FBI AUTHORIZATION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

FBI AUTHORIZATION

MARCH 19, 24, 25; APRIL 2, AND 8, 1981

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THURSDAY, MARCH 19, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:30 a.m. in room 2237 of the Rayburn House Office Building, the Honorable Don Edwards, (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Schroeder, Washington, Sensenbrenner and Hyde,

Staff present: Catherine LeRoy, chief counsel; Michael Tucevich, assistant counsel; Thomas Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

This morning the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee continues its ongoing task of FBI oversight.

Today the subcommittee will look into the role of the FBI on Indian reservations. The FBI is currently charged with a major share of the responsibility for law enforcement on the reservations. In recent years both the Justice Department and the Commission on Civil Rights have examined the FBI's role and have recommended that certain changes be made. We plan to study their recommendations and analysis in this and subsequent hearings.

Our first witness is our good friend, Dr. Arthur Flemming, of the U.S. Commission on Civil Rights. The Commission has held extensive hearings on the subject, and Dr. Flemming has consented to share with us a preview of the Commission's findings and conclusions.

Dr. Flemming, we are delighted to have you here. Will you introduce Mr. Nunez and your other colleague.

TESTIMONY OF ARTHUR FLEMMING, CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS, ACCOMPANIED BY LOUIS NUNEZ, STAFF DIRECTOR, AND PAUL ALEXANDER, ACTING GENERAL COUNSEL

Dr. FLEMMING. Mr. Chairman, thank you very much. I am always very happy to have the opportunity of appearing before this committee. I am accompanied by Mr. Nunez, the Commission's staff director, and Paul Alexander, who is the Acting General Counsel for the Commission.

I think the record should also show that for 2 years Mr. Alexander was on leave from the Civil Rights Commission and served as

special counsel for the Congressional and Indian Policy Review Commission. So I am very happy to have him with us.

Mr. EDWARDS. Thank you. We are delighted to have him here, too, and to have the opportunity of meeting you.

I'd just like to take a minute and introduce to our friends from the U.S. Commission on Civil Rights our new member of the subcommittee from the great State of Illinois, the gentleman from Illinois, Mr. Washington. We are very pleased to have him here.

Mr. WASHINGTON. Thank you.

Dr. FLEMMING. We appreciate the opportunity of addressing today the issue of the role of the Federal Bureau of Investigation on Indian reservations. As you have indicated, the Commission on Civil Rights is presently in the process of preparing a report which will be released shortly entitled "Indian Tribes—A Continuing Quest for Survival." The report is based upon a series of hearings we held between August 1977 and August 1979, and it addresses among other issues the problem of law enforcement on Indian lands and the role of the FBI on Indian reservations.

The Federal Government is responsible for investigating and prosecuting most felony offenses that occur in Indian country. Although the investigatory responsibility currently rests with the Federal Bureau of Investigation, the FBI is not a local police agency on Indian reservations. Its function is to investigate violations of Federal law, especially felonies committed under the Major Crimes Act.

The FBI's presence on the reservations is not required by statute, but it developed after World War II when there were not enough Bureau of Indian Affairs patrol officials to insure effective law enforcement. Over the years, the precedent for reporting to the FBI all violations of Federal law in Indian country was established and the FBI gradually assumed the primary investigative role.

The law enforcement mechanism on Indian reservations is complex, involving different categories of law enforcement officials as well as conflicting and competing sovereignties attempting to exercise jurisdiction. For example, the Bureau of Indian Affairs and tribal officials are responsible for keeping order on a day-to-day basis. These officials are advised by the Department of the Interior's Division of Law Enforcement Services, but the Division Chief has no direct operational control over the Bureau of Indian Affairs police. The Bureau of Indian Affairs also has special officers who are trained criminal investigators stationed on the reservations. These officers conduct an initial investigation of a serious offense prior to contacting the FBI. The FBI then conducts its own investigation and reports the case to the local U.S. attorney, who has the responsibility for criminal prosecution. In deciding whether or not to prosecute, the U.S. attorneys have broad discretion. The quality of the investigation of these offenses have substantial bearing on these prosecutorial decisions.

The manner in which the Federal Government keeps statistics about crimes on Indian lands and their investigation do not allow for an accurate analysis of the effectiveness of the Federal law enforcement effort. For example, the FBI's records do not distinguish between crimes on Indian reservations and crimes on other Government reservations.

The Commission's field investigations and testimony presented at public hearings identified a number of issues related to the FBI's investigatory role in Indian territory. First, objections have been made in relation to the length of time it takes the FBI to respond to a request for investigation.

Second, the question has been raised as to why FBI investigations should duplicate the efforts already made by tribal officers and/or the Bureau of Indian Affairs special officers. This aggravates the delay and generally is unproductive and wasteful of the limited amount of resources allocated to investigation of reservation crimes.

For example, Michael Hawkins, the U.S. attorney for the District of Arizona, testified at our Washington, D.C. hearings that the single most dramatic thing he saw upon taking office was significant duplication and overlap of the law enforcement services being offered either by tribal police agencies, the Bureau of Indian Affairs Law Enforcement Services, or the FBI. He stated that he had found instances where three separate reports were being prepared by three separate agencies, witnesses being interviewed three and four times by different agencies. According to Mr. Hawkins, witnesses to crimes who were interviewed by two or three separate agencies often produced such inherently conflicting statements that subsequent prosecutions were made enormously difficult, if not impossible.

I am delighted, Mr. Chairman, that Mr. Hawkins is going to appear before you as the next witness, and may I say we found that when he appeared before us that he had not only identified these situations but he had done something about it. And I'm sure that he will testify to that effect here.

Third, witnesses alleged that FBI investigations are hampered by the agents' physical separation from the tribal peoples. Agents generally are not stationed on reservations, and sometimes the nearest office may be more than 100 miles away. These witnesses stated that many residents are hesitant to talk freely with agents who suddenly appear on their reservations asking questions. For example, Henry Graton, a Bureau of Indian Affairs Special Officer for the Standing Rock Sioux Reservation, stated:

> We have had instances where people of the community have wanted to talk to one of us rather than somebody that is not living there.

A tribal investigator from the Pine Ridge Reservation made similar remarks:

> People are a lot more open to you if they know you. If you are going to go in a community and nobody's seen you before and you come from 40 miles away, they are going to look you over for about two days before they are going to start to talk to you.

Fourth, many witnesses and interviewed persons felt that of even greater significance is the cultural barrier between the FBI agents and the Indian communities. The agents generally do not speak the tribal language, and many residents are not sufficiently fluent in English to enable them to communicate freely with the agents. The agents do not receive training to teach them about Indian culture and, as a result, often fail to perceive the equities of a situation that might influence the decision to prosecute a crime. For exam-

ple, Fred Two Bulls, Captain of the Oglala Sioux Tribal Police of Pine Ridge Reservation, stated:

> There are many times when this happens, namely that reservation residents will not talk to the FBI. It helps a lot to be bilingual in this line of duty on the reservation to some people. They do speak English but not to a point where they can really express themselves or make you understand what they really want. In their own language they feel more comfortable.

Fifth, testimony and field investigation indicated that many Indians distrust the Federal Bureau of Investigation because they see it as an agency whose mission is to suppress dissent and political activity among Indians. Testimony relative to the role the FBI played in the cases surrounding the Wounded Knee occupation, including, for example, the Leonard Peltier case, emphasized this case. As we pointed out in previous testimony on the proposed 1979 FBI Charter Act before the Senate Judiciary Committee in October 1979, the view expressed by a resident of the Pine Ridge Reservation, who is active in the American Indian Movement, is an example of this attitude toward the FBI—and I quote:

> We have had people—members of the American Indian Movement have been murdered and because they are AIM people, the FBI does little * * * investigation towards the people that committed the murder, but there is never any convictions made, or only a few. * * * But if an AIM member is alleged to have committed a crime * * * the FBI will go out and just break itself trying to convict an Indian person, especially if you have long hair in South Dakota.

Finally, the lack of an adequate mechanism for handling complaints about FBI agents' misconduct further exacerbates the Indians' distrust of the Federal presence on their reservations.

As we pointed out in our testimony before the Senate Judiciary Committee, we are concerned that the FBI policies for the handling of complaints do nothing to dispel any impressions within the Indian community that are erroneous, or no longer accurate of FBI misconduct, nor to assure the community that appropriate action has been taken when misconduct is found to have occurred. This lack of credibility of the FBI resulting from its lack of public accountability affects the cooperation extended to agents in the Indian community.

United States v. *Banks and Means,* 383 F. Supp. 389, S.D. 1974, is a case in which a Federal judge dismissed charges arising out of the 1973 occupation of Wounded Knee, in part because of FBI misconduct. Following this dismissal, an inquiry was conducted by the Minneapolis Division of the FBI, the actions of whose own agents were under investigation. The findings by the Division of a lack of misconduct and dishonesty were not subject to any independent investigation at a higher level of the FBI, although there was a review of the record at the higher level.

In the criminal case of Leonard Peltier arising out of the occupation of Wounded Knee, FBI agents obtained from Myrtle Poor Bear affidavits claiming she observed Peltier kill two FBI agents, which were submitted to the Canadian Government in connection with a request for Peltier's extradition. However, the U.S. attorney elected not to call Myrtle Poor Bear as a witness at the trial. On appeal it was admitted that the affidavits obtained by the FBI were contradictory with one another and were, in fact, false in that she was not present at the events she claimed to have observed. The court was extremely critical of these events. Nevertheless, no internal

inquiry was made in regard to the FBI agents' development of the affidavits.

In our upcoming report we will be making the following recommendations relative to the FBI's role on Indian reservations.

First, the FBI should be removed from its primary role of investigating major crimes occurring in Indian country, and this responsibility should be assumed by tribal and Bureau of Indian Affairs investigators, with the FBI providing backup support as needed.

Second, the FBI should train tribal and BIA investigators in investigative techniques.

Third, FBI agents assigned to responsibilities in Indian country should be given specialized training in Indian law and culture.

Fourth, the Federal Bureau of Investigation should provide complainants alleging misconduct by an FBI agent with information as to the disposition of their complaints.

Finally, the proposed FBI charter should provide the House and Senate Judiciary Committee with full access to information about internal FBI investigations of allegations of agents' misconduct and should allow a civil right of action for recovery of damages for violation of the charter's mandate.

We believe that the implementation of these recommendations will help to alleviate some of the law enforcement problems now confronting Indian tribes. They would place the primary responsibility for investigative activity on tribes and, where appropriate, BIA investigators. The FBI would be in a supporting role. This shift from current position would be consistent with the policy of self-determination for Indian tribes. Only if Indian tribes are able to control their reservations will they be able to make the decisions that will determine their future development and insure their independence and sovereignty. Because of the unique trust relationship that exists between the Federal Government and the Indian tribal governments, it is imperative that the Federal role be one of facilitating the attainment and maintenance of these goals.

Thank you very much, Mr. Chairman.

Mr. EDWARDS. Thank you, Dr. Flemming. I wonder if we could get your permission to change the procedure a little bit.

Mr. Hawkins has a problem with an airplane at noon. Would you have any objectikn tn hearing his testimony at this time and then allow the ckmiittee to ask questiojs of all of you at the same tiie?

Dr. FLEMMING. I'd be very happy to do that.

Mr. EDWARDS. Thank you very much. Then we are pleased to welcome our next witness, Mr. Michael Hawkins. Mr. Hawkins is the former U.S. attorney from the State of Arizona and has had a considerable amount of experience with law enforcement problems on the reservation.

We are very pleased to have you here today, and you may proceed.

TESTIMONY OF MICHAEL HAWKINS, DUSHOFF & SACKS, FORMER ARIZONA U.S. ATTORNEY

Mr. HAWKINS. Thank you very much, Mr. Chairman. I have provided your staff with prepared comments, and I would ask your permission to include those in the record.

Mr. EDWARDS. Without objection, so ordered.

[The complete statement follows:]

STATEMENT OF MICHAEL D. HAWKINS, DUSHOFF & SACKS

Chairman Edwards and members of the committee, I am here today at the request of the subcommittee to present the views of a former federal prosecutor and resident of a state heavily impacted by the presence of members of various Indian tribes, and to answer your questions about law enforcement in Indian country and the respective roles of federal, tribal, and local officials.

Any approach to the law enforcement problems in Indian country must begin with a fundamental understanding: Indian nations can be, and oftern are, as different from one another as they are from the rest of the world. In Arizona, for example, Indian nations are as disparate as the Havasupai, whose 400 members live on the floor of the Grand Canyon and the Navajo Nation, whose 150,000 members occupy almost 9,000,000 acres of land. The law enforcement needs and concerns of tribes near urban areas may be wholly different from those in isolated desert settings. Accordingly, any attempt to resolve some of the pressing problems that confront law enforcement officials in Indian country must take into consideration the wide differences among the tribes.

THE PRESENT SITUATION

At present, a number of law enforcement agencies have potential jurisdiction over criminal offenses that arise in Indian country. State and local officials, for example, have jurisdiction over offenses committed by non-Indians. This responsibility has been significantly enhanced since the United States Supreme Court's decision in *Oliphant* v. *Suquamish Indian Tribe,* 435 U.S. 191 (1978), divesting Indian tribes of jurisdiction over criminal offenses committed by non-Indians. Tribal police officers have a jurisdiction over misdemeanor offenses committed by tribal members. In many Indian nations, the Bureau of Indian Affairs (BIA) Law Enforcement Specialists have jurisdiction over offenses that relate to government property, most non-Indian government personnel, and some overlapping jurisdiction with the Federal Bureau of Investigation (FBI) in felony cases. On some Indian reservations, BIA law enforcement and tribal police may be "blended" together (typically local tribal members as officers and BIA officers as supervisors). On other reservations BIA and tribal police agencies may exist side by side. As an umbrella over all of this is the jurisdiction of the FBI over certain Congressionally-defined "major crimes" that occur in Indian country.

THE FEASIBILITY OF SHIFTING GREATER RESPONSIBILITY TO TRIBES

Can some of the responsibilities presently undertaken by federal officers be shifted to tribal officers? I believe they can, keeping in mind again the differences among the various tribes. Within the Navajo nation, for example, I believe a substantial portion of day-to-day responsibilities of federal officers could be safely and comfortably shifted to tribal officials, if done in a carefully-planned manner.

At a minimum, there would have to be some process for assuring that tribal police officers were given adequate training (both at the entry level and on a continuing basis), that tribal courts met certain minimal due process or "fairness" standards, and that tribal police agencies were structurally professional (among other things: free from unnecessary political interference by tribal officials).

This shift could not occur, in my view, without a Congressional mandate, giving back to Indian tribes some portion of the jurisdiction of non-Indians that was taken away by the *Oliphant* decision.

COOPERATION BY LOCAL LAW ENFORCEMENT OFFICIALS

While the relations between off-reservation peace officers and tribal police officers are reasonably cooperative and cordial, there still persists some suspicion and mistrust, one of the other. Off-reservation law enforcement officials, for example, are suspicious of Indian criminal justice systems, particularly of their courts.

Tribal officials, for their part, are concerned about the even-handedness with which Indians are treated in criminal justice systems outside the reservation. Typically, they feel, Indian victims are not viewed with the same sympathy as Anglo victims; conversely, they believe, Indian defendants are treated more sternly than their non-Indian counterparts.

I have undertaken no detailed factual study to determine on which side any fault might lie. I do know that the views of both tribal and non-Indian law enforcement officials are sincerely and strongly held. At a more generalized level, the concern

has reached a point where the Arizona Legislature is seriously considering a proposal which would create a new Arizona county, made up largely of Indian residents. The proposed new county would be "carved" out of two existing counties, thereby separating Indian from non-Indian.

As a result of all of this, the prospect for good, cooperative working relationships between State and local enforcement officers on the one hand and tribal officials on the other, is not good. In the absence of such cooperation and given the Department of Justice's reluctance to become deeply involved in the prosecution of standard, daily criminal offenses, the outlook for the prosecution of such cases, particularly where they involve non-Indians, is not good.

THE TRAINING OF TRIBAL POLICE

The FBI could, and to some extent already does, play a significant role in the training of tribal police. This training could be integrated with existing tribal police training, such as at the Law Enforcement Academy that exist on the Navajo nation, where Navajo and other tribal police officers are given training.

Some form of training by FBI agents already exists in the daily contact between agents and their tribal police counterparts. I do not know whether Arizona is unusual in this regard, but I found a high degree of cooperation between FBI agents and local tribal police officers. There is no doubt, however, that more formalized and routine training by FBI agents, in particularly specialized areas, would be both helpful and productive. I also suspect that the contact, on a more routine and programmed basis, between FBI agents and tribal officers, would produce a result which I have observed personally: increased personal contract increases personal communication and, understanding.

THE ROLE OF U.S. ATTORNEY

The United States Attorney, of course, plays a particularly important role in connection with law enforcement in Indian country. In a very real sense, the United States Attorney is the equivalent of a local district attorney, particularly as regards felony crime, to the residents of Indian reservations. In many other areas of federal law enforcement, if the United States Attorney refuses to prosecute, there is a state or local prosecution alternative. As regards major crime in Indian country, however, if the U.S. Attorney declines to prosecute, there is no felony alternative and, depending upon the sophistication of the tribal criminal justice system, only a limited misdemeanor alternative. Of course, regarding offenses committed by non-Indian, the only alternative is state or local prosecution, which may be weak or non-existent.

There is an important role that this Committee could play in carrying out its oversight responsibilities over both the FBI and the Department of Justice. In recent years, there has been an effort to more carefully screen federal prosecutions and a greater effort to defer prosecution, particularly where there is a state or local prosecution alternative. This is, in my view, a perfectly appropriate policy position. Scarce federal resources ought to be used selectively. No one could seriously argue that threats to the peace and good order of the local community ought, or possible, to be handled locally.

When it comes to funding and resources, however, the Department and the FBI occasionally forget that several of the federal districts are fundamentally affected by the presence of Indian country within the district. White collar and organized crime cases are both high-profile and high-priority items. They should be. In the march to prepare appropriate prosecution priorities, however, there is a distinct feeling in Indian country that there day-to-day law enforcement problems are being "lost in the shuffle of this prioritization."

CONCLUSION

The problems of law enforcement in Indian country are as varied as the geographical locations where they are found. The United States, it seems to me, has a special role in carrying out its trust responsibilities towards the residents of Indian country. In carrying out that role, it should be kept in mind that residents of Indian country had the same expectations as you and I. They expect the government to be reasonably efficient; they expect law enforcement to be adequately funded and properly trained; they expect criminal justice systems that operate with basic fairness; and they wish their communities to be safe and secure.

Thank you for having me here today. I would be happy to answer your questions.

Mr. HAWKINS. Mr. Chairman, before coming here today, I asked the general counsels of the three largest tribes in Arizona to provide me with their comments on your subject matter, and one did respond, and that is Mr. George Vlassis, who is general counsel of the Navajo Nation which is America's largest Indian tribe. And if you have no objection, Mr. Chairman, I would offer a copy of his comments which are rather frank and straight to the point and I think of interest.

Mr. EDWARDS. Without objection, this will be included in the record.

[The statement of Mr. Vlassis follows:]

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March 16, 1981

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Re: Reduced FBI Presence in Indian Country

Dear Mike:

My observations concerning the FBI presence in Indian Country are as follows. In over ten years of work, primarily related to the Navajo Reservation, I have found that the great majority of the FBI agents assigned to problems which bring them within the physical confines of the reservation are not suited for such assignments. I don't know whether the problems arise from inadequate training or by innate bias. The same agent, in dealing with me or an Indian off the reservation is a different person -- not so quick to judge, not so hostilely defensive and not so determined to be judge and jury in the preliminary stages of an investigation. If I could characterize the many agents who have come in contact with me or Navajo governmental officials in one phrase, I would say they are "nervously hostile" until they return to their offices in Gallup, Albuquerque or elsewhere.

Because of the cultural peculiarities of the Navajo Tribe, or most any other tribe, the customary investigative procedures involving questioning which goes from individual to individual do not work well, particularly where the agent has been instructed or concludes that, somehow, he would be better off if he is dressed like someone's idea of a cowboy. Most of these fellows look like they came right out of Sears and act like programmed robots.

Another difficulty is that the agents are prone to approach the non-Indian administrators in the tribal government as their first contact and, either intentionally or inadvertently, produce a clandestine non-Indian "conspiracy" complex. Most of the investigations could be completed in short order if anyone had the sense to approach the Chairman, the Vice Chairman, or me, directly, which no agent has ever done.

Working through the Navajo tribal police, I have found that I can gather more information in a day or two than what I believe the FBI agents could collect in a week or two, simply because the great majority of the tribal police have been adequately trained in police and investigative procedures and, using that training in connection with their mastery of the language and their upbringing on the Reservation, they can, in fact, discover the "truth" about a particular situation in relatively short order. My impression is that the agents, speaking of them individually, do not trust the tribal police or the tribal government and perhaps that attitude is instilled by the BIA law enforcement personnel, most of whom are not suited to the functions that they are assigned to perform.

Since the days of Wounded Knee, the BIA law enforcement personnel have dealt with Indian law enforcement situations as if Wounded Knee was about to arise any minute on no notice. The most recent example was the usage of AK 15, 16, or whatever (automatic weapons) for the arrest of four Navajo women, two of whom were juveniles and two of whom were on social security. That approach is destined for failure from the outset.

While the tribal courts are not everything one would desire, neither is the justice court or the magistrate court in Mesa or Gila Bend. The greatest weakness in the law enforcement situation on reservations seems to be the technical abilities of the tribal prosecutors, most of whom are not professional lawyers, but who may be opposed by trianed lawyers in their attempts to prosecute various offenders. Sometimes I think that prosecutions are stalled by tribal prosecutors, even though tribal police have gathered the appropriate evidence, simply because the prosecutor wants to avoid what he anticipates as the potential media embarrassment of losing the prosecution's case.

I think tribal police would be very receptive to FBI training, particularly if that training could take place partially on the reservation and partially at some FBI location.

While I could go on endlessly about these matters, I would leave you with two thoughts: (1) given the opportunity FBI agents have almost invariably performed in a discourteous manner with relation to highly placed tribal officials, and (2) with the exception of yourself, no U. S. Attorney in the three states (Utah, Arizona, New Mexico) has ever attempted to obtain any rapoort with the tribal government on a person-to-person basis. That situation is aggravated from time to time by the refusal of a U. S. Attorney to initiate a prosecution against an Indian where the sentiment of the tribal government is very strong for prosecution.

The process of consultation between the federal law enforcement authorities and tribal authorities should not be considered demeaning to the federal authorities. It would seem that the federal authorities, be they from the BIA or the Justice Department, are extremely hesitant to have frank discussions with their tribal counterparts.

Needless to say, my views would not be at all applicable with respect to small tribes, like the Fort McDowell Reservation, where, at present, the reservation has neither the means nor the desire to assume a large roll in law enforcement with respect to serious criminal violations.

I would hope that this would be of some benefit to you in the pending investigation of the Committee on the Judiciary of the House of Representatives.

Sincerely,

George P. Vlassis

Mr. HAWKINS. I want to thank you for having me here and I appreciate, Mr. Chairman, your going out of order.

In summary, I would tell you that my experience, after almost 4 years as U.S. attorney in a State and district heavily impacted by matters involving members of native American tribes, is that law enforcement can work in Indian country. There are barriers to effective law enforcement in Indian country. They are not insurmountable. The FBI has a role to play there. It is a role that I think needs to be refined and fine tuned to some substantial extent.

One thing that must be kept firmly in mind, Mr. Chairman, based on my own experiences: Indian nations are as different one from another as States are from one another. Just as something that might work in Augusta, Maine, might not work in Albuquerque, N. Mex., so, too, for example, a policy for the Navajo Nation, whose 150,000 members live on 9 million square acres, might not work for the Havasupai, who are 400 people who live at the bottom of the Grand Canyon with no electricity and supplies either packed in by mule or brought in by helicopter.

Also, problems of Indians who are in or near urban areas are very different from those in remote desert areas.

Another thing that must be kept in mind is that the sophistication of criminal justice systems varies widely. Some are very sophisticated. In my opinion, the Navajo criminal justice system, although not without faults, is effective, politically stable, independent, and is workable and provides fundamental due process to the people that come through the court system. Their tribal police are well trained, well prepared, and conduct effective investigations. And on a reservation like that, the role and the relationship between the FBI and the tribal police approaches the relationship between city police officers in a local jurisdiction off the reservation, and the FBI.

In a small town in Arizona, Flagstaff or Kingman, the police look to the FBI for scientific lab support; they look to them for assistance in locating witnesses that might travel across State lines, they

look to them for assistance in following leads that might be beyond their jurisdictional reach. It is a cooperative relationship.

That ought to be the fundamental goal of Federal law enforcement. It is workable on some reservations; it is not workable on others.

I think that is the general thrust of my statement. I'd be happy to answer any questions you might have, Mr. Chairman, or that any other members of the committee might have.

Mr. EDWARDS. Thank you, Mr. Hawkins. I wonder if Dr. Flemming, Mr. Alexander, and Mr. Nunez might come back to the witness table.

I recognize the gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman.

First of all, I want to commend you, Dr. Flemming, for the fine work you have been doing over the years with your Commission in the field of civil rights. We are very appreciative of your efforts, and it is my understanding you are considered the elder statesman of civil rights on the Hill, and I commend you for your efforts in the past. I want you to know the Commission has my support in the future.

Dr. FLEMMING. Thank you very much.

Mr. WASHINGTON. The current President has made clear he wants to protect and sustain the Commission. He could do no less with a man like you at the helm.

Dr. FLEMMING. Thank you.

Mr. WASHINGTON. The actor Robert Redford met with us on the subcommittee yesterday, and he was extremely concerned over the alleged abuses by FBI agents on Indian reservations, and he was feeling perhaps that this committee or the Congress should strengthen and tighten oversight responsibilities of the forthcoming charter. He painted a picture of allegations about experiences of people on the reservation with FBI agents.

But his rendition of what was happening recalled to my mind what one former Director of the FBI purported to have done in other civil rights cases. He besmirched his name and used every effort negative and untoward, if not illegal, with reference to Dr. King, because of what he stood for. I think Mr. Redford raised the question when he said perhaps we should be about the business of the charter to give us some assurance of appropriate oversight in the future over attempts, perhaps, by the FBI to politicize itself.

And I would agree that that might be especially appropriate insofar as the activity of the FBI vis-a-vis those reservations, because the reservations are geographically isolated and have significant cultural differences and perhaps misconceptions and serious communication problems.

What would be you response to that?

Dr. FLEMMING. Congressman Washington, we would concur in that type of recommendation. You probably noticed that we did testify before the Senate Judiciary Committee relative to the FBI charter, and based on that testimony I reiterated here our feeling that the charter should provide both the House and Senate Judiciary Committees with full access to information about internal FBI investigation of allegation of agents' misconduct, and in addition

should allow a civil right of action for recovery of damages for violation of the charter's mandate.

We feel very definitely that provisions of that kind should be incorporated in the charter.

Mr. WASHINGTON. And that grows out of your experience in dealing with matters on Indian reservations.

Dr. FLEMMING. That is right. That grows out of our field investigations, our public hearings. And the commissioners as a whole have evaluated that evidence growing out of our field investigation and our public hearing and have arrived at this particular conclusion, among other conclusions.

Mr. WASHINGTON. Are you satisfied with the recruitment effort on the part of the FBI? I am not certain but I think the perception among a lot of people, certainly in my community, is that the FBI might be somewhat ethnically lopsided, that they haven't reached out in the FBI with respect to its agents and officers with respect to different ethnic backgrounds, black, for example, and certainly Indians.

Would it be of some interest to know at this point what profile the FBI might come up with?

Mr. EDWARDS. If the gentleman would yield, that is an excellent suggestion. From time to time we have requested a breakdown, but we haven't done it for a number of years, and I would be interested as to how many Indians there are as FBI agents. So without objection, we will go ahead and make that request in writing.

Dr. FLEMMING. Congressman Washington and Congressman Edwards, Judge Webster did appear as a public witness in connection with our hearing in Washington, and that is one of the issues that was raised with him. And he made certain responses at the hearing and then, my recollection is, did provide additional information following the hearing. And we would be very glad to bring that together, both his response at the hearing and the additional information that he supplied us and furnish it to the committee, and you might find that helpful in using it as a base for further inquiries along that particular line.

Mr. EDWARDS. Thank you.

Mr. WASHINGTON. Thank you.

Mr. EDWARDS. Mr. Washington, are you through?

Mr. WASHINGTON. Yes.

Mr. EDWARDS. The gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Dr. Flemming, I would like to join my colleagues in welcoming you here this morning, and I do have questions along two lines.

Your testimony is particularly harsh in its treatment of the FBI in response to complaints of crime on Indian reservations.

Now, in light of Mr. Hawkins' testimony that the various Indian nations are as different as the States in the Union, what is your response to the recommendation that apparently the FBI be divested of jurisdiction over law enforcement on Indian reservations?

Dr. FLEMMING. Well, as I indicated in my testimony, we believe that as a matter of overall policy the FBI should cease to play the primary role in investigating major crimes occurring in Indian country, and that the basic responsibility for this should be placed

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with the tribal police and/or Bureau of Indian Affairs investigators, with the FBI having the responsibility for providing backup support as needed.

We recognize the fact that if that becomes the basic policy of the Federal Government, that the time that it would take to implement that particular policy would certainly vary from tribe to tribe. It would certainly be very dependent, for example, on the resources that might be provided the Bureau of Indian Affairs police activities on the reservations, and it would certainly be dependent on how far along the particular tribe or the tribes were in developing their own police system.

As Mr. Hawkins indicated, we have taken note of the fact that, for example, the Navajo Tribes, with whom he worked, have made considerable progress along that line. And you could not just automatically apply a new policy of this kind in the same way in relation to every tribe. But we do believe that it would be sound policy for our Government to set that as the objective and then to move toward the achievement of that objective as rapidly as possible, recognizing the fact that the FBI would always have responsibility for backup support and would always have a significant role to play.

Mr. SENSENBRENNER. If primary responsibility for investigations is taken away from the FBI, who monitors the quality of the investigation which is done by the tribal police?

Dr. FLEMMING. That question really leads to a consideration of how effectively law enforcement activities on Indian reservations is being coordinated by the Federal Government.

As I indicated just briefly in my opening statement, you've got, of course, the role of the Department of the Interior through the Bureau of Indian Affairs; you've got the role of the tribes themselves; and then you've got the role of the Department of Justice.

The executive branch has never fixed responsibility for coordinating those various roles and giving overall direction for the handling of this problem. And in our judgment that is essential.

We were asked just to discuss today the FBI role, but we have in our chapter on law enforcement in our upcoming report some recommendations on this whole problem of coordination. And that ties right in with your question.

I think that overall responsibility should be fixed at a particular point in the Government for this, and that the agency that has that overall responsibility is the agency that should size up the situation and determine when you can move, in connection with a particular tribe, in the direction of achieving the kind of an overall objective that is reflected in our recommendation.

Mr. SENSENBRENNER. Will your report recomend that Congress in effect reverse the Supreme Court's decision in the case of *Oliphant* v. *Suquamish Indian Tribe,* which divested Indian tribes of jurisdiction over the criminal offenses committed by non-Indians?

Dr. FLEMMING. We will not recommend a reversal of that. We typically don't get into the business of recommending that the Supreme Court reverse itself on a matter of that kind.

But we will recommend that the Federal Government take note of the fact that nobody has really followed up on that particular decision in a meaningful and effective way.

The aftermath of that particular decision illustrates very poignantly the fact that responsibility for coordination has not been fixed or accepted at any particular point in the executive branch of the Federal Government. And we think that that is very, very serious in terms of following up on that particular decision. People are confused.

And Mr. Hawkins is in a better position to comment on that than I am, because he can comment on it from a very practical point of view growing out of his own practical experience.

But we feel that the report of the Federal Government in recognizing that decision and then setting a policy that could be implemented effectively growing out of that decision is a very poor record.

Mr. SENSENBRENNER. Now, taking your response to my last question in conjunction with your response to my earlier questions, should the Supreme Court decide that the *Oliphant* case not be reversed and the crime has been committed and nobody knows whether the suspect is an Indian or non-Indian, don't we have even greater coordination problems? Because if the suspect is an Indian, that would be under the jurisdiction of tribal police; if it was a non-Indian it would be under the jurisdiction of the U.S. Government.

Dr. FLEMMING. The answer is it does confront the Government with more difficult coordination problems. But in our judgment that is no reason for the Government not tackling those problems and endeavoring to deal with them in a positive and constructive manner.

Mr. SENSENBRENNER. May I ask Mr. Hawkins to answer my last question to Dr. Flemming.

Mr. HAWKINS. Yes, Congressman.

That is a very difficult question to answer personally. My own view is that since, as I understand it, *Oliphant* is not constitutionally based, not based on a provision of the Constitution but based instead on the lack of jurisdictional authority under several acts of Congress, I think it can be legislatively overruled, and my own judgment is that it should be.

With regard to the standard to be used or described in a statute that would provide again Indian nations with jurisdiction or non-Indians, one thing that ought to be kept in mind is that we are not generally, on the larger Indian reservations, talking about situations where non-Indians are sort of captive and not there by choice.

I think given the authority to exercise jurisdiction over non-Indians, most tribes are talking about people who come to their land with the purpose of using it to hunt, to fish, to recreate, to travel, to camp or fish, or just to be a tourist. And doing that, if you are a guest in someone's house you observe their rules, and I think the same thing should pertain when you visit Indian country as an outsider.

Oliphant is a significant impediment to maintaining law and order and discipline and safe communities within Indian nations at present. The Department of Justice, at least during the last administration, took a view with which I disagreed personally and do disagree, that the primary jurisdiction over standard street-type crimes committed in Indian country by non-Indians was with State authorities.

Well, the fact of the matter is that local prosecutors are simply not as interested, for reasons both good and bad, in pursuing violations that occur in Indian country. And just as there are suspicions by non-Indians of Indian judicial systems, there are suspicions by Indians of the even-handedness with which these cases are handled and whether they are handled at all.

To precisely answer your question about is there an agency that can perform a coordinating role, there is not one that has all the teeth that is necessary, but certainly the U.S. attorney in a given district can use the authority as the powerful discretionary authority of whether or not to bring prosecutions, to coordinate effort among the law enforcement agencies, and second, use the prestige of his or her office to encourage local prosecutors to exercise their responsibilities.

The U.S. attorneys I knew whose districts were heavily impacted by the presence of native Americans made those efforts. Sid Lezar in Oregon, R. V. Thompson in New Mexico, and others made those efforts.

I'd be a little bit remiss if I didn't make one remark.

There have been some comments about FBI misconduct. In the main—and I spent thousands of hours working on this problem—the FBI agents that I knew that worked in Indian country were decent, humane, compassionate people who worked long and hard under very pressing conditions to do the best job that they could.

There are cultural and language differences to be certain, but in 4 years of being a very critical and at the same time interested observer in this whole affair, I saw no provable damage-resulting case of FBI misconduct.

Maybe we had a better range of agents, maybe there was better understanding, I don't know. And I found willingness on the part of the FBI to adjust their own internal policies to try to better serve the reservations. It doesn't mean they can't do their job better; I think they can. But I think that point ought to be made.

Dr. FLEMMING. If I may comment, Mr. Chairman, on Mr. Hawkins' comments, first of all my comment relative to the overruling of the *Oliphant* decision related to trying to get the Supreme Court to overrule its decision in that particular case. I certainly share the views expressed by Mr. Hawkins that the Congress could come to grips with that issue and pass legislation which would lead to an entirely different result in the courts.

And I would also like to say that based on our field investigations and based on the testimony we received at public hearings, it certainly is possible at the present time for U.S. attorneys to do a very effective job of coordination. And when our report comes out we will be dealing in some detail with the program that Mr. Hawkins worked out for coordination, and we will be dealing with it in a very positive way.

He demonstrated what can be done by exercising the powers that are now vested in a U.S. attorney, assuming that no roadblocks are thrown in the way as far as the U.S. attorney is concerned. And that could happen from the Federal level.

Mr. SENSENBRENNER. Thank you. I have no further questions, Mr. Chairman.

Mr. EDWARDS. To pursue the subject Mr. Sensenbrenner, which I think is very important, and which I hadn't thought about before. The situation on the reservations is essentially one of extraterritoriality insofar as the courts are concerned. Insofar as practically all felonies and from people coming in from outside the reservation, the tribal courts don't count. These cases must go to a Federal court or State court outside the reservation; is that correct?

I think a lot of resentment occurs as in China before the revolution. The Boxer Rebellion was caused by the fact that in effect every country would have its own courts in China.

Mr. HAWKINS. Congressman, you hit on a particularly important and sensitive question.

Today the typical felony criminal case that occurs in Indian country that would involve an Indian defendant and one or more Indian victims, is tried 300 or 400 miles away from the reservation in a large metropolitan area such as Phoenix, before an all-Anglo jury with an Anglo judge, an Anglo prosecutor, an Anglo adviser, and probably an Anglo public defender, none of whom have touch with the day-to-day prnblems that might arise in that particular Indian nation.

There is a substantial problem in my view in this country today with whether Indian defendants and Indian victims are receiving the jury-of-their-peers guarantee that is talked about in the Constitution under those circumstances.

One critical and important question that this subcommittee could ask the Administrative Office of the Courts is: In those districts which are heavily impacted by the presence of members of Indian tribes, what are the on-the-ground facts about native American participation in jury panels? And I think you will find it is nothing or next to nothing. And it is an important problem and one that ought to be looked at.

These cases can and should be tried closer to Indian country with greater Indian participation in the process.

Mr. EDWARDS. Wouldn't you agree, Mr. Hawkins, that we are skirting rather closely to deprivation of equal treatment under the law as provided in the Constitution when we require somebody to be hauled 300 or 400 miles away to be tried by people who have no relationship to the problems back home?

Mr. HAWKINS. I don't know if I'd characterize it as that, but your concern in that regard is well founded, and I share that concern. The chief Federal judge in Arizona and I began to work in the last year or so I was in office, just to use one specific example, of attempting to move the northern location where the Federal court sits in Arizona from Prescott, which is in a county that has 2 percent nonwhite population, to Flagstaff which is centrally located in the northern part of the state and is a county that has a 38 percent nonwhite population, the bulk of which is native Americans.

And those efforts ought to be encouraged, and they ought to be continued.

But it is a problem—and I have tried these cases myself. I took my share of prosecutions when I ran the office, and tried cases, and you haven't had a difficult case until you have had a witness who can't tell you when an event happened but can only tell you that

the corn was at a certain level from the ground, and the people on your jury panel are engineers from Motorola and Digital, and the cultural gap is just astounding.

Mr. EDWARDS. Thank you. The gentlewoman from Colorado.

Mrs. SCHROEDER. Thank you, Mr. Chairman. And I apologize for being late, but there are too many committees running at the same time.

Mr. Flemming, I want to ask: When the Commission looked into this whole area, did you look into whether or not the FBI reacted differently to different Indian tribes or whether they reacted differently to different groups, such as AIM, within different Indian tribes? Was that part of your investigation?

Dr. FLEMMING. No, we did not address ourselves to that particular issue. We took some testimony in connection with our hearing, particularly in South Dakota, where there were some allegations to that effect. And I reflected very briefly some of that testimony in my opening statement here today from a particular witness.

But we did not take testimony of that kind and then probe further to determine whether or not there was a valid basis for the testimony.

We certainly did take note of the fact that there is a perception of that kind on the part of American Indians living on reservations.

Mrs. SCHROEDER. I guess I am a little surprised that you didn't go into that more, I say that as one who, when I ran for Congress in 1972, and later on under the Freedom of Information Act when I finally got my FBI file, found they had hired agents to break into my house and monitor us and do all sorts of things. It was very interesting because I belonged to such incredible groups as NOW and Vietnam Veterans Against the War, so I thought they had a license to break and enter and look for any other damaging information they found. I belong to the League of Women Voters and other things.

I would have handed them my political brochure if they had wanted one.

All of which makes me wonder what kind of mind set was operating. If that was operating in Denver, Colo., I wonder if it was operating in other areas and if so, there might be some substance to those allegations.

Did you not think it was worthwhile looking into?

Dr. FLEMMING. Yes, we do think it's worthwhile looking into matters of this kind and we did address ourselves to the procedures that are followed in connection with allegations of that type relative to misconduct on the part of FBI agents.

And as our upcoming report will indicate, and as my testimony indicates today, we are not at all satisfied with the manner in which allegations of that type are handled.

For example, in my testimony I pointed out that where a complaint of this nature, let's say, is made, it will be investigated internally by the FBI, but at least at the time we were holding our public hearings the complainant will never hear anything about what happens to the complaint.

Also, one of our specific recommendations growing out of our study, as indicated here, is that we believe that the FBI charter

should provide very specifically that the House and Senate Judiciary Committees should have oversight responsibility in connection with conduct of this kind. This is not provided for—or at least it wasn't provided for in the draft of the charter that we testified on when we appeared before the Senate Judiciary Committee.

So if you are familiar with that, we said specifically here that the FBI charter should provide the House and Senate Judiciary Committees with full access to information about internal FBI investigations of allegations of agents' misconduct and should allow a civil right of action for recovery of damages for violation of the charter's mandate.

Mrs. SCHROEDER. I guess my problem with that is I look at myself—and I admit it is very hard to divorce yourself from those things—but when I hear that, I think that is not much of a remedy. I can have an oversight committee say that is not right, that they should pay people money to break into your house. And to say I can go into court and get civil damages or something, that is very, very costly. And I live with an attorney, my dear husband, and it is still very costly even for me.

So I am still not sure that that is an adequate remedy, I guess, in that kind of situation.

Dr. FLEMMING. Well, I would share your feeling on that and on the question of cost. It would seem to me that some provision should be made for the handling of cost, as has often been the case in connection with matters of this kind.

Also, we are not making that recommendation just by itself. I mean we also recommended that the FBI should be required to provide complainants as to alleged misconduct by FBI with information as to the disposition of their complaints. And we feel, I think, that the FBI internally could pursue a much more vigorous policy than it has in the past.

Again in my testimony I pointed out that in connection with some of the cases arising out of Wounded Knee, the court identified misconduct on the part of FBI agents and did it in pretty vigorous terms. That resulted in an investigation in the area by the FBI office that had responsibility for the area where the alleged misconduct took place.

There was a review of the record according to the FBI, at higher levels here in Washington, but no thought of making an independent investigation of the situation.

And it seemed to us that when the court reaches the conclusion on the basis of the testimony that has been presented to it that there was serious misconduct on the part of the FBI agent, that as a minimum not only should there be an investigation on the part of the agent in charge in that particular area, but that there should be something more than just a review of the record at the Washington level.

Mrs. SCHROEDER. Well, I probably live closer to South Dakota than other people, and maybe we are unduly suspicious in our part of the country, but we have a feeling that people tend to get promoted for that kind of action. And there is a saying in my part of the country that whenever any of them get into trouble the FBI tend to put their wagons in a circle and protect them at all cost or at least brush it off, and that is very disconcerting for us.

I also want to ask if you explored the case of Leonard Peltier at all.

Dr. FLEMMING. Only from this point of view. We did explore in some detail what happened following that particular case. We did not attempt to get in and conduct the kind of investigation that is conducted by other Government agencies.

For example, in our chapter on law enforcement, you will find that we did review briefly the events surrounding the whole Wounded Knee development, including the Peltier case. And then we tried to draw some lessons from what happened and didn't happen as a result of that particular development. But we did not attempt to duplicate what other Government agencies had done in terms of investigating the case itself.

Mrs. SCHROEDER. So you don't reach any specific conclusions on that case?

Dr. FLEMMING. Not on that particular case, no. But we did reach some conclusions relative to what happened or didn't happen following that particular case.

Mrs. SCHROEDER. Mr. Hawkins—I am taking too much time, but let me ask you one quick question. My understanding is that the Department of Justice task force indicated that the U.S. attorneys have declined to prosecute a large number of cases that come from reservations. Is that your experience? And, if so, why do you think that happened?

Mr. HAWKINS. That was certainly my assessment of the statistics when I took office in 1977. I think our record in those 4 years that followed is probably somewhat better.

The declination rate on felony cases coming out of Indian country is higher, for some understandable natural reasons, as a first consideration.

Mrs. SCHROEDER. Like what?

Mr. HAWKINS. Many cases are alcohol-related, and you will find memories and perceptions blurred by alcohol on the part of everybody who was a participant.

Mrs. SCHROEDER. So you mean you don't have enough to go on as prosecution, is that it?

Mr. HAWKINS. Yes, sometimes there is not enough evidence, based on the fact of the heavy involvement of alcohol.

Mrs. SCHROEDER. I see.

Mr. HAWKINS. A thing that sometimes comes into consideration for which there must be some flexibility in system of deciding whether to authorize prosecution or not is the wishes of the families.

It is common, for example, in a situation of rape or assault of a man on a woman in the Navajo or Apache culture, for the families to attempt to work it out among themselves, and it is not an atypical situation for a prosecutor to have a felony case in hand and have a representative of both the victim's family and the defendant's family come to him and say, "We have made our peace on this."

Mrs. SCHROEDER. What about the victim? The victim——

Mr. HAWKINS. I'm talking about the victim and their family coming to you, and the defendant and his family coming to you and saying to the prosecutor, "We have made our peace on this. We

have apologized to each other. We have made, in effect, our civil settlement, and we don't want the court to go forward."

That sometimes happens.

I can also tell you there are some cases of declination which upon examination doesn't make a darned bit of sense. And one of the things I tried to do when I was U.S. attorney was to make sure there was an administrative appeal vehicle where the tribal people could come to me and explain if the case wasn't authorized for prosecution and they thought it should be.

Mrs. SCHROEDER. Thank you, Mr. Chairman.

Mr. EDWARDS. Well, of course, there were other U.S. attorneys who had jurisdiction—many, I presume, in different parts of the country; isn't that correct?

Mr. HAWKINS. Yes.

Mr. EDWARDS. Do they share your attitude with regard to both the FBI and the difficulty of some of these cases where prosecution was declined?

Mr. HAWKINS. Some do; some don't. I point out in my prepared remarks that there is great and understandable emphasis on the part of the Department of Justice on high-profile, high-priority organized crime cases and quite often there is the failure to recognize that when you tell U.S. attorneys in general, "Concentrate your cases on those that have high impact, that have high priority—organized crime, narcotics, those sorts of prosecutions," that you must take into consideration that in many districts—Arizona, Colorado, the Pacific Northwest, South Dakota, New Mexico, Utah—the caseloads of Federal prosecutors are heavily impacted by the presence of Indian nations. And something that must be kept firmly in mind is that the U.S. attorney plays a very different role as regards crime in Indian country. You are their district attorney as to felony crime. If you don't prosecute, in all probability there is no effective prosecution alternative.

And I don't think there has been enough emphasis from the policy point of view on the part of the Department of Justice or the executive branch in general in the past in all recent administrations to recognize that and to encourage that.

Mr. EDWARDS. But you are 300 or 400 miles away, maybe 500 miles away. You are not a native American. You are not a local person like we are used to back home with our district attorneys. They are neighbors, they are people who went to school, who went to college, around Denver or San Jose or Chicago or something like that.

It must be very unsettling for the district attorney to be someone so removed from the day-to-day life of an Indian reservation.

Do you get that feeling?

Mr. HAWKINS. I agree with that. It was easier for me. I was born and reared in a small town on the edge of the Navajo reservation and the schools I went to had 30 and 40 percent native American kids in the schools. I speak halting Navajo. So it was a little easier for me, but I think your point is very well made.

Dr. FLEMMING. Mr. Chairman.

Mr. EDWARDS. Dr. Flemming.

Dr. FLEMMING. Could I just follow up on the comment that was made on the policy of the Department on priorities.

We identified that as quite an important issue. And in our forthcoming report we will say this on that:

> On a national level the Department of Justice sets priorities for allocation of investigative and prosecutorial resources based on an evaluation of the kinds of criminal activities that have the greatest impact on society. At the present time investigations of organized crime, white collar crime, and national security violation are at the top level of priority, and according to the Director of the FBI.

And this was testimony he gave us at the public hearing we held—

> Those being the areas of primary impact we try to devote an increasing number of our resources to them on the ongoing program at particular basis.
> Investigations of crimes on Indian reservations is set at the lowest priority level.

And we feel that that is an issue which definitely should be addressed. And there is a good deal of evidence growing out of our field investigation and our public hearings bearing on that.

Mr. EDWARDS. In addition to that, don't all the witnesses think that practically all of the investigations should be by well-trained tribal police, and all crimes tried within the tribal system and not in the Anglo system 1,000 miles away? Isn't that the goal that we should strive toward?

Dr. FLEMMING. Yes.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman. I apologize for missing the early part of the hearings.

Dr. Flemming, I have been a student of the rhetoric involved in compulsory busing for some time, and I think I understand the rationale which the courts use. Cultural isolation is not a good thing for people of a definable racial group. Racial isolation isn't a good thing. Homogenation is important, even if it is compulsory. Even if the people don't want it, it has been determined by sociologists and civil rights theoreticians and certainly the courts that that is the only way to have equal protection of the law vis-a-vis education.

And I am somewhat puzzled as to why Indians aren't compulsorily bused to white schools so this homogeneity—in other words, if it's good for the blacks and the whites, why not for the reds? Why do we treat them differently?

Dr. FLEMMING. Congressman Hyde, I haven't personally gone into that. That was not——

Mr. HYDE. I know it's not within the purview of our meeting, but since you're here, it is so convenient.

Dr. FLEMMING. I don't think we get into that at all.

Mr. ALEXANDER. We discussed it in our chapter on Indians and civil rights.

Dr. FLEMMING. Mr. Hyde, Paul Alexander is our acting general counsel, and as I explained at the beginning, for a couple of years he was on leave from the Civil Rights Commission to serve as special counsel of the American Indian Policy Review Commission, a congressional commission. So that he is very, very well acquainted with this area and did some excellent staff work on it.

Mr. HYDE. Perhaps he can address that question.

Mr. ALEXANDER. Well, as the Supreme Court of the United States has held consistently, Indians in their tribal setting are not defined as a racial classification for purposes of the 14th amendment. In

that setting it is a political relationship, a relationship the United States as a government has with the Indian tribe as a government. And we are talking about the tribal political obligation of the United States in relation to law enforcement functions on Indian reservations.

Indians in certain urban settings and in certain public school settings may, in fact, be treated as a racial classification for certain types of civil rights laws. But when we are talking about a tribal setting, that is not a racial classification. That is a political group of people. It is the only such thing in our constitutional system like that.

Mr. HYDE. I understand that, but the rationale for busing is to eliminate or ameliorate cultural isolation. In previous years, Indians have been told they couldn't speak their native language, and sort of forcibly inbred into the public school system. And there has been a substantial and strong movement away from that in recent years. They have built the high schools now in Indian country and are attempting to hire more and more Indian teachers.

So the sort of thing you're talking about was tried at one time.

My only concern is the compulsory aspect of it. I think there is merit to mixing different cultures. I think the Indians can learn from us and we can learn from them, and we can all learn from the Hispanics and blacks. But it is the conscription of kids on buses that is so militantly sought by the government in courts, and it is the selective mix of all these good notions that just has concerned me.

I do understand the legal difference, but the social differences or the social advantages of this are still there.

Dr. FLEMMING. Congressman, as you well know, the Commission and I have been quite vigorous in our advocacy of desegregation policies, which include court orders and which in turn make provision for pupil transportation. And I don't waver at all in my feelings that that is the only way in which we will ultimately provide equal access to the educational resources of our Nation.

However, on this issue I have lived long enough that I have seen this pendulum swing back and forth as far as the Indians are concerned. I have not had the opportunity, as Mr. Hawkins has had, of living close to the tribes, but I have been in the Government when it's been swinging back and forth.

At times we have thought that the thing to do was to try to assimilate, to use a term that has been used very often. And then we moved in the direction of self-determination.

And as far as the law is concerned at the present time, that is, represented by laws passed by the Congress, as a nation we seem to be committed now to the concept of self-determination.

When I was Commissioner on Aging, I pushed for an amendment to the Older Americans Act that would make it possible for the Administration on Aging to make grants directly to the tribes. The Congress has passed such an amendment to the Older Americans Act, and under title VI of that act now grants can be made directly to the tribe.

In our report, when it comes out, you will see that we do deal with this from a historical point of view, from a legal point of view,

and we as a commission—and I certainly concur in it—come down very strongly on the side of self-determination.

I think on balance that that is the direction for the country to move in.

Mr. HYDE. I share your adherence to the notion of the consent of the governed being awfully important in our democracy, along with equality and along with freedom. But the consent of the governed is pretty darned important, too—and that is what you are saying and that is what I am saying, too, only I probably put it in a little broader context.

Thank you.

Mr. EDWARDS. Mr. Tucevich.

Mr. TUCEVICH. Thank you, Mr. Chairman. I noted, Mr. Flemming, with interest part of your conclusion on the internal inquiries made by the FBI of charges alleging misconduct of their agents, basically that the House and Senate Judiciary Committees would have access to the internal findings and reports.

I am curious whether you feel the FBI has been less than zealous in pursuit of allegations of agent misconduct.

Dr. FLEMMING. That is our feeling.

Mr. TUCEVICH. That is your feeling?

Dr. FLEMMING. Yes.

Mr. TUCEVICH. That being the case——

Dr. FLEMMING. May I say, some of the evidence that leads us to that particular conclusion is referred to in my opening statement, and there is additional evidence along that line in our report.

Mr. TUCEVICH. You made reference immediately preceding that recommendation to the Peltier case, the case of Dennis Means and Banks, and finally the comments of the U.S. district court judge in that case. Was the Commission indicating that there was no attempt at an investigation on the part of the FBI?

Dr. FLEMMING. No; in fact, in my testimony we indicated that the FBI—first of all, you have to separate those two. When the court handed down the decision in the *United States* v. *Banks and Means,* an inquiry was undertaken by the Minneapolis division of the FBI. But it was the actions of their agents that were under investigation, of course.

The findings by the division of the lack of misconduct and dishonesty were not subject to any independent investigation at a higher level, although there was a review of the record at a higher level.

I want to be fair to the FBI from that point of view.

And that is indicated in a communication from Judge Webster to the Commission.

But in our judgment, on a review of seriousness of those accusations, the FBI should not have been content with an investigation conducted solely by the office where the agents operated.

Mr. TUCEVICH. Did the Commission make any request of the FBI to provide them with access to the internal investigation with respect to that case?

Mr. ALEXANDER. What we requested was what they had done, and that is in the printed transcript of May 14, 1979, with a letter from Judge Webster attached and all his statements. That is our record on that to date.

Mr. TUCEVICH. Would it be a fair statement to say you asked the Director to submit written responses?

Mr. ALEXANDER. Yes.

Mr. TUCEVICH. And the written responses in this particular hearing are in entirety the extent to which he responded to that particular subject.

Dr. FLEMMING. Yes. His letter was responsive to our inquiry.

Mr. TUCEVICH. But I take it you were not satisfied by that response.

Dr. FLEMMING. Well, I have just stated that in our judgment, in view of the seriousness of the allegations, it seems to us that the FBI should have conducted an investigation outside of the area where the misconduct took place.

Mr. TUCEVICH. Would it be fair to say that this is more of an isolated case or on the other hand did you detect a systematic pattern on the part of the FBI to not fully investigate allegations of agent misconduct?

Dr. FLEMMING. Well, you referred to a court proceeding growing out of the Leonard Peltier case and involving the affidavits that the FBI agents obtained from Myrtle Poor Bear. And on appeal it was admitted that the affidavits obtained by the FBI were contradictory with one another and were, in fact, false in that she was not present at the events she claimed to have observed.

And as I indicated, the court was very critical of these events. Nevertheless, no internal inquiry was made in regard to the FBI agents' development of the affidavits.

We feel that such an inquiry should have been made.

Mr. TUCEVICH. OK. Aside from these particular cases that you mentioned in your statement, were you able to detect any other instances whereby the Federal Bureau of Investigation was lax, in your opinion, in pursuing allegations of agent misconduct?

Dr. FLEMMING. We felt from these cases—and my recollection is there were several others which we'd be very glad to furnish you.

Mr. EDWARDS. Without objection they will be received.

Dr. FLEMMING. Our conclusion was, on the basis of those cases, that the procedures that are followed regularly were deficient in terms of investigating alleged misconduct.

Mr. TUCEVICH. So would it be a fair statement to say that you perceive this to be a widespread problem?

Dr. FLEMMING. No, that would not be a fair statement, because I do not have knowledge that could lead me to the conclusion that it was widespread. I say that the lack of adequate procedures for dealing with a matter of this kind could very well create a problem that would be widespread.

Mr. TUCEVICH. Did you receive complaints in that regard from reservations other than Pine Ridge? In other words, since Mr. Hawkins has indicated that Indian tribes are very diverse and spread out throughout the Nation, were there such indications from other witnesses who testified?

Dr. FLEMMING. I have referred to the fact that we do have some other testimony referring to some other cases, and those came from other reservations. And I will be very glad to identify that for the record.

Mr. TUCEVICH. Thank you.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman.

Dr. Flemming, I take it then that you don't recall specifically any other instances of FBI agent misconduct other than what you have already discussed.

Dr. FLEMMING. There are some other instances in the record of our hearings and our field investigations which I wll be very glad to have brought together and submitted to the committee.

Mr. BOYD. Thank you. Couldn't the priority question which you indicate is a problem with regard to FBI action in Indian jurisdiction—couldn't the priority question have something to do at least with any lack of resources on the part of the FBI and the fact that the FBI offices tend to be pretty thin and spread over many hundreds of miles in some cases?

Dr. FLEMMING. Yes. Judge Webster in his testimony before the Commission indicated that lack of resources did make it necessary for them to develop these priorities and adhere to these priorities.

The fact of the matter is that in his testimony to the Commission he indicated agreement with the thrust of the first recommendation that we have in our testimony. And I might just call attention to that in view of the fact that this has been raised a number of times.

In the hearing before the Commission when Judge Webster was a witness, Mr. Alexander, who was the counsel conducting that hearing who asked Judge Webster:

Are you familiar with the Task Force Report of the Department of Justice from the 1974 to 1975 era which did an internal review of the entire Department?

He said, "Yes, I am."

It continues:

In that report it was suggested that FBI functions on Indian reservations were perhaps duplicative of that of the Bureau of Indian Affairs and perhaps the tribal police, and the FBI should be shifted into a secondary responsibility rather than a primary responsibility for major crimes. Could you tell me whether the FBI was involved in that study, first of all?

Then he said the FBI was not involved in the study but did supply comments to the study afterward.

MR. ALEXANDER. Are you familiar with what the Bureau's position at the time of the study was on that recommendation?

Judge WEBSTER. Yes, sir.

Mr. ALEXANDER. Could you tell us?

Judge WEBSTER. I believe the Bureau's position was opposed to that recommendation.

Mr. ALEXANDER. And currently the Bureau's position, your personal position would be——

Judge WEBSTER. Well, my personal position would be that if the Bureau of Indian Affairs and other law enforcement agencies within the Indian reservations had the competence to fully protect the rights of the Indian residents on those reservations that the Bureau would be favorably inclined to discharging its statutory responsibilities on request; that is, investigative responsibilities upon request of the U.S. attorney or the Bureau of Indian Affairs, whoever would have authority to request Federal assistance.

I say that because, as you know, we are trying to operate on an increasingly demanding jurisdictional level with static and, in fact, diminishing resources. Between 1976 and the end of 1980 we will have lost over a thousand special agents by budgetary attrition. This means that we have an obligation everywhere in the United States, State, local, and on Indian reservations and other places, to not be duplicative, to create the maximum amount of cooperation, and this we are trying to do. Bank robbery is an illustration of our efforts in that direction.

The policy decision that has to be made by others, I think—it is not one that we can make alone—is the present capability of BIA and others to fully discharge those responsibilities.

The other thing I can say as an aside is that I would be very unhappy if we developed a program in which we were called in not at the beginning of a difficult case but after the case had gotten itself so turned upside down that we couldn't do anything. Those are the types of things that we have been working on, say, for instance, with the relationship between the FBI and the Inspector General in these new areas. But if we can deal with alternative plans, you will find me very receptive.

Mr. BOYD. Thank you. I assume that same difficult problem with resources will continue over the next year.

I just want to ask Mr. Hawkins before he flies the coop about whether, given appropriate alternatives, the FBI would not object to abdicating at least to some extent its responsibilities with respect to major crime enforcement in Indian reservations, and the problem of determining when those alternatives exist.

Would you comment?

Mr. HAWKINS. I wouldn't want to state the Bureau's position. I know Judge Webster and I like him very, very much. I think the country is well-served by having him at the helm. I think that is a question that has to be asked of individual Indian communities.

There are those tribes, I think, that would be very much opposed to removing the FBI as their primary law enforcement tool, for a number of reasons. There are those tribes that would be happy to do it tomorrow if someone could wave a wand.

I think part of the problem is resources. I think the other problem is generally a failure to recognize an existent fact, and that is that the crime that occurs in Indian country is primarily street-type crime, violent crime, the type that is ordinarily investigated by local investigators and prosecuted by local prosecutors.

Because of the peculiar trust relationship between the United States and the tribes, it is different vis-a-vis them.

But as a goal I think your chairman is absolutely correct that the goal down the line ought to be to have the same relationship between the FBI and tribal police agencies as there is now between the FBI and local police agencies.

There is some variety, quite frankly, in the ability of tribal police agencies from reservation to reservation, and within their justice systems there are some wide varieties with local non-Indian systems.

Mr. BOYD. Then you agree with the dual sovereignty concept?

Mr. HAWKINS. Yes, I do agree with it. I also think the training aspect, getting the FBI more heavily involved in the training of tribal police officers is something that ought to be encouraged.

Mr. BOYD. Do you think the FBI is more competent to train tribal police officers than is the Department of the Interior or the BIA?

Mr. HAWKINS. I don't think there is any question about that.

Mr. BOYD. Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you. I should think that some of the Indians would feel the same way about the Bureau of Indian Affairs police as they would about the FBI. Aren't they both from Federal agencies?

Mr. HAWKINS. In some cases, with some tribes, the BIA is actually viewed with more suspicion than the FBI. In other tribes there

is what we call merged law enforcement, that is, BIA people help run the tribal police department but the officers are members of the tribe. There is a warm working relationship between the two.

Again, it differs from reservation to reservation, but the suspicion isn't just of the FBI. It extends to the BIA, there's no question about it.

Mr. EDWARDS. Have some reservations reached a level of sophistication and education, to enable their own tribal police to handle all crimes, except perhaps treason and espionage which are necessarily Federal crimes. Also perhaps with their own court system, upgrading the present system so that they would be like our superior courts—the tribal courts in American States?

Mr. HAWKINS. Yes. In my opinion there are three, perhaps four tribes in Arizona, that would be ready now or in the very near future to assume that sort of responsibility.

Mr. EDWARDS. Mr. Alexander, are there some elsewhere in the country?

Mr. ALEXANDER. Yes.

Mr. EDWARDS. Wouldn't it be a good national policy, then, to try out that system in some of those areas and give the other tribes something to shoot at?

Mr. HAWKINS. Yes, sir.

Mr. ALEXANDER. Yes.

Mr. EDWARDS. Mr. Hyde mentioned the manpower, I believe, of the FBI. And the figures that have been furnished to this subcommittee are that in 1980, 76,951 man-hours—and I hope woman-hours, too—were devoted to criminal investigations on Indian reservations by the FBI. And this equals approximately 33.24 agents full time, which is a lot of agents. That is about the number that are in Atlanta helping out in that tragic situation. Those agents could be better used elsewhere. They shouldn't have to be doing that kind of work. They are traditionally not trained for that kind of work, either.

Does anybody know whether or not the FBI's Academy at Quantico trains tribal police?

Mr. HAWKINS. That is a very interesting question. They do to some extent, but I understand there is a great deal of concern among tribal police agencies about the number of available slots for tribal police officers that are available at the FBI National Academy.

There are at least two dozen, just to pick one example again, Navajo tribal police officers who have attended that National Academy, and the tribe is much the better for it, and they understand the Federal Government and work with it better.

But that is something that perhaps the Bureau should be gently asked about, is their policy toward allowing increased numbers of tribal police officers to take part in that training, which is generally viewed as some of the best training that police officers can obtain.

Mr. EDWARDS. I think we are about through.

Do you think this subcommittee could direct a letter to the administration suggesting that they take a few of those reservations where they have gone a long way and have them look into

whether or not they would want to have a plan such as we have been talking about?

Mr. HYDE. I think it's a great idea and would certainly join in any such correspondence.

Mr. EDWARDS. Are there any further questions by counsel?

[Negative response.]

Dr. FLEMMING. I might say, Mr. Chairman, we addressed that question to Judge Webster also. We will be glad to again put that in the record along with our testimony.

Mr. EDWARDS. Thank you. We will be looking forward to your full report.

Mr. HYDE. May I ask Mr. Hawkins: What about the Drug Enforcement Administration? They have training as well. Would this be useful for tribal police or isn't it the problem it is in other areas?

Mr. HAWKINS. In my view it is not at the level of the problem that it is in the non-Indian community. There is a problem upon remote Indian reservations with getting response at all from the DEA and not infrequently the remote areas of Indian reservations are now frequently being used by traffickers in heroin and marihuana coming from Mexico and Central American countries into the Southwest United States. And there is a problem, yes.

The answer is "Yes," they could use training from the DEA, I think, in narcotic investigative techniques, and the DEA should not be immune from your committee's looks at the responsiveness and response time of Federal investigative agencies to the problems of Indian country.

Mr. HYDE. Mr. Chairman, is it beyond our jurisdiction to write the DEA and inquire as to whether any tribal police are invited to theirs?

Mr. EDWARDS. No, it's not. Let's do it.

Off the record.

[Discussion off the record.]

Mr. EDWARDS. We want to thank the witnesses for their excellent testimony. We appreciate your enormous contribution, Dr. Flemming, and Mr. Alexander and Mr. Nunez also.

Dr. FLEMMING. Thank you.

[Whereupon, at 11:15 a.m., the hearing was adjourned.]

83-073 O - 82 - 3

ADDITIONAL MATERIAL

TESTIMONY

OF

JOSEPH A. MARTIN

CAPTAIN, MAKAH TRIBAL POLICE DEPARTMENT

MAKAH TRIBAL COUNCIL

BEFORE THE HOUSE JUDICIARY COMMITTEE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

Hearings on March 19, 1981

on

F.B.I. LAW ENFORCEMENT ON INDIAN RESERVATIONS

I am Captain Joseph A. Martin, Makah Tribal Police Department, and I have been authorized by the Makah Tribe to submit this statement on its behalf.

My testimony addresses the role of the Federal Bureau of Investigation on the Makah Indian Reservation. The Makah Indian Reservation covers approximately 44 square miles on the extreme northwest corner of the Olympic Peninsula in the State of Washington. The reservation is bounded by the Pacific Ocean to the west and the Strait of Juan de Fuca to the north. The reservation terrain is isolated, rugged and mountainous and is endowed with miles of spectacular beaches and scenery, which annually attract more than 200,000 outsiders to the reservation, especially in the summer months.

The Makah Indian Tribe has a tribal government organized pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. §476. Shortly after Federal organization in 1937 the Makah Inidan Tribe

adopted a Law and Order Code and established a tribal court. The tribe has consistently endeavored to develop and maintain an effective law enforcement program with primary responsibility for law enforcement on the reservation. Pursuant to this objective, the Makah Tribe has successfully contracted with the Bureau of Indian Affairs for the past several years under Section 102 of Public Law 93-638, 24 C.F.R. §271.18, the Indian Self-Determination and Education Assistance Act, to administer both law enforcement and correctional center manpower programs designed to improve the quality of reservation law enforcement.

The present nine-man Makah Tribal Police Department provides around the clock law enforcement service throughout the reservation and has coordinated with the Federal Bureau of Investigation for six years. During that period by agreement with the FBI the Tribe has taken on a gradually increasing responsibility. The Federal Bureau of Investigation now relies upon the Makah Tribal Police Department to provide the total range of criminal investigation services needed at the scene of a crime. Tribal Police conduct interviews of both criminal suspects and victims and in addition perform all necessary interrogations. In short, Tribal Police are responsible for preparing the entire case report of any given crime and effectively brief the Federal Bureau of Investigation as to all aspects of a crime prior to any Bureau involvement.

The Makah Tribal Police Department has provided the foregoing services to the Bureau in connection with such diverse crimes as negligent homicide, homicide, burgularies and cattle rustling.

For example, Makah Tribal Police Department has rendered approximately 300 man hours of service to both the F.B.I. and the Drug Enforcement Administration in connection with the breaking up of a highly sophisticated marijuana operation which had attempted to run contraband through the reservation. Tribal Police seized 290 bales of marijuana valued at nearly 50 million dollars.

The Makah Tribal Police Department, in addition, has a fisheries enforcement division of six men which provides virtual around the clock enforcement and emergency services to diverse groups of fishermen within a vast geographical area encompassing approximately 1500 square miles in the Pacific Ocean and the Straits of Juan de Fuca.

Tribal Police have been trained by the F.B.I. itself in such areas as firearms use, hostage negotiation, legal education, fingerprints techniques and use of chemical agents in the field. Four tribal officers are graduates of the Bureau of Indian Affairs Police Academy and two officers are graduates of the Washington State Criminal Justice Police Academy. While I serve as Captain of the Makah Tribal Police Department I am also a United States Marshall, I am a graduate of the United States Federal Law Enforcement Training Center in Glynco, Georgia. Approximately two-thirds of the Tribal Police have received an average of 72 hours of F.B.I. training per officer. An inspection team from the Bureau of Indian Affairs recently recognized the Makah Tribal Police Department

as the most efficient and well organized police department in the Bureau of Indian Affairs Olympic Agency.

The Makah Tribal Police Department is, therefore, eminently well qualified to assume primary responsibility for investigation of major crimes on the reservation and has satisfactorily executed this responsibility for several years now. However, the continued ability of the Makah Tribal Police Department to perform such services in lieu of the Federal Bureau of Investigation is dependent upon the financial support which is provided in the Federal budget. Essentially, we are operating a Federal law enforcement program. Our most important responsibilities are the enforcement of Federal laws. While the Tribe provides what it can in financial support, it is unable to subsidize the program beyond the present level. The Tribe feels that the major federal responsibilities of the Department, including drug enforcement as well as Indian major crimes, justifies an increased level of Federal financial support. We have previously submitted testimony to the House Appropriations Subcommittee on Interior and Related Agencies on this point, and I am filing with this statement a copy of that testimony.

We believe the Subcommittee should, when placing primary responsibility for criminal investigation in the hands of tribal enforcement agencies, recommend that budgetary as well as technical assistance be provided to tribal police departments assuming such

additional responsibility through the Division of Law Enforcement Services in the Bureau of Indian Affairs. The transfer of such investigative authority to Indian tribes would be counterproductive unless financial and technical assistance is provided. We believe the implementation of these recommendations will help to alleviate the financial problems, in particular, which the Makah Tribal Police Department is now experiencing in assuming primary responsibility for law enforcement services on the Makah Reservation.

MAKAH TRIBAL COUNCIL
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STATEMENT
OF
JOSEPH A. MARTIN
CAPTAIN, MAKAH TRIBAL LAW ENFORCEMENT
MAKAH TRIBAL COUNCIL

MAKAH TRIBAL LAW ENFORCEMENT F.Y. 1982 BUDGET JUSTIFICATION

This appropriations request is to the Bureau of Indian Affairs and involves a total overall increase of $274,517 in the tribal law enforcement budget. The Makah Indian Reservation covers approximately 44 square miles on the extreme northwest corner of the Olympic Peninsula in the State of Washington. The reservation is bounded by the Pacific Ocean to the West and the Strait of Juan de Fuca to the north. The reservation terrain is isolated, rugged and mountainous and is endowed with miles of expansive beaches and spectacular scenery which annually attract more than 200,000 outsiders especially in the summer months.

The Makah Indian Tribe has a tribal government organized pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. §476. Shortly after federal organization in 1937 the Makah Tribe adopted a Law and Order Code and established a tribal court. The Makah Tribe has consistently endeavored to develop and maintain an effective law enforcement program. Pursuant to this objective, the Makah Tribe has successfully contracted with the Bureau of Indian Affairs for the past several years under section 102 of Public Law 93-638, 25 C.F.R. §271.18, the Indian Self-Determination and Education Assistance Act, to administer both law enforcement and correctional center manpower programs designed to improve the quality of reservation law enforcement.

The present nine-man Makah Tribal Police Department provides around the clock law enforcement service throughout the Reservation but a substantial increase in funding is needed for F.Y. 1982 if such service is to continue, especially during the months when the Reservation population is almost quadrupled by outsiders. Actual reservation population growth from 1968 to 1977, for example, has averaged about 4.4% per year. During the tourist season which lasts from April to September, the tribe estimates an influx of nearly 104,000 people who visit the reservation for purposes of sports fishing, camping and hiking. In addition, nearly 40,000 commercial fishermen frequent the reservation during these months. The Tribe also estimates that approximately 60,000 non-residents visit the Ozette tribal village and laboratory each year.

The crux of the matter, therefore, is that the Makah Tribal Police Department actually services a drastically larger population during six months of the year which greatly increases both the need for and cost of tribal law enforcement services. For example, the tribal police have been forced to allocate a tremendous amount of their resources to prevent the vandalism of tourist vehicles which are left overnight on isolated reservation trails and beaches. The tribal police are frequent participants in search and rescue missions to assist inexperienced tourists when they are injured or lost in some of the more remote reservation areas. The tribal police have been compelled to purchase a four-wheel drive vehicle, stretchers and other rescue equipment to handle such emergencies.

Compounding these tourists related law enforcement problems is a sudden increase in crime with respect to traffic in narcotics on the reservation. During September of 1980 the tribal police assisted in breaking up a highly sophisticated marijuana operation which had attempted to run contraband through the reservation. The tribal police seized 290 bales of marijuana valued at nearly $50 million. The problem of smuggling of narcotics on the reservation continues and the tribal police have been compelled to increase their drug surveillance efforts. In addition, the tribal police have had to contend with inflation and rising costs particularly in connection with law enforcement equipment, insurance and salaries.

Pursuant to a recent Bureau of Indian Affairs recommendation, for example, the tribal police must now establish separately, the functions of jailer and police dispatcher. Before this time, both functions were performed by a single staff person. Now, however, the functions must be separated and new staff hired.

Notwithstanding these pressures, the Makah Tribal Police Department has provided outstanding law enforcement services to the reservation community for several years and was ranked, by an inspection team from the Bureau of Indian Affairs recently, as the most efficient and well-organized police department in the BIA Olympic Agency.

However, the continued effectiveness of law enforcement activities on the Makah Reservation in the face of these pressures is dependent upon the budget increases identified in the attachments which have been officially filed by the Tribe with the Bureau of Indian Affairs. A deterioration in this program will jeopardize the lives and property of both the Makah Indian people and of the thousands of others who visit the Reservation each year. We respectfully request that the House and Senate Appropriation Committees direct that these urgent needs be met by specifying that the Bureau of Indian Affairs shall increase the funding level for the contracted law enforcement program on the Makah Reservation to a minimum level of $394,516, an increase of $274,517 from the the present level of Bureau funding.

TESTIMONY

OF

GERALD ONE FEATHER, EXECUTIVE DIRECTOR,

OGLALA SIOUX TRIBAL PUBLIC SAFETY COMMISSION

AND

ZACHERY HIGH WHITE MAN, CHAIRMAN,

OGLALA SIOUX LAW AND ORDER COMMITTEE

BEFORE THE HOUSE JUDICIARY COMMITTEE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

HEARING ON MARCH 19, 1981

ON F.B.I. LAW ENFORCEMENT ON INDIAN RESERVATIONS

I am Gerald One Feather, Executive Director of the Oglala Sioux Tribal Public Safety Commission, and I have been authorized by the Oglala Sioux Tribal Public Safety Commission to submit this statement on its behalf.

In recent history, the relationship between the Federal Bureau of Investigation and the Pine Ridge Reservation has gone through a variety of phases. Without recanting the difficulties that were encountered in the past, I can happily say that since the Public Safety Commission was created and the Tribe assumed law enforcement responsibilities from the Bureau of Indian Affairs, the working relationships with the Federal Bureau of Investigation and the U.S. Attorney have improved tremendously. My testimony concerns the role of the F.B.I. on the Pine Ridge Reservation and supports placing primary responsibility for criminal investigations on tribal enforcement agencies provided budgetary and technical assistance is upgraded commensurate with the increase in responsibility.

The Pine Ridge Reservation is located in southwestern South Dakota, with the Nebraska state line forming its southern border. Approximately 14,000 Indians and 3,000 non-Indians live on this 1,800,000 acre reservation, larger than the State of Delaware. The landscape is characterized by rolling plains covered with buffalo grass, interlaced by creeks, buttes, ravines and low ridges. It is dominated in places by the spectacular scenery of the awesome Badlands' formations to the north, and the Black Hills to the west. Parts of the Gunnery Range have a rugged grandeur and jagged terrain as impressive as that of the Grand Canyon. These and other natural monuments, as well as nearby Mount Rushmore, mean that a substantial number of tourists are attracted to the area each year. Mount Rushmore alone draws over 2 million tourists annually.

The Oglala Sioux Tribe has a tribal government organized under the Indian Reorganization Act of 1934. 25 U.S.C. §456. Its Constitution and By-Laws were approved by the Commissioner of Indian Affairs on January 15, 1936. In December of 1935 the Tribal Council, the governing body of the Tribe, adopted its own Law and Order Code and established a Tribal Court system. The Tribe has always undertaken primary responsibility for law enforcement on the reservation. In keeping with this objective, the Tribe successfully sought to contract with the BIA for operation of the Pine Ridge Reservation Law and Order Program in December of 1976, pursuant to Public Law 93-638, and by authority of Article IV, Sections 1(a), 1(k), and 1(n) of the Constitution and By-Laws of the Oglala Sioux Tribe;

Tribal Council Resolutions 76-12 (July 20, 1976), and 76-113 (December 14, 1976); and Tribal Ordinance 76-12 (December 14, 1976).

Tribal control of law enforcement is now in the fourth year. At present, the Public Safety Commission has a staff of 78. Tribal officers provide around-the-clock law enforcement throughout the reservation. The recent increase in cooperation between the F.B.I. and the Tribal Police puts more responsibility upon Tribal personnel. The F.B.I. now relies upon the Oglala Sioux Tribe for many of the criminal investigations and reports needed at the scene of a crime. Tribal officers conduct preliminary investigations of the crime site as well as work along side the F.B.I. agents throughout subsequent investigations. Tribal officers are involved with the F.B.I. in many types of crimes, including homicide. At least one Tribal officer has been commended by the Public Safety Commission for his investigative work which led to the development of a suspect and the officer's subsequent apprehension of that suspect. In fact, on a reservation on which the population is 90% Indian and where, in some rural areas, non-Indian outsiders find it difficult to be inconspicuous, the involvement of Tribal officers in criminal investigation is essential for successful law enforcement. Investigations by the F.B.I. have been hampered in the past by the fact that their agents are easily recognized in the reservation community.

The Oglala Sioux Tribal Police are more than adequately qualified to assume primary responsibility for investigation

of major crimes on the reservation. All Tribal officers undergo 240 hours of basic training over a six-week period before they are considered eligible to serve. This program has been put together by the Public Safety Commission and operates primarily with F.B.I. and other outside instructors. Supplemental training is emphasized. The Public Safety Commission itself operates a "weekend academy" which offers college level course work in criminal justice and may lead to a college degree for the officer. Additional training in a particular specialization is often made available. Recently, an officer completed a course on the use of a polygraph machine and a Captain on the force completed an F.B.I. course dealing with administration of a police department. Members of the force have also graduated from the United States Federal Law Enforcement Training Center in Glynco, Georgia.

While the Oglala Sioux Tribe's Public Safety Commission is qualified to assume the responsibility for investigation of major crimes on the reservation, and has already assumed much of the responsibility over the past few years, continued ability to perform such services, in lieu of the F.B.I., is dependent upon financial and technical support. Essentially, we are operating a federal law enforcement program. Our most important responsibilities are the enforcement of federal laws. The F.B.I., nationwide, is becoming less interested in rural law enforcement, including Indian reservations. Often the F.B.I. will not become involved unless the crime is of a certain magnitude. In practice, this means that crimes in the Pine Ridge Reservation are not even being investigated.

An increased role for the Public Safety Commission could remedy this. While the Tribe provides what it can in financial support, it is unable to subsidize the program beyond the present level.

In conclusion, the Oglala Sioux Public Safety Commission supports an increased role for Tribal law enforcement agencies in federal criminal investigations on Indian reservations but urges that adequate attention be given to federal financial and technical assistance to tribes before the F.B.I. role is phased out. The Tribe feels that the major federal responsibilities of the Commission justifies an increased level of federal financial and technical support. Some savings may be realized since F.B.I. manpower may eventually be reduced. The transfer of any investigative authority to Indian tribes would be counterproductive unless increased financial and technical assistance is made available. We understand that the Bureau of Indian Affairs is seeking additional funding for this purpose, and we support its efforts.

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March 10, 1981

Michael Tucevich
House Judiciary Committee
Room 407
House Annex #1
Washington, D.C. 20515

Dear Mr. Tucevich:

Thank you for your telephone call concerning the upcoming hearings of the Subcommittee on Civil and Constitutional Rights on FBI jurisdiction on Indian reservations. As I mentioned to you, the American Indian Law Center has had some experience in this area, most recently in connection with our work with the Commission on Tribal-State Relations. I am enclosing for your information an unedited copy of a transcript of hearings held by the Commission on Reservation Law Enforcement on December 17-18, 1979.

You mentioned some of the problems the subcommittee would be looking at, all of which seem to fall within the general perception that reservation law enforcement is inadequate because it is a low priority with the FBI and the U.S. Attorneys. I believe that this is the perception of reservation law enforcement among many familiar with the problems, including many members of the Indian community, and I think there is a good deal of merit to this view.

In our work with the Commission on Tribal-State Relations we have taken what we feel is an innovative approach to the intergovernmental relations problems on and near Indian reservations. Most analyses of reservation problems, we have found, conclude that the solution lies in either making more money available or transferring responsibility from one government which is apparently not dealing with the problem effectively to another which might do a better job. Both of these solutions are somewhat unimaginative and politically unrealistic.

Our approach has been to take existing levels of effort and jurisdictional lines for granted and to attempt to identify methods of using resources more effectively without a jurisdictional realignment. The limits of legislative and judicial jurisdiction are relatively inflexible, but there is considerable room for coordination among executive branches of tribal, state and federal governments. In the law enforcement system, the formal milestones of arrest, incarceration, arraignment, prosecution, trial, sentencing, etc., are obviously tied to jurisdiction.

Other functions, such as patrolling, radio communications, detention pending arrest by another jurisdiction, investigation, providing witnesses, pre-sentence investigation, probation and other alternative sanctions, training of officers, etc., are less subject to jurisdictional limitations and can be the occasion for intergovernmental cooperation which will greatly improve the system and lead to more efficient use of limited resources and better protection for both Indians and non-Indians.

Among the complaints we have heard are that not only is the FBI not taking the lead in bringing about better relations among law enforcement agencies, it is even reluctant to cooperate when state or tribal governments have taken the initiative. During the last administration the Department of Justice seemed to be quite anxious to shift responsibility for Indian law enforcement to the states regardless of whether the states were ready or willing to assume it and do a good job. Complaints have also been voiced concerning the lack of leadership of the Bureau of Indian Affairs, despite its obvious lead responsibility with respect to most Indian matters within the federal government.

The role of the federal government with respect to law enforcement on Indian reservations is unique. Because of the limitations on tribal court jurisdiction over non-Indians, the six-month/$500 limitation on punishments in the tribal system and the rather poor working relationship between state and tribal systems, there are frequent gaps in services exposing individuals and entire communities to a situation where they are without protection from certain types of offenses or certain classes of criminals. This is not the case in other areas of federal law enforcement where there is usually sufficient overlap between federal and state jurisdiction to assure adequate protection. I hope that your hearings establish definitively that what would otherwise be a routine budgetary or resource allocation decision on the part of the federal government may have a devastating effect on a reservation community and may affect the rights of both Indians and non-Indians living there.

I recommend that the subcommittee use its influence to require a specific memorandum of agreement between the Departments of Justice and Interior (including especially the FBI); that these two federal agencies be required to assume responsibility for the quality of law enforcement on Indian reservations; that they be directed to take the initiative in bringing about a coordinated use of tribal, federal and state executive branch resources in law enforcement and cooperate with tribal and state initiatives. To be frank about it, I don't think we will ever convince the FBI, the U.S. Attorneys or the federal courts that "minor" crimes on Indian reservations are not beneath their dignity. I do think it is reasonable to make them and the BIA responsible for finding alternative means of protecting Indian reservation communities

and for assuring that the job gets done by someone through intergovernmental cooperation as well as the expansion of available federal resources.

In closing, I would like to call to your attention the fact that the Carter administration abolished the Office of Indian Rights in the Department of Justice and dispersed its functions throughout the Civil Rights Division. If history teaches anything it is that Indian civil rights will be a low priority where no one in particular is accountable for their enforcement.

Thank you again for calling and please let me know if there is any information I can supply.

Sincerely,

Sam Deloria

Philip S. Deloria
Director

PSD/jc

Enclosure: Commission on Reservation
Law Enforcement transcript
hearings, December 17-18, 1979

HEARING ON COOPERATIVE AGREEMENTS

INVOLVING LAW ENFORCEMENT

Washington, D.C.

December 17-18, 1979

Sponsored By

Commission on State-Tribal Relations

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The Commission on State-Tribal Relations was chartered by the National Conference of State Legislatures, the National Congress of American Indians, and the National Tribal Chairmen's Association to develop the potential for intergovernmental cooperation. It is composed of twelve legislators and twelve tribal chairmen, and is supported by a grant from the William H. Donner Foundation, the Ford Foundation, and Bureau of Indian Affairs.

This hearing was the first in a series of hearings conducted by the Commission. The information collected will be used in preparation of a handbook for state and tribal leaders on cooperative state-tribal relations.

LAW ENFORCEMENT HEARING
Washington, D.C.
December 17 & 18, 1979

MANNING: Chairman of this Commission on State-Tribal Relations with myself is Joe DeLaCruz who is going to introduce himself and other panel members and I might say that Senator Anderson from Minnesota will be here this afternoon. He was delayed in Chicago by something, his plane, and he won't be here til this afternoon.

DELACRUZ: The panelists present today are, on the end, he's part of this Commission is Eugene Green, the Chairman of the Warm Springs Tribe, and Delfin Lovato will be here this afternoon. He had to testify this morning on the statute of limitations bill. I believe that he will be the only three commissioners representing the Indians that will be at this hearing. Of course you all know Sam Deloria, he is on the Commission's staff. The Law Center under Sam is providing the staff assistance for the tribal side of this Commission.

MANNING: This is Tassie Hanna who is our staff person for the National Conference of State Legislatures. This Commission on State-Tribal Relations was formed by agreement between the National Conference of the State Legislatures and the two national Indian organizations: the National Congress of American Indians and the National Tribal Chairmen's Association. To set the tenor of the morning's presentation and for the two days for that matter, I would like to have Sam Deloria explain to you specifically what we are all about and specifically what we are not all about.

DELORIA: Thank you, Speaker Manning. We have discussed the Commission on Tribal-State Relations at a number of meetings. Given the background of how it was formed, you will notice that whenever the people from the National Conference of State Legislators talk about it, it is the Commission on State-Tribal Relations. Whenever we talk about it, it's the Commission on Tribal-State Relations. Which is an example of the way we are working together because what difference does it make which one comes first. What we are trying to do in this Commission, I would like to set in some kind of context because I know some people have seen announcements of the meeting and as soon as you see the words state and law enforcement on the same piece of paper, everybody gets uptight about jurisdiction. The purpose of this Commission is to try and take a new look at the inter-governmental relationship between tribes and states, counties, and municipalities. In that context, we are having a series of hearings on different subject matters that governments deal with. We are trying to look beyond the usual treating of these matters. For example, on this one, we already know what any particular government could do in the way of a better job of law enforcement if they had more money. We already know that each government to some extend considers the situation unmanageable

because they don't control all the other governments and if they controlled - if there was a centralized control, we would have a more controlled law enforcement system. We know that already. We already know that if a bunch of federal laws were changed, the situation would be different. What we want to look at this hearing is given more or less the amount of money that is available to the total system now and given more or less the jurisdictional relation that we have now with the same kinds of grey areas and overlaps and gaps and unresolved questions. Taking those things for granted since they are in existence, we want to know how the law enforcement system, the criminal justice system, operates now. We see it as one system with anywhere from three to five parts: the tribal, federal, state, county, and municipal. It's one system with a bunch of parts, we want you to describe how that functions now and how it can work together smoothly or what kinds of problems there are.

We started with the assumption that the model for inter-governmental cooperation in law enforcement is cross-deputization. The more we looked into it, the more we realized that there are a whole range of things that can be done cooperatively even short of something as formal as cross-deputization. And so that is the kind of thing that we are going to be looking into in these two days. The final thing is that we are not here particularly to just develop propaganda for inter-governmental cooperation. There may be sound policy, legal reasons for one or another government in a particular instant not to want a cooperative relationship. And we want to determine what those reasons are because they have to be identified so that we can know what legitimate concerns governments have that make them want to have their own system which is separate from the others. So, with that as kind of a prelude, Mr. Co-Chairmen and members of the Commission, I think we can get started.

MANNING: Thank you, Sam. Now the panelists for this morning's presentation if you would come forward and take your places at the table here. We have from the Confederated Tribes of Warm Springs, Eugene Green. Gene, you can stay right where you are if you want. Jeff Sanders and Mike Sullivan. I also might add that if there is time at the end of the presentation for audience participation, we would welcome that. At the end of every session, if possible. Tassie, the second group, will they follow or will they all meet together?

HANNA: They are all to be on the panel this morning.

MANNING: At the same time. Then I'd ask that from the Navajo Indian Nation, Larry Benally and Paul Onuska, if you will come up. And then from the Yakima Indian Nation, Joe Young. Now I don't know if you gentlemen have had an opportunity to speak to one another as far as the order of presentation. If you haven't, and you feel that there is some type of facet would be more helpful than another, feel free to start.

Suppose we go from my left to right. What we are interested in is the factors as you know them that contribute to the successful combination of Indian and non-Indian criminal justice systems and whether or not - if you can describe your experience with these cooperative efforts that would be most helpful to us.

GREEN: Thank you. My name is Eugene Green. I am the Chairman of the Tribal Council of Warm Springs, Oregon. To my left, we have Mike Sullivan who is the District Attorney for Jefferson County and we have our Tribal Chief of Police, Jeff Sanders who are here primarily to answer questions if there are any.

This is a statement from the Confederated Tribes of the Warm Springs Reservation to the Commission on State-Tribal Relations appearing on the cooperative law enforcement on Indian reservations. The Confederated Tribes of the Warm Springs Reservation of Oregon is a federally-recognized Indian tribe organized under the Indian Reorganization Act. The reservation was established by the Treaty of 1855 between the United States and the Indian tribes of middle Oregon. More than 2,300 tribal members occupy the reservation consisting of approximately 640,000 acres in north central Oregon. Since the early days of the settlement of Warm Springs, people on the present reservation - their tribes have provided their own tribal police department. In the early years, as a supplement to the law enforcement support provided by the United States Government and in later years, the tribal police have assumed the primary responsibility for law enforcement on the Warm Springs Reservation. Until 1973, the general supervision of the Warm Springs Police was under the Bureau of Indian Affairs acting through the BIA Special Officers. In 1973, the tribe assumed general supervision and command of the tribal police force and named its own chief of police. The tribal police department worked in conjunction and in cooperation with the BIA Special Officers stationed on the reservation as well as other federal, state, and local law enforcement agencies. The State of Oregon has never had nor exercised law enforcement jurisdiction over the activities of the Warm Springs Tribe and its members on the reservation. Even though Oregon is a Public Law 280 state, the Warm Springs Reservation is specifically exempted from the application of that statute. This exemption occurred because at the time of the passing of the statute, the Warm Springs Tribe had no need for the extension of state jurisdiction over the Warm Springs Reservation. While the Warm Springs Reservation includes land within five different Oregon counties, a major portion of the reservation is included within the counties of Washoe and Jefferson with the other three counties only having very small areas that are largely uninhabited. The county seat of Jefferson County is the town of Matter which is off the reservation and is located approximately 16 miles from the town of Warm Springs which is where the Warm Springs Agency is located. The county seat of Washoe County is in the Dalles which is approximately 80 miles from Warm Springs and is again off the reservation. Because the reservation and the surrounding areas are large, relatively sparsely

settled areas, a cooperative response by police greatly improves the capability of law enforcement agencies to respond to situations which arise. Cross-deputization arrangements between the Warm Springs Tribal Police and the County Sheriff's Office of Jefferson and Washoe Counties have been in effect for at least 20 years. Nearly all the deputy sheriffs of both Washoe and Jefferson Counties are deputized as tribal police officers. Correspondingly, all the tribal police officers are deputized as deputy sheriffs for both Washoe and Jefferson Counties, Oregon. Previously, both the local officers and the tribal officers carried cards as deputy special officers of the Bureau of Indian Affairs. However, due to a change in BIA policy, this practice has been sharply curtailed. Because the officers still have authority as tribal and county officers there has been no significant problem resulting from the discontinuance of the BIA Special Deputy card, except in regard to enforcing certain federal laws against non-Indian violators. A mutual aid pact exists between the Washoe County Sheriff's Office, Jefferson County Sheriff's Office, Matters City Police, the Oregon State Police, and the Warm Springs Police Department. All of these agencies are linked by common short wave radio facilities. Any agency is free to call on other agencies who are participants in the mutual aid pact for backup assistance in time of an emergency or in response to a call which is within the jurisdiction of the other agency but which is closer geographically to the agency called. It is common practice for the tribal police officer to respond to calls for assistance from the Jefferson County authorities for complaints off the reservation but nearer to Warm Springs than to Matters. Washoe County frequently is the only law enforcement unit available to respond to calls in that area. By the same token, when a major activity occurs in Warm Springs the non-tribal agency responds to requests for assistance by the tribal police department. The Warm Springs Reservation is traversed by state highway and there are several other roads which are open to use by the general public including the roads to the major resort area owned and operated by the tribe. The tribal police assume almost total responsibility for patrolling this area even though it is a state highway. The cross-deputization permits the tribal police to take non-Indian offenders into state court. This results in considerable expense on the tribe with no offsetting compensation that is often necessary for tribal officers to travel to Matter or the Dalles to appear at any hearing that results from the citation. Elsewhere when city officers cite offenders into state court for violation of state law, one half of the fine resulting from such cases is returned to the municipalities. The tribe seeks to work out a situation where portions of the fines resulting from citations by tribal officers on non-Indian offenders would be shared with the tribe.

Through the efforts of the Warm Springs Tribes and the Oregon Commission on Indian Services, Oregon statutory law has been amended to recognize the tribal police department as an official

law enforcement unit within the state. This recognization entitles the Warm Springs Police Department to participate in training officers through the Oregon State Police Academy and certified through the Oregon Board of Police Standards and Training. All Oregon's police officers are required to attend these training sessions and upon completion receive the same certification as other officers in the State of Oregon. This recognization also enables the Warm Springs Police Department to receive special law enforcement services including investigation and crime laboratory assistance and other administrative services designed to improve the management and effectiveness of law enforcement programs. This process has contributed significantly to the Warm Springs policy in their dealings with other police agencies.

Besides the mutual aid agreement with surrounding law enforcement agencies, there is cooperation with law enforcement agencies in other areas. The Warm Springs officers have acted in cooperation with the police officers of the City of Portland, Oregon, which is approximately 100 miles from Warm Springs as undercover agents. They have also provided this service for several other police agencies. There is a standing agreement with the City of Portland for officer exchange to allow for training and exposure to different police methods. There is an existing arragement between the sheriffs' departments of Jefferson, Washoe, and Cook Counties, Oregon, the City of Matter, Culver, Redmond, and Bend, and the Warm Springs police department to extend a standing invitation for all training sessions that any one of the agencies conduct. This often results in joint efforts in sharing of expenses and training programs. On occasion, the Warm Springs Police Department has also provided neighboring law enforcement agencies with the people that are available at Warm Springs but is not available to other agencies. To insure continued coordination and cooperation, there is a monthly meeting of the chief of police of Bend, Redmond, Pineville, Culvert, Matters, and Warm Springs, the sheriffs and district attorneys of Washoe and Jefferson Counties and representatives of the Oregon State police. The tribal Law and Order Committee also sponsored an annual meeting of all interested federal, state, and local law enforcement agencies and personnel to discuss areas of mutual concerns. The Warm Springs Police Department maintains an emergency vehicle, provides an ambulance service to the reservation, area, and is a member of the emergency medical training and are required to maintain or upgrade their EMT certificates while deployed as tribal police officers. The officers are regularly on emergency duty call, and ambulance work frequently results in much overtime. The chief of police has been authorized as the deputy state medical investigator and is responsible for coordinating all investigating of non-Indians deaths within the Warm Springs Reservation. The Warm Springs Police Department also participates in Des Chutes, Washoe, Marian, and Jefferson Counties, Oregon, in joint search and rescue operations. Again, this is a mutual aid situation with a change of men and equipment as needed. Cooperative law enforcement efforts also extend to the enforcement of fishing and wild regulations. There is a joint patrol of local county

deputy sheriffs on the lakes bordering the reservation. Tribal as well as state regulations are enforced. A joint patrol effort is also conducted with Oregon State Patrol Wildlife Officers along Des Chutes and latolious Rivers which form respectively the east and southern boundaries of the reservation. In the 65,000 acres, the strip area which forms the northern most part of the reservation, Oregon State Patrol Officers and Oregon Game and Range Officers cooperatively enforce state and federal laws in the only area within the reservation that is open to hunting and fishing by non-Indians. The tribe also maintains the regular air patrol and surveillance for the entire reservation. Finally, several tribal officers have been deputized in Good River County so that they may assist with the portion of fishery regulations in off reservation fishing areas where tribal members conduct commercial, ceremonial, and subsistence fishing activities. Pursuant to the provision in tribal law, Warm Springs police officers will execute state arrest warrants on the reservation and do assist in accompanying state officers to serve state civil process on the reservation. Warm Springs police will assist local law enforcement agencies by participating in community relations programs. This includes speaking at schools about alcohol and drug abuse and career selection programs.

The cooperative program with other agencies has extended not only in the field of law enforcement field but also into the corrections field. The Warm Springs Tribe cooperates with the state court in conducting "project transports." When the state court imposes a criminal sentence of incarceration on a Warm Springs resident the tribe accepts the individual back onto the reservation to serve that sentence at the tribal jail and to make available to that individual all the tribal social and supportive services such as alcohol and drug rehabilitation. It is the belief of the Warm Springs Tribe that such offenders can more successfully be rehabilitated if they have the opportunity to be in their home environment. The average number of offenders at Warm Springs under the program runs two to four persons at any one time and will sometimes reach as high as ten different people. This program is also applicable when the court imposed a work release type of center. The tribal police will supervise the work release program so that the individual may live and work on the reservation. No reimbursement is received by the tribe for providing these services to the state courts. It has also been a common practice to have juvenile offenders refered from off reservation courts to the tribal courts for handling and disposition.

The experience at Warm Springs with cross-deputization and other cooperative law enforcement agreements have been very successfull both from the standpoint of a tribe as well as state and local law enforcement agencies. The situation is perhaps unique because of the fact that there is no checkerboarding of the reservation and no real dispute about jurisdiction. The Tribe's jurisdiction over the activities of the Indians within the reservation is clear and unquestioned by any state or federal authority. Because of the remote,

sparsely settled nature of the reservation area, the ability to call on other law enforcement agencies results in better all around law enforcement protection to the citizens of both the reservation and neighboring off-reservation communities.

MANNING: Thank you very much. I think what we will do probably will be to hoar the presentors and then go back for the questions. And so we will follow right around.

SULLIVAN: My name is Mike Sullivan. I am district attorney in Jefferson County. I am chief law enforcement officer for those law enforcement agencies who are off the reservation. I am a working district attorney; I don't have a giant staff. To give you an idea, I have personally prosecuted a driver under the influence case within the last couple of weeks, I've tried a robbery, had a couple probation revocations. I'm not the kind of person who sits back and sends other people to do it. I'm the one who has to do it. I feel like I'm in the pits and can tell you what's happening. First of all, I think you should know a little more about our area so that you can be acquainted with some of our problems. Jefferson County has a population of approximately 10,000. There are approximately 3,000 Indian residents, the bulk of whom live on Warm Springs Reservation. This is a federal reservation and the state court system has no jurisdiction whatsoever for Indians who commit crimes on reservation. I think that's very well accepted. Madras is to the south of the reservation approximately 16 miles, as you know. There are no bars on the reservation with the exception of Kahneeta Resort which is a bar primarily used by white people. Jefferson County also has probably the highest per capita crime rate in the state. We have a jail built for two; it's rated for eighteen and we typically hold 24 in it. We are a very busy county. We have about 180 on probation and about a half of them are Indian. Fifty percent of the crime is alcohol related and I have to indicate to you that a disproportionate amount of Indians are prosecuted in our court system when you consider them as a representative of the population as a whole. This is particularly true when you consider where the bulk of the Warm Springs Indian live. We do not have any jurisdiction whatsoever. There are crimes that are just prosecuted when Indians come into town. You should also know that among some people on the reservation I am not a very popular person nor are alot of law enforcement agencies in Jefferson County. There are even some Warm Springs police officers who, on a given day, don't particularly like me. Now the reason I'm telling you this is that you need to have a pretty realistic expectation of what is going on out there. Now when you have this realization, how is it that we manage to get along? How is it that when I have a problem, I'm able to call up Jeff and say, "Hey, Jeff, what do you think of this case? Do you think it's a dog case? Is so-and-so running a lot of burglaries out on your reservation? Do you want me to be tough on him?" Well, I think that we, the leaders in law enforcement, have committed ourselves to working with each other. And it's a real positive sort of thing; it's not something that "one day we do it and one day we don't."

I think we are committed on both sides to doing it on a continuing basis and are never really satisfied when we've reached a particular plateau. Now who can we say is responsible for this spirit of cooperation. When I was thinking about that when I was flying from Oregon, I have to tell you that I think that the leaders of Warm Springs are primarily responsible for this cooperation that we're experiencing. I think they have recognized that the need to cooperate with both the law enforcement agencies off the reservation, have taken the bull by the horns and said that we are going to do it; we are going to work with them; we are going to look for the positive; we're not going to dwell on the negative. And I think that the leaders out at Warm Springs are much to be commended for this.

Now you may ask how they do this. I am not going to repeat or try not to repeat what has already been said. I will say that there are some things that have impressed me. First, Jefferson County is an extremely poor county. As a matter of fact, I think that the Warm Springs Reservation has considerably more money than the white folks who live off the reservation. We don't have that much disposable income as far as our county budgets are concerned. Consequently, to get to know each other better, to understand our mutual problems, to try and solve problems, Warm Springs Reservation hosts lunch generally once a month. I know that there was a concern about how much money is spent. I don't think these luncheons costs that much. I think it's a pretty effective means by which to get people together so you can understand common problems. I would also say that one of the things the leaders have recognized, it's probably very important to get the district attorney involved in this sort of thing. At least in Oregon, the local law enforcement agencies, both municipal, county, and state, look to the local district attorney for direction in law enforcement. If you can get this one official convinced that cooperation is a good thing, I think you will be that much further ahead. I would encourage all of you to try and get your local district attorneys involved because when they are committed to this sort of thing they can bring alot of pressure to bear on local law enforcement agencies to make sure the spirit of cooperation continues. Another reason I think that the relations between Warm Springs and Jefferson County have improved is that during last year, I think Warm Springs Reservation has made a real commitment to upgrade their court system. When you see that folks out there are serious about having a good legal system, it enhances your thinking about them, your cooperation towards them. This is an internal sort of thing; it's not anything that we who live in Jefferson County or on the reservation have anything to say about. But we appreciate the fact that the folks up there are trying to create a system where they have rules of evidence, where they have laws that are understandable, where people are held responsible for their actions. I should add that still with the system being improved, the jail penalties and fines that imposed on the reservation are considerably less than those that are imposed off the reservation. And I believe that that is one of the reasons that

when Indians are prosecuted in the court system off the reservation they sometimes feel that they are being persecuted because typically maybe a fine for a DWI on the reservation might be $100 and when they come off the reservation to the state court system and they get fined $305 and they get their license taken away from them. All of a sudden they feel they are being treated unfairly. The only thing I have to say is that I treat everybody that way. That's what happens to everybody, but it may not seem like that for that particular reason. One of the things I think that I would have to give Warm Springs Reservation credit for is they allow the service of warrants and civil papers on the reservation after having been. . . . . .

(end of tape)

SULLIVAN: Warm Springs Police Department tries to be of assistance in anyway possible. I think that you can see by the list of things that they are involved in that they are really committed to working with other law enforcement agencies. We use to have a tavern right on the river that was just across from the reservation and there were numerous problems there and typically the Warm Springs Reservation was the first to respond to a fight or a shooting because they were the closest. That shows you the commitment they have because they didn't have to come across the river. I might add that for about the last year that bar has been closed and Chief Sanders advises me that crime rate has gone down substantially as far as he is concerned and that was something that I was specifically involved in. Again, that didn't make me very popular out at the reservation. I'd like to make some suggestions on how to enhance relations between local law enforcement agencies and folks on the reservation who are involved in local law enforcement activities. First, have these meetings. You may have a 3x5 card to take with you and you say I'm gonna list everything I accomplished at this meeting and you'll think about it and you won't be able to write anything down on this 3x5 card after you spend three hours out at the reservation. But that's not the point. Number 1 you get to meet the people. Number 2 you understand the specific problems they have out there and you can talk about tentative solutions. And I have to tell you that it's been my thinking that the Indian people like to have meetings and have lots of meetings and I think it's good and it enhances relations. To give you an idea of how important it is that's how I met Jeff and he and I had a lot of cups of coffee out of these meetings but we had a serious case here recently - there was a kidnapping and he and I were able to sit down and just level with each other and say that you know it was a bogus case. We both knew it. Well, if I didn't know Jeff, the chief of police, out there, well, maybe we couldn't level with each other, maybe we would have wasted a lot of money prosecuting a case that never even occurred. And that's the sort of thing that comes out of these meetings the ability to have a straight talk with a fellow person involved in law enforcement and that's why I think it's important getting to know the local people. And I don't think that these meetings cost very much. I would just say that in a court county like the one I'm associated with, even $40-50 for a luncheon is kind of out of sight. OK, we've already covered cross-deputization. I think it's important if any of you folks get involved in this, you may say that it doesn't always go as smoothly as it sometimes sounds. It's very frustrating at times. For instance, some of you have heard the expression - "Indian time." To have a court system where everybody is supposed to be there at 9:30 and have a police officer show up half an hour late is frustrating, very frustrating. The judge is on your back. The case might get dismissed but on the other hand you gotta bear with these problems; if you're off the reservation you've gotta learn to work with it, you've gotta be committed and you gotta understand not everything is going to go smoothly. Police officers may confuse tribal law with local law off the reservation and

may become somewhat bitter towards the local district attorney. For instance, our statutes about disorderly conduct are very specific and I don't think there are as many technical requirements for disorderly conduct on the reservation. Consequently, when they arrest a white person, they feel very embittered when the district attorney doesn't prosecute that person in the state court system. You have to constantly be working with the tribal police officers to make them understand there are more hoops or more technicalities to go through in the state court system. You have to be committed to that. You can't get frustrated. I would also encourage you if at all possible and I know this is a big funding step, to seek a special funding for a resident Deputy U.S. Attorney on the reservation. The reason why I say this is because we have a system now on the reservation that takes care of minor misdemeanors. The U.S. Attorney's office will prosecute major felonies. There is a whole range of crimes, I would say full grade felonies that don't seem to get prosecuted. I'm not blaming the reservation for it. They don't seem to have the jurisdiction to take care of the problem. But Portland is about 120 miles away and during the wintertime, it can seem like 320 miles away. There are just a whole bunch of cases that don't get prosecuted. Also when you have a Deputy U.S. Attorney who comes maybe once a month to the reservation, he doesn't have the contacts that are needed to make some of these cases. The police I think are hesitant for Warm Springs police officers to become too closely identified with the local law enforcement agencies. I don't think anybody on Warm Springs wants to be seen too often with the local district attorney and for that reason, I think it would be a good idea to have a local Deputy U.S. Attorney, someone who the local law enforcement agencies on the reservation could go to, have confidence in and with that, I think that your quality of law enforcement would go up. Another reason why I'd like to see the Deputy U.S. Attorney there is so often crimes are not prosecuted on the reservation that are prosecuted off the reservation and immediately I become suspect at being prejudiced against Indians. I would say that if the crimes were equally prosecuted on the reservation as well as off the reservation I don't think there would be this feeling of distrust and prejudice that many Indians seem to feel against the local law enforcement agencies and the court system. I would encourage you to have a local law enforcement committee with the understanding they would seek out means by which to enforce or to encourage better law enforcement activity on the reservation. There is a local law enforcement committee on the Warm Springs Reservation; they have monthly meetings; they are always looking for ways to improve the system. I think sometimes the committee might be a little frustrating because you cover the same ground but you've got to go to these meetings, you've got to sit down, you've got to talk, you've got to continually think of ways that you can make the system better. And I have to say that during the couple of years that I have been in Jefferson County, I have seen both the court system and the Warm Springs Police Department improve tremendously and I credit that to the fact that there is a committee out there, that there is the tribal council out there who are committed to improve relations and improve

law enforcement because they recognize that it's necessary for enhanced quality of life on the reservation. I would also encourage you to recognize warrants from the local court systems even if the local court systems can't reciprocate. It certainly increases the willingness to cooperate in other matters that local law enforcement agencies can help with.

One of the things I would encourage you to do is to pay the police officers that you hire a good wage. You get what you pay for. We, in Jefferson County, would like to hire an Indian police officer. I have to tell you that Jeff pays better than we do and consequently, all the qualified law enforcement officers who are Indian, Jeff gets. We can't get any of them.

Another thing that I think you are gonna have to understand is sometimes things will become bitter and things will explode in your face and you'll say things that maybe later on that you'll kind of regret. Both sides have to understand - don't burn your bridges behind you, and even if you don't find out that somebody said something about you that you don't like, just remember it's really not important anyway, just ignore it, because you're gonna have to go to work together the next day. And I have to tell you that sometimes things can get kind of feisty, you just have to remember, forget about it. That is a confirmed rule. I'm constantly hearing things said about myself and I've just got to the point where it really doesn't matter. The only thing that's really important are results.

I would also encourage transportation arrangements for Indians who become intoxicated in the local taverns so that they don't feel like they're being unnecessarily picked on. I know that this is somewhat of an expense but when it seems like 3 out of 4 Indians who went to town that night drinking got picked up for driving under the influence of intoxicants, they feel like they're being picked on. If there was a means whereby they could be driven back to the reservation by somebody who was sober, then I think it would enhance relations between the local people and the tribe. I don't think that's an expensive program and I think that's something that has existed between Warm Springs and Madras and the program is being re-initiated as I understand it.

I think that the local law enforcement head, Jeff Sanders, in this particular instance and myself should be aware of each other's individual problems. For instance, we have an individual approximately a year ago who was just burglarizing every place on the reservation. Jeff advised me and when the fellow finally committed a burglary off the reservation, we got real tough with him. And he did end up going to a federal institution because of the fact that he was prosecuted in a state court and then he was prosecuted in the federal courts because of the second conviction he ended up going to the federal institution and I believe that burglaries went down substantially after that.

Now I'd like to give you a couple of examples of recent cooperation between Warm Springs and Jefferson County. Apporximately a month and a half ago, we had a meeting between the local law enforcement officials and the tribal judge, Irene Wells, mentioned that she was concerned that too many juveniles were purchasing liquor in the local bars, that she had heard that some Indians were being rolled, and their money was being taken and she was also concerned that too many Indians were being served liquor after they were already visibly drunk. So I said, "Fine, we'll do something about it." We contacted the Oregon Liquor Control Commission which controls all the outlets for liquor in Oregon, set up a meeting with all the local bar owners, law enforcement agencies in Jefferson County and all tribal leaders who were interested from the reservation. There were approximately 60 people. This meeting took place 2½ weeks ago. Some of the things that came about from the meeting was an understanding of the tribal identification system, I believe the dissemination of rosters which indicate dates of birth for those who are tribal members, a request for deputy sheriffs who are on Jeff's force to accompany our deputy sheriffs on bar checks. Jeff is a little short on manpower right now, but it's a request that we made for we feel it would enhance our ability to identify those juveniles who may have passed the checkers and we can get them out of those bars. We also indicated the need for more checkers, the need for more people to drive Indians who get drunk back to the reservation so they won't get picked up. This is a meeting that came about because of a meeting that was called by the reservation. It was a response to a real problem. We came up with some definite suggestions to our particular problems in Madras. I'm not going to say that everything is peachy-keen and the problems all solved. But I will say that this last weekend was bonus weekend and that means that I think every member of the tribe gets a certain amount of money. Typically, on that weekend in Madras, since there are no bars on the reservation, we have one heck of a time. But we called in the Oregon Liquor Control Commission, we had extra people on, we were committed to the fact that we weren't going to have this happen. And when I checked on Sunday morning when I left, there had not been any problem because we were making this effort. I'm not going to say that nothing's going to happen, I mean Madras is kind of a wild town and we do have our problems there, but it's interesting to note that we made this commitment, we tried to solve the problem, and on a bonus weekend, we didn't have a lot of problems. It was just a really quiet weekend as I was told by the Sheriff's office.

Another interesting problem that we had within the last month was we had a member of Warm Springs Reservation arrested on a murder charge and the warrant was taken out to the tribe; it was endorsed by the tribal judge. To be quite frank about it, I thought one of our police officers or some police officer was going to be shot. There was just no doubt in my mind, somebody was gonna get killed. Within 15 minutes of delivery of the warrant to Jeff Sanders, who's the chief of police out there, he made certain arrangements and some

calls, and the accused-murderer turned himself in with no one being hurt. And I think even Jeff was amazed no one got hurt. So that's the kind of thing that can happen if you're committed and you seriously wanna get something done in law enforcement relations between the tribe and local law enforcement agencies. I would encourage everyone to be involved in that. There's gonna be a lot of stumbling stones and you are gonna be madder than heck sometimes but it's worth going through the problem.

MANNING: Thank you very much, Mr. Sullivan. Chief?

SANDERS: I have no more comments.

MANNING: Then we'll go on with the discussion in respect to New Mexico and the Navajo Indian Nation. Chief?

BENALLIE: My name is Larry Benallie, Director of Public Safety for the Navajo Division of Public Safety. Under public safety, we have police services, we have highway safety which is an educational program and we have fire services which is just being implemented now. The police department portion of public safety consists of roughly 300 officers and they cover an area roughly the size of West Virginia. We're just gonna talk about the New Mexico portion now. We have a district station in the NM portion, in particular this checkerboard area which is where our area of concern is concerning cross-deputization. All that is off the reservation itself.

We do have a station there in Crownpoint. It has roughly about 40 officers there, 35-40 officers, and the Navajo Tribe there furnishes almost total law enforcement, there are no other agencies. We do have one sheriff's office there, when he's there. Now, in 1973, the State of New Mexico and the Navajo Tribe signed an agreement where the Navajo police officer would now be a state-commissioned police officer, a NM police officer. Only after meeting the minimum requirements set for the rest of the officers in NM which at this point is 400 hours I believe of Academy training and right now there's a uniformed police officer's test which has to be taken and passed. We run our own Academy and under this agreement, that our curriculum is presented to the NM Law Enforcement Academy prior to each class, so we run maybe 2 or 3 classes a year. We have one in session now, but all the officers that do pass this, get through the Academy, are certified as police officers and really two states: Arizona and New Mexico - we're working on Utah now. So we really work with four jurisdictions, each state and plus our own tribe. I think it's pretty much the same as Warm Springs. The non-Indian is cited or taken into the state court system. And the Indian of any tribe is run through our own system.

I really don't know, the hard experiences with cross-deputization. In 1973, we did have this agreement with the State of NM where we had certain jurisdiction outside the reservation and like in the checkerboard area. That worked fine, that worked good, until just recently, in March of '78,

NM, well, the other Indian, up to that point, the Navajo Tribe was the only one who had this kind of an agreement with the State of NM. And the other Indian tribes were having problems because they weren't able to cite non-Indians into court, any court. So, in March of last year, NM passed a new law. This was to help the other tribes also. But it didn't quite work out that way in our case in that all of a sudden our jurisdiction was limited just to the reservation proper itself. So what is really done was it took our jurisdiction away from us outside off the reservation, particularly the Crownpoint area, and this has been a center or controversy now since well, roughly for the past three months now. We did stop, I think there was a test case, well, I'll let Paul handle that part of it since it's really in his area. That's really all I can tell you up to this point. Mr. Onuska, well, we really work very closely together, so, we don't have all the answers either. Sometimes it's just the two of us against all the other politicians and it does get pretty rough there. So, Paul.

ONUSKA: Good morning, my name is Paul Onuska. I'm the district attorney for the 11th Judicial District in the State of New Mexico and by reference, I'm going to be referring to these maps which the chief and I brought along to help you understand what kind of problems we have. Our district is two counties - San Juan and McKinley, 12,000 square miles of God's country. Farmington, a city of approximately 40-42,000; Bloomfield, 8,000; Aztec about 5,000; Shiprock about 9,000; Gallup, about 25,000; Crownpoint, about another 4,000 out here. In this district, we have estimates of population ranging from 130,000 to 150,000. As you will see, this is San Juan County, this line coming across here going up. Here, this is McKinley County down here. The other map here is a blow-up of McKinley County only. You can imagine as the Navajo Reservation extends up - to correlate - this is the portion which you see Navajo Reservation in the corner. It would continue up if we had a map of San Juan County. This kind of checkerboard application would then continue into San Juan County going north. The Zuni Reservation is also in McKinley County. The Navajo Reservation goes right on into the San Juan County. As the District Attorney, I am the chief law enforcement officer in our county and in addition to that, I'm the legal representative for the County Commissioners for San Juan and McKinley Counties. My two offices are 135 miles apart. I have a staff of 10 attorneys, 3 investigators, 7 secretaries, 1 director and I spend about 25,000 miles a year driving back and forth trying to keep everything coordinated and in addition to that, try a few cases, and try to keep the whole thing going. We have 9 law enforcement agencies to deal with, plus the federal agency and in addition, the FBI and the Bureau of Indian Affairs. In trying to deal with this hodgepodge and give you an idea of the press and volume of work, last year, 30 homicides, already this year, I think we're into the 20's, this year, we've had 3 major bank robberies; we solved 2 of those. Just last week, we had a half-million dollar armed robbery in a jewelry store. We had juvenile crime ranging from the minor stuff to the killing of individuals.

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We've transferred this year; last year two juveniles to stand trial for murder; it's a very active area. In addition, there's the civil work with the county commissioners to keep us extremely busy. In this area, right through here, is known as the Uranium Belt. The large deposits that are kept in America are right in here. This is the coal area, coal here and coal down by Gallup. There's the Pittsburgh Midway -- there's the 30-year reserves - this was about five years ago when I was representing them, they have about 25 more years of reserves of coal and keep digging hugh deposits of carbon coal. Up in here is the Four Corners Power Plant which you may have seen pictures of lively pollutor, and it provides the electric supply for the city of Tucson and the city of Los Angeles, not all their needs but quite a bit of them. Also, we have the Public Service Company of New Mexico, and an additional power plant up there which supply the power needs for the city of Albuquerque. In San Juan County, basically McKinley County, breaks down into your energy area of uranium and coal. San Juan County breaks down into your oil, gas and coal. So San Juan County, I think, is the second or third wealthiest county in the state. McKinley County, probably fifth. There's a lot going on, a lot of growth and it's a lot of fun.

Now, this is the color-code. Off the reservation, this area here is known as the checkerboard area. The white areas are basically fee lands. The remaining color-coded stuff is basically with the exception of the blue - the blue which are the State of NM. The remainder are owned, leaving out the white and the blue, the remainder are owned by the federal government in one way, shape or form or by an Indian tribe in fee, fee land or trust status. So you can see, there is a tremendous amount of federal land in this area. This is the Fort Wingate military reservation, the green area is the U.S. Forest Service and land that they own in the Cibola National Forest. The orange Indian allotment land of which the federal government has exclusive jurisdiction along with the Navajo Reservation. So that if a crime occurs on the Indian reservation, and it doesn't involve what we call bilagààna for a white man, then this area here would be federal jurisdiction. If a white person were out here and caused a crime, then we would have jurisdiction over them. And we could prosecute them in the state court. Out here on Indian allotted land, this area would be the federal government jurisdiction and would be investigated by the FBI. Problems arise, if I can point out, we had a murder in Church Rock area about a year ago and it's now being prosecuted by our office. After about six months, the FBI then forwarded it into our office and it's a big circular run-around and it's because status of land. And it gets to the point where if it's five feet on this side, it's gonna be somebody else's case, five feet here, it's gonna be your case. It took several months to find out exactly what the status of the land was in an area right in here. And when they did, they had to forward it back to our office. At least they didn't have to, but they did, and we're gonna prosecute it and the charges are being filed today on a second-degree murder charge.

The Chief was alluding to an agreement entered into in 1973 between the Navajo Tribe and the State of New Mexico in which by statute the state legislature gave after several years time, gave to the Navajo Tribe the ability, if their officers met with certain statutory requirements, to operate as state police officers off the reservation and on the reservation in an area known as the checkerboard area. The checkerboard area does not just exist in McKinley County. It exists in this area of San Juan County, the Rio Ariva County, Sandoval County, McKinley County and Valencia County down in here. So, there is a huge extension of the Navajo jurisdiction over this area to operate as state police officers in accordance with that agreement. This past legislative session, the act was amended to change it to extend jurisdiction for all of the tribes and pueblos in the State of NM to operate as state police officers. In the media, it was touted as giving to the other tribes and pueblos the same powers as the Navajo police had. In the process and quite behind my back, and the Navajo police, behand everybody's back, quite nicely done in a political maneuver, the language was inserted into the act that any jurisdiction given to any tribe or pueblo, entered into the agreement with the NM state police, that that jurisdiction would have to be coextensive with the exterior boundaries of the reservation. I.e., before the act, the Navajo police could operate out in this area as state police officers and assist our office. Now, after this last act, there is a very large doubt and with the language being coextensive to the exterior boundaries of the reservation, the Navajo police are now limited to operate within the reservation boundaries. That's taking away the ability to operate in this area where I need them. I have requested three times in writing to the Governor. Governor King, since we have what's called a short session coming up in NM, the only way things can get onto the agenda is for the Governor to place it on the agenda. And, therefore, you're at his beck and call. The following legislative session we could put it on there but we have a real need now because in this area, this is where a lot of people are living, this is where the energy that will lighten up your homes and you're using, this is where these things are being mined and taken out and this is where a lot of people need protection. Now, this whole area here -- the same thing applies in San Juan County - and we've been asking the Governor to place it on his call, I believe the Tribal Chairman just wrote a letter the other day. I attended a meeting in Crownpoint on Saturday and received a resolution from the Eastern Navajo Agency which is a collection of all the chapters in this area, the Tribe is broken down into the basic governmental units.

.....Navajo police officers to extend their jurisdiction into areas where we need them. We work along fairly well but like human beings, you know, it's difficult. We're all raised in one particular culture or sub-culture and it's always tough to cross cultural lines. As a politician, and luckily I've got a life that I enjoy; the job, the big thing in my area is that you have to cross cultural lines. This area of Gallup has everything of an eastern city - Croatians,

Greeks, Italians, Slovaks, Ukranians, Mexicans, Navajos, Zunis. You name it, we have it. That's Gallup. You've got to be able to get along out there and that's one of the reasons I think we're beginning to have a lot more cooperation because our office, along with Chief Benallie here - we've been having our arguments and having our agreements. But this kind of thing I think solidifies our action in trying to get something done to have adequate police protection out in this area. If I talk much longer, I'll put you to slepp. It's a pleasure being here and all, but I'll respond to questions at a later time.

MANNING: Thank you. We now hear from Joe Young of the Yakima Indian Reservation. He's the chief of police for the Yakima Tribe Police Department. Joe?

YOUNG: Thank you. I'm Joe Young, Chief of Police of the Yakima Tribal Police Department in Washington. I must admit I've come here rather ill-prepared. I've been tied up for the past few weeks. I've no prepared program so I'm going to have to wing it so to speak. The Yakima Tribal Police Department contains 24 regular uniformed police officers including myself, lieutenant sergeants, criminal investigators and juvenile officer staff. We have a couple of vacancies right now. I have 11 radio dispatcher-jailers. We operate our police department, we have our own jail with occupancy of 12 men and 5 women. Our average daily occupancy though is only about 3. For the most part, we deal only in misdemeanor crimes. We also have a police sub-station 20 miles out into the middle of the reservation which has 3 cells, also, it is recently opened. It has a medical center with it. We operate 21 police cars and the average travel is about 500,000 miles annually. The Yakima Indian Reservation is approximately 1.2 or 1.4 million acres. It encompasses 45% of Yakima County. Off the reservation, there's approximately 700,000 acres of timber land which is reserved for Indian use only - it's the hunting area, the logging area, it's closed to non-Indians. The lower half of the reservation, approximately 600,000 acres is the rural farm area. It encompasses five small towns ranging in population from 300 to 6,000 people. The overall reservation is approximately 30,000 residents of which about 20% are Indians. Then it is checkerboarded, with fee patent lands and trust lands. We have a game department which patrols the upper half of the 700,000 acres of closed timberland. It is approximately 14 men or women. We operate 10 vehicles in the closed area, 4-wheel drive vehicles and snowmobiles and all terrain vehicles. We routinely cross-deputize our officers with the Sheriff's office. We have very good cooperation with the Yakima County Sheriff. We generally simply request that a person be cross-deputized and without a question, I do it for him and he does it for me. My criteria is first that a person must first finish basic training before I will request a Deputy Sheriff's commission from the Sheriff. I assume his criteria is the same and I don't ask him when he wants somebody to have a Tribal Police commission, I give it to him. We receive our citation books from the Yakima County Sheriff's office. They come to us with a Yakima County Sheriff's officer or an ID

number on it. So when we cite a person, either Indian or non-Indian into state district court, the computer reads it in Olympia as written by a Yakima County Deputy Sheriff, not a Yakima tribal policeman. We estimate that we're putting $50-60,000 annually into the state district court system which the majority is returned to Yakima County, not to the Yakima Tribe. Personally speaking, I have no qualms about this. My interest is in law enforcement, not money. Although it is those dollar factors that do govern us. From my position downward, we will give you enforced laws regardless of where our money goes. It is the people above us and I've pointed this out to Sheriff Nesary several times, county commissioners or my own Yakima Tribal Council who will decide whether I will continue to enforce state law or not or continue to give this money away so to speak. Our officers are trained at the National Academy in Brigham City, the 10-week training course there. In November, when the 9th Circuit Court voted on the concurrency issues, we had assumed this back in August. Our attorneys had read into it enough. They told me that it appeared to us that we do have concurrent jurisdiction. In other words, we can start citing our own Yakima Indians into our own tribal court. We began this in August before the 9th Circuit Court ever told us, "yes." We instituted our own law and order code. We've assumed juvenile responsibility; we have a facility for juveniles; are budgeted for the remodeling of our jail and expansion to facilitate this new responsibility and we've established a juvenile court. Our cooperation with the Yakima County Sheriff's Office, the State Patrol, the FBI and the other legal entities-municipalities even, its very good. Back in April, some of our officers were involved in a shootout. At the time, it initially happened in the city, our tribal police were there, and very shortly the county was there, the state patrol. It eventually wounded up with BIA investigators and the FBI handled it. The cooperation was needed and we utilized it. I think that's all I have unless I'm opened to questions.

MANNING: Some of these questions may be relative to any of your explanations - feel free to make it a free-wheeling response where one is asked a question, and anyone else wants to contribute, please feel free to do so. We'll start with our Co-Chairman. Joe, do you have any questions?

DELACRUZ: Yes, I have a question. After listening to testimony of some tribal people and a few prosecutors that no one brought out. How much money does the tribes put into law enforcement over in the county areas, in cross-deputization and cooperation and how much does the towns put in?

SULLIVAN: Well, I have to defer to Jeff because he's directly involved in budget and the Sheriff in our county is but I'm not aware of the costs of cross-deputization.

DELACRUZ: Does anybody have any idea how much money does the Indian tribe (because of cooperation, because of LEAA, federal monies.....

SULLIVAN: The county benefits obviously but I can't put a dollar figure on it.

BENALLIE: The total budget for our department is $7.7 million and you know it costs roughly $6,000 to train one cadet, one officer. You know these other people....

MANNING: Your total law enforcement budget is $7.7 million?

BENALLIE: We have something like 425 or 30 employees. Of that about 300 are sworn police officers. Right, that's for the whole reservation. There we were only talking about Crownpoint, they have about 40 officers there, we have a district station there and we do as far as, but I don't know if this will answer your question, we do put a heck of a lot of money into the county by citations and stuff like this and we really don't get anything back out of it.

MANNING: What is your total budget, Paul?

ONUSKA: My total budget? Half a million.

YOUNG: The Yakima tribal annual budget for law enforcement is probably in excess of 3 million. Mine alone for the police department is close to 1 million. And the Game Department to that it's about 1.3 million, but it encompasses several other programs - probation, parole, highway safety, the court, all in all the Law and Justice Division for the Yakima Tribe is something like nine programs. I'm just one of the programs - the police department.

DELACRUZ: I asked that question because I don't know where LEAA is at but I know a lot of counties where there has been cooperation. They've even updated their equipment, their radio systems and everything else. It's not enough to have cooperation with management, there's other advantages. The other question I have, I know Warm Springs has been at this for a long time. There's been a lot of controversy with legal governments. That's some of the problems we're trying to deal with. But how long does it take to really get the county down to a cooperative effort.

SANDERS: I think it depends mainly on the people that are involved in the District Attorney's office and the Sheriff's office as to how much do they intend to commit themselves to a joint effort to deal with problems that are common to both law enforcement agencies or the areas that we're dealing with. Quite obviously, we have our ups and downs, depending on who is in office, but, as a general rule, we have been working for quite a number of years. I've been on the department now for 18 years and as far as I can remember, we have been working towards this common goal of working together since we are a kind of a minority within the minority.

GOULD: I'd been interested in anybody's comments in regard to the possible implications of the Oliphant case and I guess that Yakima is the one that has the largest number of non-Indian residents on the reservation. As I understand it, Warm Springs has very few non-Indian residents although you have people coming in the lodge and the Navajo Reservation. Do you have many non-Indians on the reservation?

BENALLIE: Somebody estimated that we have about 20,000 non-Indians, if that many.

GOULD: Out of how many?

BENALLIE: Well, the Navajo Tribe itself, I think the population is about 150,000. They're not all there; these are total members. We have quite a few schools, public schools, BIA schools and they bring their own teachers and things like this.

ONUSKA: But they live on the reservation, not on fee land. The Navajo Reservation itself is all reservation. There's not a question of internal checkerboard. So that when we refer to checkerboarding out our way, we're talking about areas off the reservation.

GOULD: Does the Oliphant case have any implications for you and if so how do you handle that at Yakima?

BENALLIE: Well, a number....Well, the Oliphant decision itself didn't really do anything for us because we never did assume total jurisdiction over everyone on the reservation. We were just getting to that stage and it isn't really a problem. We send people to court, according to whichever court they're required to go into. So it isn't really a problem.

DELACRUZ: Wasn't it in '78 where that change happened in the checkerboard area kind of a result of the Oliphant case because you had cooperation before then the state legislature changed it outside the reservation?

ONUSKA: I'm not sure that you can say it's the Oliphant if you want to have it straightforward - it's because some people, there are rednecks on both sides of the reservation lines and racism runs throughout America. So the problem was that certain white people didn't like getting stopped by Navajo police officers and certain Navajo police officers weren't handling the situation the best way and rather than the people coming to Colonel Benallie or myself, they went to some local state legislators and they used, probably the Oliphant decision, they used a lot of things as arguments behind the scenes to get this changed and it was a question of when an officer was maybe not doing the right thing, instead of trying to weed that out, they just changed the whole system. Which is, as you have, I think, correctly stated, it left a very large vacuum there.

YOUNG: Initially or essentially, it had no real effect on us. We had been doing exactly what it said for the past - since 1963 - we had not been taking any non-Indians into tribal court. By virtue of the Deputy Sheriff's commission, we were arresting non-Indians and we are continuing to arrest non-Indians.

GOULD: But you just send them to the state or local courts and that's it. You're able to tell which is which and which belongs where.

YOUNG: Generally, mostly to be questioned. Oliphant along though with the concurrency issue might be a point that caused a problem. I asked the state patrol initially, I haven't gone to the Sheriff's office yet, but I asked the state patrol to give me - to cite the Indians into tribal court now that they're encountering as we have started doing. They haven't given me a yes or no answer yet, but I have been receiving some feedback. I don't think they're gonna do it. They're not going to give me the Indians back. In other words, while the state patrol could arrest the Indian or non-Indian, take them into state district court, the tribal police can only arrest the Indian and take him into tribal court and must turn over all non-Indians to district court.

GOULD: Why is the state patrol reluctant to turn them over to you?

YOUNG: I think as I said a little bit ago, I think it's dollars. I've been putting quite a few dollars into the district court system. Additionally, court schedulings, and things like this, state patrolmen would have to appear in two different court systems then; overtime is one of their concerns. I pointed out to them that it's nothing more than Joe's been doing for the past 15 years. My men have been going to district court and to tribal court and I've been paying them for overtime.

GOULD: Do you think you can make some kind of monetary arrangement?

YOUNG: I've pointed out that the best way would be a simple financial transaction between the two to let them handle our Indians in district court...we just go down and pick up the revenue, the same with our court.

GRAHAM: It's been interesting listening to this. I would like to talk with this gentleman over here on my left. Do you have your own separate law and order code for your reservation or do you operate under the laws of the state?

GREEN: No, we operate under our own law and order code.

GRAHAM: Is that much different than the laws of the state? Perhaps this is one of the things we ran into. I saw a law and order code for instance that had contained many things in it that for murder, for cold-blooded murder, the most you could get was $500 and it never finally got into existence but it was a proposal, it was already written. I have copies of it. I think this is, perhaps, a dual thing; that perhaps some problems, as somebody stated here, they're reluctant sometimes to go into - before a district judge because maybe the fine might be more for driving while intoxicated, etc., this may be a place where there is a weakness, where you have your own law and order code and I would suspect that they differ from reservation to reservation, but I was highly interested. The other reservations, do you have your own law and order code?

BENALLIE: Navajo, yes, we do.

YOUNG: Yakima, we do. Our code was designed almost verbatim from the Washington State revised code. They almost erased the name of Washington out of the code and wrote the Yakima in it. And then they expanded upon it, briefly to encompass particular laws or codes, particularly culturally related, but it does incorporate all state law almost word-for-word.

GRAHAM: How close is your law and order code to the state code?

BENALLIE: Well, it has been revised several times. And there's a new one due to come up before the council. I can give you an example of how they differ. Under tribal law, you don't have, like for your driver's license, restrictions corrective lens, left side, rear view mirrors. Those aren't in there. All you're required to have is a driver's license. So you know that's being done over now. The new traffic code will have implied consent, you know the whole bit, I think it's taken probably verbatim out of the Arizona statutes also. Those we enforce on Indians. Of course, non-Indians, we enforce the state laws. So there is a big discrepancy there.

GRAHAM: Do you think that your new proposal then will be better than your old one?

BENALLIE: Oh, yes, definitely, definitely.

SULLIVAN: I'd like to comment that I think it would be a good idea if the laws were the same. I think both Indian officers and the typical officer goes to these cross-training sessions would understand a lot better if he didn't have to deal with two complete different sets of laws. If he was only being training in one, I think he'd have a better understanding. Also something that we have a problem with is search and seizure issues on the reservation as opposed to search and seizure issues off the reservations. We have Oregon law which is somewhat more restrictive than federal law, so sometimes we have a conflict and to a certain extent the federal law isn't regarded very highly on the reservation. Typically, a search warrant might be an axehandle on the reservation as a door gets kicked open and is considerably different than off the reservation where we have a very formal procedure. Now I think that with the books that are available - the Warm Springs Reservation doesn't have a law library. If they had the same law system that we have, they would have access to our Oregon reports and could rely on the same case law and I think that would be advantageous. They wouldn't have to buy thousands and thousands of dollars worth of law books.

GRAHAM: Just one more question, Mr. Speaker. Somebody talked about your police officers and we've got several reservations here. In the law enforcement academy, and I'd like a response from each Indian reservation, are they attending state law enforcement academy or is it a setup of their own?

SULLIVAN: State law enforcement academy in Oregon.

GRAHAM: This is good. That's all now, Mr. Speaker.

MANNING: Following up, I had the same note that Carroll had. What's the big impediment towards uniform penalties? Let's just take Warm Springs to start with. Why couldn't Warm Springs have the same penalties as the state?

GREENE: I think our law and order code was drafted years ago. I think it was primarily under the Bureau of Indian Affairs. I think it's been revised a few times but we don't make that many major changes in it.

MANNING: Have you discussed the possibilities of making them uniform in the monthly meetings that you have?

GREENE: I never attended any meetings where that was discussed.

MANNING: Primarily then it was the law enforcement people that met? Has that ever been discussed?

SANDERS: It has never been addressed to the point where we would make both laws compatible with one another. I think we've always maintained that the system that we have is separate from the state system and that we retain the right to set up our own rules and regulations as to implementation of the law and the fines or jail terms as a result of it.

MANNING: There is no question that you possess jurisdiction to do so, but do you feel that it would be helpful to have the same fines and penalties?

SANDERS: Most definitely, it would. At the present time, right now, my officers carry 7 different ticket books. So, it's not who committed the offense, it's which ticket book to pick up in order to issue the citations. We go into two or three state systems, the tribal and two into the federal systems so that we have enough ticket books, it's just that we don't have enough laws that are uniform.

SULLIVAN: I'd like to comment on folks at the reservation...the feeling that I get is that they want to maintain their independence from local law enforcement agencies and they certainly don't want to give the appearance that they're under the thumb of the local law enforcement people. And I think that's one of the problems with having the same laws because it gives the impression at least that the local white people are taking over the reservation enforcing their own standards on them. And I think at least in Warm Springs, the people are very proud of their independence and I think will continue to have their own code just to ensure that they do have their independence.

MANNING: These meetings that you spoke of before, primarily who attends those?

SULLIVAN: Well, Jeff is sometimes there. I'm there. Sometimes a representative from the state police, Ham Perkins; the sheriff quite often goes with me. Sometimes, Bob Lowry, the chief of police from Madras, he'll go. Irene Wells, Daisy Ike, who is a tribal advocate for prosecution. Let's see, there are 3 people on the law enforcement committee. It's important to have the tribal elders involved in this and I think most of us understand here the tribal culture but to have the elders who are highly respected among the tribe, it's important to have their presence there because the only way to get things done is to have their OK on things as far as I can see -- they have to believe in the system. So, those are some of the people that are involved and now for the first time, they have a tribal attorney to upgrade the court system out there and he's an Indian attorney. I might indicate that someone handed me something - the Indian Civil Rights Act and it says, "Limits tribal court punishment as a matter of federal law to 6 months and/or fine." I'm aware of that and that's why I made mention of the fact that there's a whole grade of low-grade felonies that aren't in fact prosecuted because the U.S. Attorney's office doesn't pick them up. So on misdemeanors, we have a limit up to one year and $1,000 which is half, but most of the time you can take care of a disorderly conduct or driving while suspended for 6 months. That's pretty adequate. The problem becomes what happens when you have somebody hit somebody in the head with a nightstick which you know is a weapon and should be a felony, but it's a low-grade felony. So the U.S. Attorney's office doesn't pick it up and the tribal court system doesn't have the ability to really deal with that adequately because certainly that might be worth more than $500 fine or 6 months in jail. But I'm aware of that. It doesn't necessarily mean that the penalties have to be the same. The penalty is basically up to the court but if the laws were the same, that's the important thing. The judge is the one that really has to understand the penalty. It's the police officer who has to be able to pigeonhole that illegal activity and say it fits within a specific statute.

MANNING: Does your office meet regularly with your law enforcement counterparts?

ONUSKA: In San Juan County, there's a monthly meeting, a law enforcement meeting, where all agencies are invited and the Navajo police come in from Shiprock periodically. In McKinley County, there's no such organization-type of structure because the basic handling of law enforcement.....

.....when there is an opportunity to deal with one another. I think this recent thing when we were outlining, in the state legislature, it brought us closer together and to know one another and visit and work on the problems.

MANNING: How about in Washington?

YOUNG: The first Thursday of every month, we have what we refer to as the Lower Valley Law Enforcement Supervisors' Luncheon. I missed one last Thursday. It's usually attended by approximately 25-30 of the law enforcement supervisors from all

through Yakima County. We have kind of a workshop or a guest speaker on major topics in law enforcement.

MANNING: How high a level in the tribe - at what level do they participate? At your level and down or do the elders sometime attend?

YOUNG: From the tribal organization, I attend, my assistant chief of police, my lieutenant and my immediate supervisor, my division administrator, the man in charge of all my programs. Generally, the three of us attend.

MANNING: Mr. Sullivan, you mentioned you had a problem in the reservation recognizing warrants from outside agencies. Could you go into a little more detail?

SULLIVAN: Our state code doesn't provide the recognition of tribal warrants so we can't enter them in our computer 0s that's just it. On the other hand, I do believe that the reservation can allow the service of state warrants on the reservation which they do. Of course, in a situation like that, I think the easy thing is to say, "Well, tit for tat." If you folks aren't going to di it for us, the heck with you. But I think that I have to give credit to the folks out at Warm Springs. They've said OK, we understand what the situation is. In the spirit of cooperation, we'll go ahead and help you serve your warrants, most of the time. They do get served.

MANNING: You almost mentioned a burglary problem, that couldn't really get resolved until the burglar went outside the reservation. What was that? Why couldn't you solve the burglary?

SANDERS: Most of the burglaries that are committed on the reservation are felonies that come underneath the federal court system and our particular federal court system has a very large backlog so that the low felonies are never dealt with. They are referred back to the tribal court system which basically doesn't have the mechanics to handle this type of backlogs that are coming back into the judicial system. And in the federal system, the juveniles are not addressed at all unless there's a murder involved. They will not deal with juvenile crimes on an Indian reservation. I believe we had one youth that had committed 20 some burglaries up there and had accounted for pretty close to $15,000 in stolen merchandise. Yet, we could not get him into the federal system until it get so out of proportion that it was way off balance and they had to take him in then. But they were reluctant in dealing with it because of not having the facilities to deal with youthful offenders.

MANNING: In a situation like that, what do you attempt to do internally to...you know you can at least get 6 months and a $500 fine. Do you do things with these people who aren't being prosecuted in the federal courts? How do you cope with this?

SANDERS: We do, but, then, we also feel that we are not getting the judicial process taken care of as a result of just doling out 6 months in jail or a $500 fine. The punishment does not fit the crime so, therefore, it's not a deterrent.

MANNING: Is it safe to say, gentlement, that there is a problem at the low-grade felony level with the federal government jurisdiction?

SULLIVAN: I think there is.

BENALLIE: Not only low-grade felony, but also in major felonies. We've had officers severely beaten but it won't be prosecuted because he wasn't permanently disabled.

MANNING: What are your suggestions other than writing a letter to the President? What are your suggestions for curing this problem?

SULLIVAN: A resident U.S. Attorney.

MANNING: Are there any other suggestions?

ONUSKA: The other alternative, if it would be acceptable to tribes, is to allow the state to have jurisdiction in those areas that the federal government fails to exercise.

MANNING: What would the reaction of the tribes be to that suggestion?

ONUSKA: They are not going to want that...(lots of laughter). You asked me a question of how to get the job done and get somebody in jail, on how to chase a bad guy, I'm telling you that if A is not going to do it then you have B sitting over there with a court system that may be able to do it - then if your objective is to get the bad guy and not step on toes of sovereignity and all the other issues - then that is a way to do it. But, people under the present system I just don't think want to do that. Consequently, we end up with the federal government not having an adequate approach to it, and people getting away with the low-grade felony - and sometimes, even the higher ones.

MANNING: I guess one of the answers could be to amend the 1968 Civil Rights Act, too.

SULLIVAN: Typically, I think the response is the state court system seems to be more effective - and probably the same response you get as when you go to a meeting - "how come you are such a mean S.O.B., and you prosecute everybody who walks off the reservation - so why don't you go pump up the U.S. Attorney's office - they will do something." I get that response typically. I think Jeff has been there even when I've gotten that response. I am not trying to pick on the U.S. Attorney's office, but this is the response I get constantly from the reservation. They feel that they cannot get anything done.

DELACRUZ: I just want to follow up on that. You inherited a jurisdiction there. I know Yakima had that problem where the county and state supposedly has jurisdiction. The states and counties

have not acted. You're saying the problem is the United States and the U.S. Attorney. Now what's the answer when you end up with a situation like that? Where the county and state is reluctant to put up the funds and other things to take care of the situations that they say is within their appropriate jurisdiction?

ONUSKA: Fine. Come on out, and you write to Governor King, and get it on the Colville, and come out and appear before our legislature, because I am in agreement with you. I think that the key is that you see in front of you a bunch of folks that chase "bad guys." All we are saying is let us get the job done, and give us the money. I don't care whether it comes from the state or the federal or the Indian tribes. They key is that we, as law enforcement people, see people that come across in front of our desks, and into our stations, that are hurt in some way, shape or form, and we would like to be a lot more responsive to that particular issue. I think all of us see that on a day-to-day basis, and we don't care where it comes from but I think that, in this area, that we have in this recognition of the Navajo police to operate in the checkerboard area there are three alternatives. They can either: 1) go back to the old law; 2) they can appropriate funds for additional state police officers to patrol that area; 3) appropriate funds for additional sheriff deputys to patrol that area. The choice is up to the state legislature.

MANNING: That brings me to why, of all the change in the first place that you alluded to, the fact that there are rednecks on both sides and they have the state capitol and they got some legislators involved to change the state law. My question to you is, and not you specifically, but where were the law enforcement people? Why weren't they out opposing the changes? Wasn't there some communication between the tribe and you people to go down and lobby against that bill being passed?

ONUSKA: Nobody knew about it. The way the bill was originally introduced, it did not have that in it. You're a legislator and you know how you can slip something through in committee, and keep it very quiet...(lots of laughter)...and the media coverage on this was very interesting. There is a lady here from Taos Pueblo, and I just explained this to her this morning; she said, "Oh, I didn't know that." Because the media and the state said, "Every tribe and every pueblo is going to get what the Navajos have." And they didn't contact me, and I'm the D.A. in the state that has this problem more than anybody else. This is the man that I have to deal with. They didn't call him.

BENALLIE: They called me, but they gave something entirely different than what was passed.

ONUSKA: Well, I am talking about the thing that ended up in there. And it got through, and it was explained...

MANNING: It might very well have gotten through innocently enough with respect to what they were attempting to do just what they were saying, but in essence, there was this gap that they didn't have any knowledge of.

ONUSKA: I would submit that there was very little innocence in this activity...(lots of laughter)...

MANNING: Now you say you are going to the Governor to ask that he put this on the call. Now I am not familiar with your short session down there, but why weren't you people going to the legislature? Why do you have to go to the Governor?

ONUSKA: Because in New Mexico, the only bills that can be introduced in the short session are the items a) requested by the Governor of NM; and b) the ones that have an appropriations package attached to them, so that if it does not have an appropriation, and it is the changing of the statute, which is what we would have to have here, then it has to go through the Governor's office; he has to place it on the call. And we would like to ask this Commission, if they would like to write to the Governor, we would be glad to accept any letter or any support in this area of trying to change this law. You'd be helping Colonel Benallie and myself.

(Long quiet pause)

Is there no response to that? Are we not getting a letter?

MANNING: We'll meet later...(lots of laughter)...

SULLIVAN: I would like to address another problem, Mr. Speaker. You were talking about low-grade felonies. One of the things that I have noticed, and is a real source of frustration is that you get a low-grade felony and between the time it goes to the FBI, which is 6 months, and then the U.S. Attorney's office, that's another 6 months, and they decide to reject it. I suppose Jeff gets a little frustrated getting a document a year later on a burglary that is suppose to now be handled as a misdemeanor with 2,000 sets of finger prints all over it. It seems to me there is no deterrent whatsoever at that point, because a kid has probably burglarized 20 or 30 places in that year. If there is anyway to expedite the process of the federal government in reviewing those cases and deciding whether to prosecute or not, I think it would be very beneficial to those people in the tribal government, because who wants to take a look at a case that is a year old. I mean I'm dealing with yesterday's murder, or yesterday's barroom fight. That happened a year ago, that's ancient history.

MANNING: The thought occurs to me that if the law is going to remain as is, and you obviously, or the Sheriff's office, need alot more money. So that would constitute an appropriation.

SULLIVAN: The problem is that the county sheriff is not appropriated funds from the state legislature; it comes from the county commission. The whole taxing structure would have to change, and to take that on, you would have to take on the entire state. Taxing structures cannot be changed overnight to

accommodate this particular problem. The appropriation would be for additional state police personnel. That could come through the state, but if we can't get it through the Governor's office, I think that is a pretty good indication and we have our work cut out for us in the regular session, too.

GRAHAM: I think a common problem, at least in our country, is the U.S. District Attorney. You're exactly right. I think that by the time everybody get through with this case, I don't care how bad it is, the evidence has gotten cold, the witnesses have disappeared and so the typical thing when this all finally boils down two years later and then they throw the thing out. I mean the thing operates so terribly slow. By the time they get a hold of it, they say, "Well, it isn't even worthwhile to try it." They won't be anything a year or two later but just throw the case out. And this is one of the problems. A great problem, it is in our area. They've got to devise some other way of being able to get these cases going, if it's a felony or something that should come before the federal court. It takes too long and this is why there's no better action in the courts. The process has to be speeded up or you just as well forget it. And I think a lot of justice would be done. I think the Indians would be happier with it and I'm sure the non-Indians would be. We know what's the problem but how do you cure it. How do you get them to take a hold of these things and go with it. If you call for an investigation with the investigating officer under the FBI, sometimes they don't even respond, you can't get a hold of them, maybe it will take them months, while the evidence is gone. They gotta move faster than that or you're not going to have anything better than what you got today.

MANNING: Well, maybe we'll hear from some of the federal people later on in these sessions, today or tomorrow and try to get some answers. Joe, do you have another question?

DELACRUZ: I have one more question. None of the witnesses really addressed civil matters between county and state. Are you working in any of the civil areas?

ONUSKA: I'm the attorney for both counties.

DELACRUZ: I mean such as sanitation codes.

ONUSKA: I'm the county attorney on all civil matter for San Juan and McKinley Counties and my staff handles those problems also.

DELACRUZ: Does the tribe ever.....

SULLIVAN: I'm county counsel for Jefferson County. The tribe does pretty much what it wants on the reservation.

SANDERS: We've got own sanitation laws. Our government handles our own problems. We never go through the county government to deal with problems on the reservation.

DELACRUZ: Would Jefferson County be willing to update their civil codes on sanitation, up to Warm Springs, for water?

SULLIVAN: There's nothing wrong with our code on sanitation. I don't think there's anything wrong with their sanitation. I just think they put about a million bucks into their water system out there.

DELACRUZ: I'm talking about the codes as far as water quality laws and things like that. Warm Springs is pretty updated.

SULLIVAN: Well, we have different problems out at the reservation, because they have a good code at the present tim_. I don't understand.....

DELACRUZ: I asked the question because you kept referring t adopting the state code and....

SULLIVAN: This, I think, it would be helpful in law enforcement but I don't see why it would be helpful in Civil in regards to sanitation and.....

DELACRUZ: Well, that's another area of problems that some tribes are having. It's the same type of thing.

SULLIVAN: I can't change county codes because they are most often state laws and they're not going to change for the reservation.

DELACRUZ: How about on Yakima. Is the county doing their job out there as far as civil enforcement on sanitation, things like that?

YOUNG: I can't answer that.

ONUSKA: I'd like to point out at this map you see here. All those different colored roads are the various roads that are taken care of and in the county area down in McKinley County in particular, there are many times joint powers agreements entered into between the tribe, the BIA, the local energy companies and the county commissioners for the maintenance of those roads that you see on there. There's a joint cooperative area there. And another area in Farmington we open up, and I'll be missing it on December 22nd, a San Juan detoxification treatment and medical facility. Under state funding, a board of directors has put that together, headed by my chief deputy in our office and we were involved in representing the county commissioners of San Juan County and we have various council members from the Navajo Tribe on the board of directors. It's a joint cooperative area using state money to put it up and it's the first one being built under this new program. It'll be located in Farmington and available to all the residents of that area. And also, the board of directors have expanded to accept anybody regardless of what state they live in since we're so close to Arizona, Utah and Colorado. If they've got an alcoholism problem, they'll be accepted.

DELACRUZ: In that disputed area, who handles the sanitation, building codes, etc.? Is it the tribes, or is it split jurisdiction?

ONUSKA: It depends on what color you're talking about on the maps. You can see 1, 2, 3, 4, 5, 6, 7 different colors, maybe 8. And you don't have 8, it divides down to maybe between state, county, Indian tribe and then, there's a fee land and military reservation; it gets a little involved. It would depend on what you're talking about.

DELACRUZ: I'm speaking about your sanitation codes and things like that.

ONUSKA: Well, the Indian allotment is primarily federal land and it would depend on what they have since they have total jurisdiction over that and that would be all the orange that you're looking at. State lands in the white area would come under the State of New Mexico sub-division laws and the laws on environmental improvement protection that we have that are monitored through the county and the state agencies and through our office which we have to take care of. The green areas are U.S. Forest Service, U.S. Government, the red areas U.S. military reservation, U.S. Government and that pretty much takes care of it. And then you have your two blocks called the reservation, the Navajo and Zuni and then that's up to the tribal governments.

MANNING: It is customary after the panel has discussed and exhausted the questions to ask staff if they have any questions and after that, we'll go to the audience.

DELORIA: In reference to these inter-agency meetings that a number of you mentioned, does anybody from the Department of Justice ever attend these meetings? The FBI or U.S. Attorney?

YOUNG: The FBI regularly attend our.....

DELORIA: Regularly attends? Where is the nearest FBI?

YOUNG: In Yakima.

ONUSKA: The FBI attends ours in San Juan County. We have 3 or 4 agents in Farmington and 5 in Gallup and our office has excellent communications and in fact they assisted us.

SULLIVAN: Warm Springs are not at the bigger meeting but I understand that they meet individually with the different law enforcement agencies.

SANDERS: We have separate meetings with the federal systems.

DELORIA: Do you have any reactions to the legislative proposal to set up U.S. magistrates on reservations. Would that clear up some of these problems?

SANDERS: I would encourage it.

SULLIVAN: That would be a good idea.

BENALLIE: I don't know if it would help, but it's a good idea.

YOUNG: I think our Yakima tribal prosecutor has suggested the alternative of making himself a magistrate.

DELORIA: When a prosecution is declined by the U.S. Attorney, are either the tribe or the state officials informed? Are files sent over there quickly, or is that a big source of delay? What's the communication flow in this situation?

SULLIVAN: Slow.

YOUNG: Slow.

ONUSKA: Since Mr. Harry Thompson took over in New Mexico, it's improved tremendously with our office. We have really noticed a big change in that I've met with him several times in Albuquerque. He's come out to the Gallup-Farmington and we've sat down and we've tried to eliminate this kind of problem. Sometimes the investigations are slow because that's the nature of police work. Once again, I'm referring only to the colored areas on the second map here, in those areas, it's not uncommon for us to arrive on the scene and have everybody in the world standing there looking at a particular unfortunately hurt person or a dead person, whatever the crime, theft, or whatever it is, everybody's there and then they all disappear. Somebody ends up picking up the ball. If the federal people do, since Mr. Thompson has taken over and they are not going to have a case or its determined later on not to be federal jurisdiction land, then as promptly as possible a letter is sent over to us explaining the reasons in detail, as to declination and will we undertake the prosecution. In some of these areas, under the dependent Indian community theory, in the checkerboard area, the federal jurisdiction could be exercised in some of the white areas, if there was a major murder that would occur. And, if the federal government decided to do that, they would have to go into the U.S. federal court and prove that it's a dependent Indian community. Mr. Thompson and I have set down and, he's decided and I agree with him, it's a bunch of malarkey to go through that additional proof aspect whenever the state court is sitting there and they have also concurrent jurisdiction and that's a much quicker avenue to get it into our office and get it prosecuted, then to to through the federal backlog. So, to answer your question, it's coming along a lot quicker since Harry has taken over.

DELORIA: Does the federal system ever accept cases that have been investigated by either the state or tribal or BIA officials and investigations turned over to the U.S. Attorney or the FBI? Will they accept that? Or do they have to have it from as near to the beginning as possible?

ONUSKA: I think they're just like us. They like to get in on the ground floor and di it right from the start. It runs into the same thing. We'd probably, if we get it first, it takes time to investigate and by the time they get it, it's the same delay in reverse. They have the same hangups and problems we have when we get it after a period of time.

BENALLIE: You're talking about the U.S. Attorney, right? Well, generally in our case, he's not involved until the investigation is complete. In Arizona and New Mexico, the U.S. Attorneys have come up with some guidelines where the Navajo Tribe is responsible for investigating some - I think it was three of the 14 major crimes - and BIA is responsible for these and the FBI is responsible for these. Because at one time, it was really a triplication of efforts there. It got to be such a big hassle that these guidelines are working now. Most generally, when a case is declined by the U.S. Attorney, we're notified by letter within a week. And then the case is presented again to the tribal prosecutor and if they decide to pursue through tribal court, then that's the route we take.

DELORIA: But do you get a fairly quick decision from them?

BENALLIE: Right. Sometimes over the phone. It depends on what the case is.

DELORIA: The jurisdiction, in legislation on courts is pretty well fixed by law but executive branches have more discretion to work together with respective - a lot of the things that executive branches do in the criminal justice system - presentence investigations, probation, things like that. Are there other examples or ways that you can think of - ways that the system can be coordinated. Do you share presentence investigation resources?

SULLIVAN: Not in Oregon.

DELORIA: Is there any reason - you just don't, or is there some impediment.....

SULLIVAN: Presiding circuit court judge says that information is confidential. There is something that is done and I have a high regard for and that is one of the people on the probation staff acts as a liaison between the state court system and the tribe and I believe helps a lot of people make their court appearance. Also.....(end of tape 2).....

Typically, what I'll do is call up Jeff and say, "Hey, this guy did this and this; he's been found guilty, set for sentencing. Would you mind taking him on a transport program?" and Jeff will say yea or nay. And he has said yea and nay; he doesn't always take them and I think he feels that if he can do something with them, he will. That's another example, I think a really good example of cooperation between executive branches. Search and rescue in our state is a function of the Sheriff's office but in other states, I think it's a

separate function and separate organizations. Search and rescue operations - our Sheriff's office cooperates with Jeff Sanders, when we have planes that crash, and probably the biggest cooperation we got was this past winter when our jail was flooded, Jeff was kind enough to take all our prisoners who were swimming around in the sewage that came into our jail. We appreciated it.

DELORIA: I'm sure the prisoners did, too. What about the Child Welfare Act. Has that had an impact on juveniles?

SULLIVAN: We've always had a cooperative agreement in Jefferson County and typically what happens if a juvenile is picked up in town, and a lot of the kids who are on the reservation go to school in Madras and they do something, it goes through our juvenile officer and is then referred out to the tribal judge and I think that takes care of a lot of the juveniles. There's never been a problem that way.

DELORIA: Will the state institutions accept a tribal court commitment of a juvenile?

SULLIVAN: No, but sometimes we get those things referred back and if an order is entered by our juvenile court, sometimes we kind of wonder how legal it is but the defense says, "I don't care, that's what the kid needs," and the judge says, "I don't care, that what the kid needs," so OK, that's what the kid needs. You get the order and away he goes.

....General laughter....

DELORIA: What does the kid say?

SULLIVAN: Well, most of the time, everyone is pretty much in agreement. The parents are in agreement, all the counselors are in agreement, the judges both on the reservation side and Jefferson County side all are in agreement. In the juvenile system, there are a lot of informal agreements made. Wouldn't you say, Jeff, that's the way it works?

SANDERS: Yes. Right.

DELORIA: Is there any-ever been informal communication among the judges?

SANDERS: Yes.

SULLIVAN: We've been present out at Kahneeta when the circuit court judge is, and the county court's been invited. We've had the justice of the peace and now a district court judge - they've done away with the justices of the peace - where they sit and talk. And I think that also when somebody is going through the federal court system, I think, I'm not sure of this, I don't have any evidence, but I think the circuit court judges and the federal court judges meet.

ONUSKA: I can't speak for them. I don't know.

BENALLIE: Yes, there is quite a bit. We have, I think six district judges, chief justice, they are in informal communication. We have a monthly criminal justice meeting.

DELORIA: Do they ever communicate with the state district judges?

BENALLIE: I have no idea. I wouldn't know. They attend a lot of conferences. I don't know what they do there.

.....Laughter.....

DELORIA: What would be legitimate reasons that you can think of for systems not to cooperate in the ways you've been talking about? Any policy reasons, anything that come to mind that would tend to keep the systems apart?

SANDERS: I feel in some instances that state is unsure of whether they can enter into agreement with tribes or do they have to enter into agreement with the federal government to get to the tribes. And the tribes are unsure if they are allowed to deal with state government rather than going through the federal system.

DELORIA: So it's uncertainty more than a specific reason?

SANDERS: Uncertainty of the power each possesses. Does the state have that power to go into agreement with tribes or reservations and the reservations are unsure if they have the power to enter into this agreement and would it be binding or legal.

DELORIA: Does the BIA encourage this cooperative relationship or are they unaware of them, opposed to them? What's their role?

SULLIVAN: They're invited to be at the meetings typically, at the Warm Springs Reservation.

DELORIA: Do they show?

SULLIVAN: Sometimes.

YOUNG: Sam, could I address that question a little about the reservations - why they may not want to enter agreements. I'm in the midst of trying to get the state patrol to cooperate with me. To get the Indians cited into tribal court. And I think money is one of them. They're going to lose the dollars but then on the lower side now, away from the commissioners, amongst the police themselves, they feel that they question the competence of the court. And if proper retribution has been distributed by an Indian court upon an Indian, that is compatible with district court. And I've had that question posed to me by a state patrolman himself, out on the street. If proper retribution doesn't follow the crime, you've got no deterrent. That makes them somewhat reluctant.

DELORIA: You think that's a reasonable concern on their part, or is that attributable to ignorance, tribal system, or to a real experience?

YOUNG: I don't know. Maybe resistance to change.

MANNING: Are the penalties less in a tribal court?

YOUNG: We utilize a uniform bail code. The same code that the district court uses. Fines, I think, have, like the prosecutor over there commented, fines are at times less. I don't know how to address it. It's a court problem.

MANNING: Any other questions? I wonder if I can go back a moment to one of Sam's questions. You mentioned the tribe is considering requesting the federal government to appoint the present judge.....

YOUNG: Our prosecutor.....

MANNING: .....and make him a dual role, U.S. Magistrate. Is that correct?

YOUNG: Yes.

MANNING: And that would negate the necessity for any federal legislation which would mandate the U.S. Attorney at each reservation. If it went that route. Right?

DELORIA: He wants to be an assistant U.S. Attorney or a magistrate?

YOUNG: Magistrate.

DELORIA: How can he be a magistrate and a prosecutor at the same time?

MANNING: That was my question.

YOUNG: He'd like to be, would it be a protem status, as an acting status, as an assistant U.S. Attorney.

SULLIVAN: Maybe as a Deputy U.S. Attorney, but it would never work the same as a magistrate. That would be convenient for me, too, if I could sit as judge, too.

DELACRUZ: What you're getting at over there, Sam, is the federal judge's dockets are so full. If there was a magistrate, say over in Yakima, the U.S. Attorney probably would go ahead on a lot of smaller misdemeanor type cases. It's really not a lack of having a U.S. Attorney prosecute, the court dockets.....

SULLIVAN: I think it is a case of both myself. I think that you need some prosecutors in the U.S. Attorney's office and, obviously, there's a shortage of federal judges and magistrates.

MANNING: Are there any other questions by staff. If not, is there anyone here would either like to make a statement or ask questions of the panelists relative to what we've been discussing. There's a gentleman in the back with his hand raised Will you just state your name.

SHING: I'm Levy Shing, Executive Director with the Ute Tribe in Northern Utah at Fort Duchesne. Two things I think I would like to make a remark to on. I spoke to the young lady about the Oliphant case and what it had to do with law enforcement powers. Within our area, it has had an impact. We have a major highway, U.S. 40, that comes through our reservation. Plus we have two towns within the reservation boundaries and what has happened is that our law enforcement officers had a working relationship with the Utah DPS and what has happened is now that whenever, we had a working relationship where we were able to cite offenders of the traffic code, help the DPS with some of the unfortunate powers that they had. But the Oliphant case and the jurisdiction issue, it made it pretty ackward in many of our cases in that the officers' citations were not upheld within the county as well as within the state courts. And this kind of presents a problem in that it made it a little more difficult for our tribe, the Ute Tribes, to enforce some of the codes that we had as well. With the major highway coming through, plus the two towns within the reservation.

GOULD: You don't have cross-deputization then?

SHING: That's been the problem, too. And I think this young man brought it up without realizing it was the fact that the states and the counties do not recognize many times the police powers of the tribal police force. In our police department under 638, which is part of our funding plus the tribal funds which we provide for the department, it is stipulated within a year, an officer must receive training in an academy. In our area, most of our training is done through the BIA Indian school, the training program up there. The program is similar except for maybe a couple of courses for the State of Utah Police Academy. The state does not recognize that training of our law enforcement officers. Therefore, when it comes to arresting and enforcement of different parts of our code, as well as state codes, many times this is not upheld within our state courts. They say, you do not have jurisdiction to take care of the problems that have happened. And I think now the recommendation to this Commission is that if they were to educate, to have county and state to reciprocate or do the same as the Warm Springs does with Indians serving a warrant on the reservation with the approval of the tribal judge, we could do the same thing with our law enforcement if they would afford us that right to go and serve a warrant off reservation for cases have been happening on the reservation. The other part that has happened is that we have 1.7 million acres within which to enforce our tribal law and order codes as well as our fish and wildlife. We have seven wildlife officers, 12 law and order officers. Right now, because of the Oliphant case, prior to the Altman case, we were able to take non-Indian members before our tribal court if they had broken the law on our reservation. We cannot do that anymore. Therefore, there is reluctance upon our conservation officers as well as our law enforcement officers to cite a non-tribal member or non-Indian on our reservation and it poses a lot of problems in that if we do catch someone who has broken a law, let's say killed a deer out of

season, we can cite him, but once we cite that person and send that offense to the state or the county, we don't see the result because they take over and we do not know what happens to those cases. Whether or not those law and order code offenses have been settled, we can't prosecute it. So it does pose a problem. We're in some ways like the Navajo Reservation up in the U & O, we have a lot of checkerboard. This has brought a lot of havoc into our part of the country. And we have a lot of private ownership by non-Indians and we have the tribal reservation around that. So the dilema up there, we do have a working relationship at the officer's level but beyond that, when the county comes in, the county commissioners, our state higherups, that working relationship disappears. At a local level, it can be done but when it gets up higher, we run into problems. There is really a situation that if this Commission can convey (a message). You honor us, we honor you, this type of thing, it can work, I see it, but they have to afford us the same respect because our law and order code is similar to the state motor code and the fish and game we follow the same season. But our problems are as long as we honor them they don't worry about honoring us. That is a problem in our state.

MANNING: Thank you.

DELORIA: Has the tribe or BIA ever talked to the state officials to get specific about what they feel is inadequate about the training of your police officers?

SHING: We have tried to meet with the state. Now, the DPS is involved and that's beyond the law enforcement agency that we have the problems. It would be the state as a whole. The law enforcement officers themselves, I don't think that too much of the problem they understand that there's some law enforcement problems. It's the political round that we're running into, jurisdictions. That's the problem there.

DELORIA: So your feeling is that the reservations that your state expresses about the quality of the training of your police officers is not a substantive is not the real reason, it's more the political relationship....

SHING: That's exactly what it is - it's a political relationship.

MANNING: There's a gentleman down in the back.

MERRICK: I'm Nate Merrick and I'm the director of the law enforcement of the Cheyenne and Arapaho Tribes of Oklahoma and I'd like to direct a question to the Yakima representative who gave earlier testimony in the program. I would like to ask about your court system. One specific question is how many of the defendants who go into tribal court and plead not guilty and ask for a jury trial are actually given a jury trial?

YOUNG: I wish I had a court representative here to answer that. I don't really know.

MERRICK: Ok, can I ask another question? Does the Yakima Nation have a process where the grand jury can hear cases that are low-grade, family type crimes?

YOUNG: No, they would all be turned over to the U.S. Attorney.

MERRICK: But this gap between the U.S. Attorney and the tribal courts is nothing.

YOUNG: Right, there's nothing there.

MERRICK: Do you think that a grand jury process would be good for the tribes? To hear cases to decide to hear them?

YOUNG: I don't know really how to address it. I think that the U.S. Attorney would be more receptive to us than some a little closer to us. I think we share this problem.

MERRICK: I think with the tribes' forces the way they are, and experience working with tribes, different tribes in South Dakota and Nebraska and North Dakota, there are no provisions for a grand jury and I think that if the tribes did have a grand jury, these cases would run through a grand jury and a lot of these low-grade felonies would be taken care of.

MANNING: I'm a little confused. How can, with the 1968 Civil Rights Act limit, how could that be done? That gentleman who just asked that question?

MERRICK: Pardon?

MANNING: With the limitations by the 1968 Civil Rights Act, as I understand it, the best the tribe could do is six months and $500.

MERRICK: Well, that's the other question. Couldn't the tribes be empowered to give stiffer sentences?

MANNING: Well, that would take a change in that law.

MERRICK: Well, I;m just recommending it.

MANNING: Ok, I just wanted to be sure I was all for this.

DELACRUZ: Maybe, I don't know. I've seen a draft of Yakima's new code and I think Warm Springs did address it. Some of the tribes in the Northwest got an appeals court process, the larger tribes, all the way up to the federal courts. If someone wants to go through that process. It's not exercised that much. It has been used three or four times in some of the tribes.

MANNING: Yes, sir.

SHING: The Ute Tribe law and order code has that stipulation for tribal court. If the federal court will not touch it, we will usually handle it in tribal court. We do have the possibility in that if they want a jury trial, we do have a

jury trial. We also have an appeals court and at this time, they will come for the appeals system within our tribal court. The ones that's handled there, they can go through the appeals area, then it goes to the federal court system. Our federal system we've dealt with, we had to get done so under the IRA Act....

DEAN: I'm Bobo Dean, representing the Miccosukee Tribe and the Oglala Sioux Tribe. I would just like to make a brief statement on the arrangement which the Miccosukee Tribe has made with the Dade County. The Miccosukee Tribe is located in Florida in the Everglades and Dade County commissioners have authorized the tribal officers to act as county officers in an area adjacent to the tribe's reservation. The only real issue involved in that, in negotiating that agreement, was the tribe's concern that the Dade County Public Safety Director insisted that when the tribal officers acted outside the reservation, they would act under his instruction and the tribe was initially reluctant to do that but they agreed to try it and its now been in operation for about a year and a half and its worked out quite well. The two law enforcement departments work together very well cooperatively. The area of county jurisdiction covers a major highway, U.S. 41, across South Florida, and there's been a great benefit to both Dade County and to the tribe to have this arrangement. I'd just like to ask one question. There was a mention earlier of the issuance of federal commissions by the BIA. I'd like to know from the tribal representatives how important is the issuance of a federal commission to tribal officers. Secondly, there is, I understand, some question that's been raised for a year or so in the Justice Department as to whether an officer employed by a tribe, but commissioned as a federal officer by the BIA, is protected by the laws of prohibiting an assault on a federal officer. I don't think there's any ruling on that question but there's dialogue between the Interior Department and the Justice Department, and I would like to get some impression from the tribal representatives whether they would feel it would be a practical impediment to tribal law enforcement if an assault on a tribal officer employed by the tribe but commissioned as a deputy special officer were not legally the offense of an assault on a federal officer?

MANNING: Anyone wish to respond?

BENALLIE: About a year ago, we had a takeover of our administration building by some dissidents and this came up. What would happen if our officers got hurt? You see, we never asked for federal commissions. We just don't have any use for them at this point. We did ask for BIA deputy special officers' commissions at that time, thinking that if our officers were hurt, we'd be covered. Well, it turns out that we may not be because we were at that time enforcing tribal laws. And the way I understand that that thing works is to be covered by that law you have to be enforcing some federal law when the officer is hurt. So, that's what we found out about it. Like I say, we've never really asked for federal

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commissions. At this point, I don't see we can use them.

MANNING: Yes.

HALEY: Maybe I can address that. In the State of Washington, I have spoken with our agency special officer and area special officer and have been instructed that when enforcing the federal code with the U.S. deputy special officers commission, we are federal officers and any threats, attempts on our life, assault will be prosecuted by the U.S. Attorney's Office. That's what the Bureau told me. So then, I went to the FBI to find out if, in fact, if we refer a case to them, will they take action. And was told by the special agent in charge in Seattle that they would take action as us being federal officers if we had been commissioned by the BIA and that was concurred by the U.S. Attorney's Office in Seattle. So we assume that we are covered. We've only had one case of an assault on one of my officers since we've had our federal commission and the sheriff requested to take state action because it was not within a geographical boundaries of our reservation. We're enforcing treaty rights rather than criminal law. Well, they arrested the man the next day and in three weeks, we had him sentenced and in jail through the state court and we didn't go to the federal court because as you discussed earlier, it would have taken a good year to prosecute him. ....(end of tape).....

DELORIA: I just want to ask since we have all this high priced legal talent in the room, in a circumstance like that, I wonder if we would be operating under the Colliflower case. If you have a tribal officer who momentarily is a federal officer, then a review of his actions subsequently in a court, would that come under the Colliflower kind of situation where, in fact, he was subject to constitutional standards completely rather than the Indian Civil Rights Act?

ERNSTOFF: I'm Barry Ernstoff, a tribal attorney from the State of Washington, here representing the Colville Tribe. The answer is yes, except we don't like to say we're going under the Colliflower case because you know what we think of the Colliflower case. That was a case that wrongly, the Ninth Circuit held that an Indian tribal court when its very closely meshed with federal courts, that the Indian tribal court would be looked upon as a federal court. So, while it's the theory that we follow it isn't really that case, because we say that actually when you're carrying a DSO commission, you are acting as a federal officer, you don't have to worry about the interlocking of tribal and federal, you're really separately acting as a federal officer. The BIA takes the position that you can enforce all federal laws, that you're basically no less than a federal officer than an FBI agent to all intents and purposes. So, that from an independent statutory basis, a separate question which Bobo didn't raise but was one which we all raise and we'll do it quietly is this whole question of the authority of the BIA to commission people as deputy special officers. It rests on the most narrow of reeds and it's done, everybody goes along, but someday, I think, that they just may be in a criminal situation, a real

contest over the propriety of the issuance of these federal commissions. The whole BIA police rests as you know on a 1887 appropriations act, but that's a separate question. But the answer to the question is yes, they are acting in a federal capacity and we say, therefore, everything applies including for instance, the due process standards that would have to be followed which are different from some extent from tribal court due process standards.

DELACRUZ: Even if they're enforcing tribal law. Right.

ERNSTOFF: If they're enforcing tribal law, then we take the position that no, it's not a Colliflower kind of situation and then the tribal court due process, in other words, when they wear different badges, they're actually acting in different ways. As you know, many officers wear at least three badges, each one, it's hard to know what you're doing, and they're usually fairly similar, but really, you're acting as a state deputy sheriff, you're under a certain due process, whatever the state courts have decided you've got to do. Federal is separate, and tribal is separate and then you got to know which kind of land you're standing on and if you've figured all that out, then you, as a police officer, know what kind of action you're to take.

MANNING: Chief, you want to make a remark?

SANDERS: On the BIA commission cards, at Warm Springs, I take the stand that I don't need the commission card to enforce laws nor have it in order to protect my men in case they are assaulted. I think the degree of assault tells you which court system it's going into and not the card that you're carrying. I think that if it were serious enough, it could get into the federal court system and if it wasn't that serious, you would come into the tribal court system so that the carrying of a BIA commission card at Warm Springs, we use to think that it was important for us to have it to enforce federal law. I have since changed my opinion and as a result of that, none of my officers pack BIA commission cards since last year yet we still enforce laws. It's an assumption on my part that I have exclusive jurisdiction on the reservation other than the felony crimes which belong to the FBI so, therefore, I make the arrests accordingly.

HALEY: In Washington State, the tribes that I represent as the Colville and Yakima, are Public Law 280 which does not give us exclusive jurisdiction with the federal government. The state maintains jurisdiction and the tribes assert concurrent jurisdiction. So, with the DSO commission, they're a necessity for us to enforce federal law and to be able to go either into federal court for assault upon a police officer is a felony even if it was justified, a citizen would be a, it would be a misdemeanor.

DELACRUZ: When you say the State of Washington, exclude Quinault, because we've taken the position Warm Springs has.

HALEY: Well, you're in an exclusive jurisdiction, I just said the tribe I represent in the State of Washington. There are several tribes in the State of Washington that are exclusive and jurisdictionally limited, like Quinault.

MANNING: There are several hands raised and I want to get back because he started this whole thing. We'll see if this gentleman's questions were answered or if he wants to clarify something.

DEAN: I want to agree with Barry's analysis regarding to Colliflower but raise this question. Barry, you feel that the same breakdown applied with reference to the question of assault and apparently, there's a view that if an officer is commissioned as a federal officer, but if he's acting in the enforcement of tribal jurisdiction and he's shot or attacked, some people feel that that's not the crime of assault on a federal officer. I'm not sure that that is correct. I think there's a good deal of uncertainty about that. Do you feel that the determining factor is in what role he is acting at that time with reference to when the assault was committed?

ERNSTOFF: That's what I think and the reason is as I understand the question is that some people would like to take advantage of these federal statutes in protecting federal officers and try to apply them to tribal officers. The problem is to get the other side of the coin, which is that if you want to equate tribal with federal, then you also get some of those federal responsibilities, problems, limitations and all that. With my clients, I like to advise them and they, themselves, have determined that wherever they can separate themselves from the federal instrumentality, that even though there may be some negatives, the positives outweigh the negatives. One other way we handle this is really an interpretation of the Oliphant case. I know something about it, I argued it before the Supreme Court and I tried to figure it out ever since the opinion came down. While the court held that the tribe's dependent status creates a surrendering of the right, if they ever had it, it would exercise direct criminal jurisdiction over non-Indians, it does so basically on a sort of treaty analysis that this was surrendered to the U.S., the United States said we'll protect you in the treaties, and you got to give up that power. One of the things that most of the, at least the Washington State, the Pacific Northwest treaties also say is they have provisions whereby the tribes agree, and this is what Justice Rehnquist used to get this far, tribes agreed to surrender up law violators, that's the words he used, the Navajo treaty has the same thing. And we have now interpreted that to mean that even though we don't have criminal jurisdiction to try and to punish non-Indians, we not only have the power but as a matter of fact, we have the treaty duty to investigate, to arrest non-Indians committing violations of federal law and to surrender and turn them over to the federal prosecutors because the treaty says that we have to surrender up. That means that a tribal officer without a deputy special officer commission or anything else has the obligation and the right under the treaty to actually do everything short of actually prosecuting,

you just take them over to federal court if it's a federal crime. We also take that to mean that, in a Public Law 280 situation, the state being the successor to the Feds of jurisdiction, now when we do our investigation and determinations, etc., we can surrender up or hand over to the state court, even without a cross-deputization agreement, a non-Indian offender for prosecution under state law and it's the other side of the coin the way we look at it, of what Justice Rehnquist said, which is that we now have the treaty obligation to turn over.....

DELORIA: But, are you now implementing this? Have your police officers shown up at a county attorney's office with an offender in tow and a big file of evidence and said, "Here's your person under the treaty?"

ERNSTOFF: We're not implementing this for two reasons. One is the tribal police are afraid to do it. Even though, I have advised that it's perfectly, I think a justifiable exercise of jurisdiction. Secondly, we do for the most part, and I think we're going to get our licks in this afternoon, but we do for the most part have cross-deputization and deputy special officer commissions. So, it's a lot safer to go with a commission where you know you've got authority than to depend on this theory. But the tribes that have problems, and we'll talk about that this afternoon, with getting cross-deputization or DSO commissions, I think that the surrender up provisions of the treaty and read them together with the Oliphant case, and the Turtle case (State v. Turtle), I think you get a pretty strong legal basis for carrying this out. And then, when the Feds or the state don't accept these defendants as alleged perpetrators for prosecution, what you've got is a treaty violation which is failure to carry out the other half of the bargain of Oliphant which tells you to carry out prosecution of non-Indians who commit crimes on Indian reservations.

YOUNGBEAR: My name is Sebert Youngbear. I'm an Oglala Sioux tribal member. When we talk about jurisdiction or cross-deputizating officers, so far my experiences, I've been involved with the tribe since 1962, and they don't have any problems as far as jurisdiction or assaults because for myself, when I took the stand, our jurisdiction is always based upon a 1868 treaty. We have a right to give up our Indians or we can try them ourselves.

It's funny, kind of in a funny way. I was sitting here listening to different tribes, states and counties, about their cooperation with one another. The thing is on Pine Ridge Reservation is when a bureau building or a tribal building is assaulted, BIA claims jurisdiction. When a white man assaults an Indian or an Indian assaults a white man, the state claims jurisdiction. When one of our people that are above the law in Pine Ridge Reservation gets assaulted, then a goon squad claims jurisdiction. When a full-blood or the grassroots people gets assaulted, the American Indian Movement claims jurisdiction. When somebody kills a cow, then the vigilantes, farmers and ranchers claim jurisdiction.

And it's really hard to say back in Pine Ridge who has jurisdiction. But if you go back to the 1868 treaty with the Sioux Nation, it's all spelled out. And this is why I sat back here and listened. And I say go back to 1952 and '53 where some of the states, to me, I decided this is an earmark for another state jurisdiction law or termination because at that time, they called some of our tribal leaders to Washington and made them a big statement. And this is what they used and pushed state jurisdiction on us on Pine Ridge Reservation. The biggest share of our Pine Ridge Reservation is checkerboard and we have this jurisdiction. And, to me, assault is not that big of a problem. It all depends who they assault or who gets assaulted. These last two years I've seen a big change as far as the Oglala Sioux Tribe. We're under 638 and local control of law enforcement. I'm one of the review board members and I'm also on the Public Safety Commission, the Vice-Chairman. And the crime rate really went down. Because as far as the Pine Ridge Reservation, most of the crime that is getting to us and the people that they abuse are the grassroots people. This is why when we make our reports, we ask for more appropriations, we ask for more weapons, we ask for more vehicles because it affects the people.

MANNING: Yes, I have one question. What did you say that you did a couple of years ago that reduced the crime?

YOUNGBEAR: We went under contract. 638.

MANNING: What is that?

DELORIA: They contracted police services from the BIA so the tribe runs it now.

MANNING: I see. I see. Thank you.

YOUNGBEAR: At the local level, we do all our hiring and firing.

SULLIVAN: There was one comment by a gentleman who indicated that he wanted the states to recognize tribal warrants. A county can't do that. It has to be a state-wide law for that to happen but one of the problems I would bring up with that is that for warrants in our state, we have to have these supported by affidavits of probable cause and what witnesses say. I just say that the tribe now has one attorney. There is no possible way that this one attorney can do all the affidavits, let alone everything else he's supposed to do and I think that you would probably have a difficult time getting tribal attorneys who are Indians. At least, it's been my observation that there was a great deal of effort placed on having Indian attorney who would be involved in a law enforcement program. I'm not sure that you have that many Indian attorneys available at this time who could go in and do the affidavits that are necessary to comply with state-wide law. If you failed to do the warrants and something went wrong, you could easily end up in a situation where that hard-earned assets that the Indian people have

could be going to a lot of white people who were illegally arrested.

MANNING: This gentleman hasn't had an opportunity to speak yet and I'll try to get his name in. It's almost time to break anyway. Yes, sir.

LESTER: My name is Bob Lester. I represent Governor George Nigh of the State of Oklahoma. I believe there are other Oklahoma people here, I'm glad to see them. I'm here primarily to learn what I can from the meeting and return that to Oklahoma. And also invite you and encourage you to have one of your regional meetings in Oklahoma. But the reason that Oklahoma, as you know know, is probably the largest Indian population state in the Nation. If that isn't correct, I do know that we have more tribes represented in Oklahoma than anywhere else. And you have as much pride and difficulty between the tribes coordinating their activities as you do from the standpoint of the other laws. I'm not authorized here today to make any comments that would represent Oklahoma or any of the tribes in Oklahoma. So, I will state anything that I will state in the form of a question. I am the governor's representative in all activities concerning law enforcement in the state. I liaison with everyone. I have been a law enforcement officer since 1932. I was born in Cheyenne-Oklahoma which is right next door to the Cheyenne-Arapaho Reservation. In Oklahoma, probably from my understanding, we're more checkerboarded than any other state. We have Indian land in everyone of the 77 counties. Some of these counties are more Indian land than anything else. Instead of reservations you see there, which is checkerboarded, we're just checkerboarded throughout the counties. There may be a 160 acres of Indian land, every little bit, there may be a section, there may be two sections. In some of the more rural areas in the cattle country, etc., there may be much larger areas that are Indian land. Overall, enforcement of law in our state, from the standpoint of Indian land and non-Indian land is a very, very difficult problem. The thing that has happened in Oklahoma, we have had one training program which was conducted through the state authorized training facility for, I think, they trained 10 Indian officers, and those officers then are working under the BIA throughout the State of Oklahoma. More important than that, we have hundreds and hundreds of Indian officers working in city and county and state law enforcement agencies in Oklahoma. Indians make very good law enforcement people. I've riden with them for years, I've worked with them closely for years and they make very fine law enforcement officers. The problem is getting more of them into the law enforcement system. And getting those people trained in order that they can do their job. We have heard here this morning so much of different versions and different ideas and different programs that are in effect throughout the country, regarding this program, that unless we can find some way to coordinate this and get it uniform, it's going to be awfully difficult for us that we, in Oklahoma, to enforce the law, or the Indians to enforce their law pertaining to each tribe that might be represented. And if nothing else comes from this,

it would help Oklahoma, I hope, to point out one thing, that whatever the federal government and the state government and the Indian tribes do accomplish, that it will be done to where it will be a uniform system, where it will work for one tribe in one section of the country, it will work for all. Within our state, we have so many tribes, so many different jurisdictions, that unless we do have a uniform system, we're not going to be much better off than we have been in the past. I think the fact that we have many Indians on local law enforcement agencies, sheriff's and police departments, maybe we have less, are less conscious of the need for the program that we're discussing here today, then maybe they do in some areas. But whatever comes of it, we, in Oklahoma, hope that you will have a meeting there in our state. We'd love to have you there. But more importantly, I think it will be to the benefit of the Indian tribes and the Indian population in our state, where they can come to a meeting such as this and become more aware of exactly what the federal government through the BIA, what the future programs will be that will enable them and enable the State of Oklahoma to better represent our Indian population. And if Oklahoma can be of service by having a meeting in the state, we will provide you with the facilities and do whatever is necessary to make you welcome in the state if a meeting can be held there to benefit our Indian people. Thank you very much.

DELACRUZ: I didn't quite follow your last statement, Mike, on honoring warrants.

SULLIVAN: Well, in our court system, and I can only speak for the State or Oregon, when we issue a warrant, that warrant has to be supported by an affidavit. An affidavit is a statement of fact which establishes probable cause. It's a statement that's taken under oath. I'm not sure that the reservations right now have enough legal people on their staff to prepare all the necessary legal documents to fit into the state court system. Maybe New Mexico has the same requirement for issuing warrants that we have.....

ONUSKA: We do.

SULLIVAN: .....but typically, these affidavits can be three-four pages long to establish probable cause. I'm just saying that's one impediment to just saying we're going to plug into the state system, the necessary legal help.

DELACRUZ: If the tribe had it, do you see any problem with plugging into your system?

SULLIVAN: It doesn't bother me. I want to catch as many bad guys as the next person. I think it's going to be something will have to be address on a state-wide system. I think there's reluctance for any legislature to say that, "Well, we're going to address problems that one specific county is going to have."

DELACRUZ: Well, that's what I thought you said. Because I don't think in the State of Washington, you have to have an affidavit. I find most county sheriff's departments and county prosecutors, the sheriff and his people issue a warrant. And a lot of times, they are the one that are involved. And a lot of tribes have procedures and have to go through that process, it's just about visa-versa for some of the tribes.

ONUSKA: In our state in this area where we work with affidavits and warrants, the Navajo police officers or the Zuni police officers and any problems that would involve state jurisdiction come into our office and we prepare them for them.

DELACRUZ: Barry, am I right in the State of Washington, they don't have to have those supporting affidavits?

ERNSTOFF: You have to have an affidavit for Washington.

DELACRUZ: You do. No wonder the sheriff's department is so always in trouble.

MANNING: Last question.

MERRICK: For the Cheyenne Arapaho Tribes, I'd like to address a question to Mr. Sullivan in regard to cross-deputization. The State of Oklahoma has taken a position that police or the county sheriff do not have any authority to exercise any supervisory authority over the police officer or tribal policeman or BIA policeman, whatever he may be, when he is exercising state authority on the Indian land. In your case, what position do you take as far as the civil and criminal liability is concerned when that officer is exercising authority and what supervisory authority does the sheriff have over that man and visa-versa?

SULLIVAN: Well, I don't want to admit liability before hand but I'd have to say that if someone is acting in capacity as a deputy sheriff, I wouldn't want to go into court and say that we weren't responsible. On the other hand, as far as telling individual deputy sheriffs who work for Warm Springs, it's not a situation where we're calling them up and telling them what to do. Generally, there's a great big fracus and everybody converges on the place and then we kind of sort it out and the Warm Springs officers go back to the reservation and we generally take the guy into custody and lock him up.

? : In other words, it's just a mutual trust situation where you trust each other to go out and do your own job.

SULLIVAN: Yeah, I haven't determined any big problem with that. You know I'm not saying that it's always smooth. I want you to understand that. But, generally, we haven't outlined anything in detail and to be quite frank about it, the sheriff on a couple of situations has come in, he shakes his head and says, "Well, it's just one of those things." So, Jeff, why don't you add something. You've been awful quiet. How do you feel like that works. Your people are the ones who

are deputy sheriffs and they're working for you.

SANDERS: We haven't had any problems of late. I think....(end of tape)

SANDERS: This is certified and also, we attend the same school as any other police officer in the state. This is one of the key points of Indian reservations have to recognize that if we are to deal with non-Indians on the reservation, we either have to be just as qualified as the non-Indian police officer and receive the same training and be certified through the same certification process so that we are equal to or better than.

SULLIVAN: A police officer might be sitting right next to a Jefferson County deputy going through the same program. And that's I consider is really key. There's no hesitation to say that anyone has more power or authority, they're equal, that's it.

MERRICK: Does your tribe provide civil and criminal liability for any of your police officers?

SANDERS: Oh, yes, we got all that plus false arrest, or the tribe picks up that for itself.

MANNING: Chairman DeLaCruz is going to ask the last question and then we'll break for lunch and then I'll bring you some instructions and some announcements.

DELACRUZ: I wanted to ask the panelists on your inter-governmental cooperative programs, your meetings, law and order people. Do you do any public education, public awareness of what you're doing and why you're doing it and how it's working in your reservation and local areas?

SULLIVAN: Since, obviously, there is a disproportionate number of Indians are prosecuted in a system when anything good comes up, I have friends with the paper and I usually call them up and I tell them so there's something to offset that. I think in Saturday's paper, there was an article having all of our names and indicating that Oregon has something else to tell besides its bottle bill.

ONUSKA: Since we've taken office these last three years, this is the first time the District Attorneys in New Mexico are full-time law enforcement officials. They were part-time and had a part-time practice before. I have, on my word processing machines, the mailing lists of the chairman on down, for all councilmen, all chapter presidents, vice presidents and secretaries. And they receive mailing from me. In addition, at the end of the year, I compile an annual report which this year will be about 45 pages worth and send out to each one of those members plus all of the officers that we deal with the chief here receives it, so it's an effort, it's a beginning, we're just starting in that area.

DELACRUZ: I know you guys, I get you guys' papers.

YOUNGBEAR: The Yakima Tribe itself publishes a newspaper. I try to do my own public relations work and some people call me a publicity hound but I think it's selling the position to the department itself. I have contacts like Mike does, the local newspapers and I think we're making the public aware of us. We also have a crime prevention program. It's kind of minute right now. I have two officers who do part-time work in schols and public awareness.

DELACRUZ: I raised that question, Speaker, because you get a situation like you have up in Yakima that checkerboard area and you got anti-people on both sides and there's really an awareness of the benefits of developing methods to co-exists. You probably wouldn't have things happen like that in the New Mexico legislature like in 1978, 1979. I know up in Quinault and _____ County, I think, that's in a different part of the state sometimes. That the county was really reluctant to go publicity wise on the advantages they get for being in cooperation with the tribes because of the different federal programs available because of the nature of Indian tribes and their relationship to the United States. But, the advantages outweigh in the favor of counties and county governments sometimes as high as 85% by going into cooperation. The whole purpose is to provide services to people and to help members to co-exist. So, there is a reason for the publicity.

MANNING: Ok, we'll break for lunch. I've been informed that there's a restaurant in the building here and it will probably be more convenient to eat there then to try and find one, I understand, at considerable distance from here. If you'll see the young lady with whom you registered, she will be able to sell you a ticket to the restaurant for lunch. I guess that's the way it functions. This afternoon, we'll meet promptly at 1:30 and it should be an interesting afternoon with some excellent presentors and it'll be relative to improving the capacity for cooperative law enforcement. Thank you all for attending this morning's session.

DELACRUZ: We will come to order. This morning we heard the panelists testify and describe their experiences with cooperative agreements with their local entity of government and state government. And before I go into this afternoon's panel, I would like to introduce Irv Anderson, a Representative from Minnesota who is on the Commission. He came in this morning, and Rueben Snake, another Tribal Chairman on the tribal side of the Commission has showed up.

This afternoon, we have panelists who will discuss areas where Indian and non-Indian criminal justice systems operate independently. State and tribes can take several steps to provide their law enforcement activities. The panelists will discuss barriers to cooperation and propose actions that will overcome the problem. On the panel this afternoon, we have Dave Dunbar, who is director of the Indian Law Program with the National Tribal Chairmen's Association. Dave talked to me but I don't see Tom here but we'll save a spot for him. Bruce Haley of the Skagit System Law Enforcement Association from Washington State. And I guess Barry, you're going to be sitting up here with Andy. We have Hilary Waukau from Menominee, who is the Appellate Judge of the Menominee Tribe and John Niemesto of Wisconsin and Nancy Young from the Indian Desk from the State of Wisconsin and the Colville Tribe asked to be on this part of the panel to present their experience. Andrew Joseph, a councilman from the Colville Tribe, will be here with their attorney, Barry Ernstoff. I guess as we did this morning, we'll start from the left.

DUNBAR: Thank you very much. I appreciate the opportunity to speak today. My name is David Dunbar and as you've been told, I direct law programs for NTCA. Now, my experience in cooperative agreements is a little different from the experience you'll be hearing because my experience is not at a personal level. I have not - I do not work actively in law enforcement at any reservation or state level. However, let me tell you how I am involved in it. The NTCA is a co-sponsor of this Commission and, of course, I have been assigned to work closely with it and make my reports back to our board of directors. In addition to that, I also conduct law programs and one of the activities we are doing presently is conducting training programs in Indian law and effective governmental operations. The tribal chairmen and the states that interact are from a wide variety of education backgrounds, it's been my experience that cooperation can be promoted if we can sit down in an environment that is conducive to discussion. So, with that in mind, I have tried to direct the law programs toward the area of cooperative agreements, not only under existing law but pending federal legislation. You've heard discussion this morning about a lot of areas that involve cooperation between tribe, state and county governments. There's also a federal attempt to promote this - the activities of the Senate Select Committee in introducing Senate Bill 1161, now Tribal State Compact. There's a lot of opposition to that bill - some people have said it's a premature bill but, of course, the level of sophistication of the tribal

governments will determine whether they can use that or not - that particular piece of legislation.

While I've been going around the country becoming involved with discussing cooperative agreements, I've become aware of many problems that tribes and state and county governments have. An axiom that we can use is that these governments can operate more effectively if they do cooperate. However, the level of cooperation varies between the states and counties and the tribes. We heard this morning some varied examples of good cooperative efforts. At one time, several months ago, we went into Oklahoma to conduct a training program and we had representatives from a number of the tribes - we had some 20 tribes in attendance. Is Mr. Lester here still? In your comment this morning, you said you were interested in having a meeting of some sort in Oklahoma. It may interest you that during the last week of October, we did. The National Tribal Chairmen Association did conduct a meeting there in which the Commission on Tribal-State Relations was involved. Of course, we also involved the state agencies that were responsible for Indian affairs. During my week's stay down there, I became aware of many problems that Oklahoma tribes are experiencing. I'm sure many of you are aware of those problems but for those of you who are not, let me give you a brief overview of the situation as I saw it down there. The State of Oklahoma had.....(end of Side B)....

After the Littlechief decision, the state determined that there was no jurisdictional base for them to operate. So that left the tribe with a rather unique problem. They were without anything. So the problems as I saw them down there involved a total justice concern ranging from corrections through adjudication. Of course, the federal government moved in with the CFR courts at that time to help alleviate that problem. Now, the CFR courts, of course, serve a limited function due to the lack of personnel and resources. One of the BIA special officers indicated to me that it was his responsibility to patrol some 800,000 acres of Indian country and he had no help and upon apprehending any offenders of the CFR code, he would turn them over to the U.S. Attorney's office. I guess the prevailing practice down there was that the U.S. Attorney would then bargain the offense down and release the offender or turn them loose altogether or not wish to prosecute because of a high docket case load. So when we speak of what barriers there are to effective cooperation, I suppose we can speak of legal barriers which you became aware, this morning, of some of them - the jurisdictional barriers - of course, those are legal barriers - and one of the prevailing barriers that I see is attitudes. We listened to the testimony this morning and found that Warm Springs and Jefferson County have very unique cooperating agreements in many areas and I believe that is based on the attitudes of the individuals that are involved. The attitudes that I experienced in Oklahoma are sort of opposite of that because I had discussed several problems with the tribes up in Kay County and they have no cooperation with the District

Attorney in that county at all. They have no discussion, the District Attorney does not want to talk to them, they don't want to talk to the District Attorney, and they sort of shuffle the responsibility to each other and say, "Well, we have all these common problems, but no solutions." So they asked me and said, "Well, we've been listening to people for a long time and we want some help." So I responded, "Well, what have you done for yourself first?" In light of these problems down there, some of the activities that the FTC has proposed for in the future to improve the cooperative relationship in Oklahoma is to convene another meeting down there. Now this meeting, hopefully, will be conducted after the first of the year upon the location of the monies to support it. At that time, perhaps, the people that are involved on the state side will be amenable and sit down with the tribes to discuss solutions to the problems that they have. Another major barrier that I have seen as far as the Oklahoma tribes are concerned is resources. They don't have the resources to initiate their own justice systems. The limited efforts of the federal government are not responsive to the total solutions of law enforcement in Indian country down there. I wanted to say reservations but they don't have reservations. So the attitudinal positions of many of the people that are involved in cooperative agreements are, I suppose, the essential thing to promote the agreements that we talk about. Not only in law enforcement which may involve cross-deputization, mutual aid, extradition, rendition, communications, facilities utilization, but in the area of probation, parole, social services. These are all things the individual people of the tribes have a need for and as citizens of the particular states that they're located in, it would seem that they've being denied something that the other citizens have and, of course, we all realize the problems that are present which deny that particular service for them. But I believe that some sort of solution can be implemented to address the problems that these tribes are experiencing in Oklahoma and, hopefully, soon. Now, let me talk about one area that I was addressing - the area of corrections - probation and parole. I am only aware of one institute that has effectively addressed the area of corrections and that's the SwiftBird Project, currently conducted by, or started up by NARF. So knowing that I would be talking here today, I went and discussed what SwiftBird with the director, and the people who were responsible for implementing it. SwiftBird is a unique approach to corrections. They address Indian offenders and it's an alternative to incarceration. They have established a cooperative agreement with federal and state officials in South Dakota, North Dakota, Nebraska, Minnesota, Washington and Iowa. It's a minimum security facility - they have a staff of 40 people. They have (I don't want to use the word inmates) - residents - 25 residents - but they are able to serve 60. They provide educational opportunities, vocational opportunities. They have effective food services, dietary services. They try to promote religious freedom, they try to secure employment, they find suitable places to live for the residents once they're discharged. They have established GED services. In servicing

these residents, it takes them - they receive $25 a day from the federal Bureau of Prisons - the BIA kicks in $300,000 and state corrections of South Dakota also provides $25 a day for each inmate - the Indian Health Services provides a clinic and the state Department of Education provides the vocational services. There are no tribal funds directed towards support of the SwiftBird Project. So, we have, in the area of corrections, a very viable solution to some of the problems that were being faced by the federal penitentiary and the state penitentiaries that appears to work. As yet, there has been no release of any of the residents in that institution with the exception of one whose conviction was overturned. So, how that particular institute will effect the recidivism rate or the offenders is another question that will probably be coming up in the future. But I see no reason why a concept like this will not work in other areas of the country and, at present, the only barrier to implementation of this is resources and money. So, with that in mind, I would probably state that the federal government would have a major responsibility for implementing services of this sort, and if and when the Tribal-State Compact Act is passed, I understand there is monies built into that particular piece of legislation which will promote cooperative agreements which will also contain renegotiation and limited time frames for cooperative agreements to work. So that the people can look at them and see if it's doing any good. As I said the experience that I've had is kind of on an theoretical basis because I'm not involved in practical law enforcement, so with that in mind, my discussion will come to an end. Thank you.

DELACRUZ: We'll continue as we did this morning. We'll have all the panelists make their presentation before we start asking questions.

HALEY: I'm Bruce Haley, with the Skagit System of Cooperative Tribes in Northwest Washington State. I am here, speaking basically as to what has been developed with our program and some of the ramifications in regards to agreements with state and federal government. The four tribes that I represent are unique from, like Chairman DeLaCruz's tribe, we are Public Law 280 tribes, which means we have concurrent jurisdiction with the state and three of the tribes, while being federally-recognized, do not have a reservation or land base, which makes it sort of complicated when we get into the area of enforcement, jurisdiction and sovereignty. What I'd like to first do is read a conceptual paper that was presented by the tribes taking part in the U.S. Presidential Task Force on Washington State's fisheries. And when we talk about fisheries enforcement or law enforcement, it all is basically the same. This was the tribe's paper to the state and federal government in regards to cross-deputization and cooperation. The Presidential Task Force was representative of 19 tribes, three state agencies and five federal agencies that sat down for about three months and met three to four days a week to discuss problem areas and enforcement was just one portion of it.

DELACRUZ: Bruce, is that a very long paper? Can you summarize it for us?

HALEY: OK, I'll go ahead and summarize. What we talked about in this area is that cross-deputization arises from the need for an efficient law enforcement areas where a number of jurisdictional areas need to be represented. Problems exist in state, tribal and federal jurisdictional areas and making effective law enforcement at times can become ineffective unless there is agreements in writing in regards to cross-deputization or cooperation. In any agreement that is prepared between the state, the tribes and the federal government, standards have to be established for cross-deputization. These standards have to be met on both sides. Effective agreements between tribes and the state and other areas will prevent a criminal prosecutor from being immune from legal action such as arrest, fines, incarceration because of an officer's inability to act in an official capacity because he's out of his jurisdictional area. You heard earlier in regards to the checkerboard patterns, Oliphant, a lot of the problems that were addressed right now. At 3:00 in the morning, an officer, a tribal officer on the reservation, has a difficult time telling whether the man coming out of a person's house with a gun in one hand and possible a TV set in the other is an Indian or non-Indian. Whether he should be arrested as a tribal policeman, a federal officer or a state officer. So these cross-deputization agreements have to be reached. Cross-deputization will not work effectively, if under cross-deputization, they are not processed properly. In other words, once the arrest has been made and a proper hat or badge is put on by that officer, if follow-up is not made, then it all falls apart. The sheriff and the chief enforcement officer of the tribe and the tribe itself may reach an agreement, but if it is not followed up by the rest of the criminal justice system of the jurisdiction that has the proper authority, everything else breaks down. We found, in our discussions that, of course, local citizens are going to have a lot of fear in regards to cross-deputization. One of the big things that we heard in proposing some of these areas is that non-Indian citizens are not going to want to be arrested by a tribal enforcement officer. And our contention is that most of this is through lack of information in regards to the cross-deputization plan. We must bring in the tribal elders. We must bring in influential citizens in the non-Indian community when we discuss these plans for cross-deputization and mutual aid.

In regards to standards, training at either the state academy or the Bureau of Indian Affairs Academy in Brigham City must be instituted. In Washington State, for example, we have a law that specifically states that only officers of a political sub-division of the State of Washington can attend their basic academy. And then, we have sheriffs telling us, "We will not deputize you until you have state training." So, it's a Catch-22. Areas can be found to get around the law.

Colville has found an area in regards to sending their people to the state academy in Spokane. We've gotten around it, and we send our officers to the state academy at Seattle. But the intention of the law was specifically to prohibit federal or tribal officers from attending their training.

So that's basically what we came up with in a series of meetings. First, I'd like to give a little history of what a lot of the tribes and I can speak from where we're at, came up with these type of recommendations. When I formed the Skagit System of Law Enforcement about three and a half years ago, one of my first duties was to speak to the sheriffs of the three counties that we have our enforcement authority in. And I was basically told to go to hell. It was something new for me because I'd been in law enforcement for 13 years. I was an under-sheriff of a county prior to taking this job where we commissioned tribal enforcement officers of three reservations that worked in our county. Some of them received special deputization, some received, based on their training and experience, full county deputization to act as a county officer in all situations. So this was something brand new to me. We ran into the area where state enforcement officers were ignorant of the treaties and of Indian law enforcement so it became an educational process to bring them up to where we're at today. Three years ago, myself and other tribal enforcement officers arrested an Indian on the reservation who was wanted by the State of Washington for one count of first-degree armed robbery and two counts of first-degree kidnapping which I and my officers considered fairly a dangerous individual. Because we were tribal police, we were able to make the arrest without incident after explaining to the citizens that gathered what we were going to do with the individual and the authority. When I took him to the county sheriff as our treaty indicates that I have to do, the chief jailer refused to accept my prisoner because we were from a foreign nation. And the sheriff wasn't in to do anything about it. So, based upon our treaty provisions, I had to release this individual on the courthouse steps. And it was only through officer contact of the actual deputy that gets out on the road and comes onto the reservation that we were able to have a deputy sheriff just happen to come along and re-arrest the individual, so he was able to be turned over to the proper jurisdiction. Three years ago, myself and another officer ended up getting shot at and we made apprehension and took the weapon away and at that time, we were not deputy special officers so the federal government couldn't do anything about it and the state refused to do anything about it and that person was never even taken to court. These are just some of the areas that we ran into problems with.

Because of what we've done in the last three and a half years in an educational process of state agencies, specifically those in the office of the county sheriff's, city police department and prosecutors, we've been able to reverse this

trend in regards to their consideration of tribal enforcement. Some of these have been by showing them the standards under our Public Law 638 contract with the BIA for training of our officers. The State of Washington, 1977, said that state officers have to receive a basic training of 440 hours within the first 15 months of employment. That's the only standards that they have set. My bureau standards say that I have to have the same thing done in 12 months. It goes on to say that my officers have to receive firearms qualifications semi-annually. The state doesn't address that. It says that we have to receive a minimum of 40 hours in-service training annually. The state doesn't address that. It also goes on in regards to supervisory command training upon appointment to that rank. The state doesn't address this. They have a lot of recommendations that they would like to see their officers receive but again, that's purely upon the chief's or sheriff's discretion. Through an educational process, we were able to show our local sheriffs that we're better trained than they are, whether they want to admit it or not. Then we had to sit down and meet with the prosecutor to address the issue of bringing our tribal people charged by state people into our tribal court and vice-versa, letting us take action against non-Indians and cite them or deliver them to the proper jurisdiction to be heard by state court. It's taken us a while but we now have a written agreement with the prosecutor of one county which is the one we majorly work in, where we now have the facility for bringing tribal people charged by state officers into our tribal court and this is done by paperwork backup so that we can lay a paper trail to show the validity of our tribal court. Since a lot of this has started to happen, we've had some very positive aspects in regards to the county sheriffs that we work with. As I mentioned earlier, I had one of my own officers that was assaulted and the state came in and charged the person that assaulted him - it was off-reservation - with assault second-degree under the revised code of the State of Washington and the subject was found guilty and incarcerated. A couple of year previously, we got shot at and nothing was done. We had the prosecutor attend our tribal court and spend a day with us so he could assess where our tribal courts were coming from and I was able to sit down with the prosecutor and the sheriff and his under-sheriff, chief criminal deputy, chief civil deputy, and teach them about Indian law enforcement, about treaty rights and all the areas that they were ignorant of and they have finally - are instituting meetings with the tribes to discuss sovereignty, authority, cross-deputization, mutual aid and a lot of these other areas that we hope to overcome. To come down to the final point of all this and how it gets done, administrators like myself and the sheriff or a chief of police can talk and want cross-deputization, but it takes two other areas. Number one are the managers - it would be the county commissioners, it would be a tribal council - those are the people who have to give the support to the tribal and state law enforcement agencies and have trust in them. And the other area is the officers on the road, interacting with each other. When a state and a tribal officer work together

and find that both of them are adequately trained, are adequately knowledgeable of the law and can work together, that's when they can go back to their other jurisdiction and say, "Hey, we can work together, why can't it work in other places." And you develop a mutual trust. And the last area is the completion of the criminal justice system in Indian country. We, being the Skagit System Cooperative, have been in existence about three and a half years. Prior to that, it was a sort of hit and miss with a tribe here and there and the sheriff's prosecutors' nobody could adequately say that tomorrow, there would be a law enforcement program. We've had to prove ourselves. Now they're looking at where is the rest of your criminal justice system? Your courts? So we had to develop a court system. We have our own three tribal court system, and based upon our reservation is the inter-tribal court for western Washington which services 14 tribes on a circuit court and circuit court of appeals for the tribes. Now they're saying, "Where's your corrections?" At this point in the Puget Sound Agency of the BIA which comprises 12 tribes, I think there's only two that has agreements with local sheriff's departments to incarcerate their prisoners and now the sheriffs are saying we don't have room because they're getting sued and so for the correction facilities now for the 12 tribes, if funding goes through will be with the Swinomish Tribe because of a new facility that was just built which has incarceration and corrections facilities. So now we will have a complete criminal justice system in Indian country in our area and only through this way will we be able to get cooperative agreements going.

DELACRUZ: Andy? Andy Joseph, Colville.

JOSEPH: I've been on the tribal council for 10 years and this is my first year in law and justice and fish and wildlife. I'm here representing Jude Stensgar, who is the chairman of the Fish and Wildlife Committee. I mean the law and justice committee and also Dave Stensgar, whose the chairman of the Fish and Wildlife Committee. Some of the tribe in law and order, the tribe contributes $540,000 into our law and order program and in our fish and wildlife program, the tribe contributes $154,000. In our tribal courts program, we contribute $108,000. We have 14 tribal policemen. We have 11 game wardens, two fisheries biologists and a game biologist that's funded under the Fish and Wildlife Committee. And I'm including these people because they're part of our - they're involved in our tribal courts in jurisdiction and things of that sort. Our reservation is 2,300 square miles in size. It's 98 miles from one end to the other with three mountain ranges dividing up the reservation. So, we have a lot of land to cover and we're checkerboarded, too. But the tribe manages to buy back about 17,000 acres of land a year. In Okanogan County, we pretty much control the voting. Our police chief was elected to the county office as the county sheriff from Okanogan County. We're cross-deputized with Okanogan County. The other county of our reservation is Ferry County, which takes up about half of the reservation. We don't have cross-deputization with Ferry County.

We have a lot of cattle rustling, horse thieving, pretty much like has been going on in the past. We've raised 23,000 head of cattle on that reservation. Most of our reservation is closed to the non-Indian and most of the non-Indian ranchers like it that way. They seem to appreciate our law and order and call on us whenever they have a problem, and offer a lot of support to us. One of the county commissioners is married to an Indian in one county and one whose just given up and not run for reelection is also married to an Indian from Ferry County. ...(end of Side A)...

This is a letter from Grand Coulee Dam, Washington, which is in..... There are seven counties that surround our reservation. Three counties make up part of our reservation: Okanogan, Ferry and a small part of Stevens. But this letter is To Whom It May Concern, from the city of Grand Culee, from Phil McGee, who's Chief of Police there. It says, "It has come to my attention that Sheriff (this is before our officer was elected to the Okanogan County Sheriff's Department) of Okanogan County has pulled the special deputy cards from the Colville Police. This concerns me as I am a professional police officer and I know what a job the Indian police have done and are doing for the people of this area. I know the Chief of Police, Johnny Johnson and have worked personally with him on law enforcement matters. My department and his conduct the training as one group. The purpose for this is to get better instructors and a more complete training for our officers (the officers surrounding the reservation depend on us for a lot of training and a lot of professional help that we're able to get, just being an Indian tribe). By taking away the power to arrest and prosecute felonies in his area leaves helpless the people who have a need to at least receive police protection, which never was avilable to them before Chief Johnson took office. Chief Johnson's ability as a police administrator under very trying conditions shows through what fine police officers he has trained and put in the field. I would be proud to have any one of them on my department, and I speak from knowledge gained with personal contact in working with them. It is a shame and wrong doing that the people of Colville must go back to little or no enforcement because of personal petty jealousies. If there's anything that I can say or do that will influence or help this police agency, I will do it.

After Johnny was elected to the Sheriff's Department of Okanogan County, a sheriff from Challam County in Wenachee, Washington, became our chief of tribal police and he had been training police officers for quite a few years. He ran unopposed in _____County for 20 years before he came to the Colville. Unfortunately, we lost him because of a heart attack. He was supposed to retire and one of our own tribal members has assumed chief of tribal police. Also, we have just hired a deputy sheriff from Ferry County who is a tribal member to be the Director of our Fish & Wildlife Program.

When we catch a non-Indian hunting in the reservation area, there isn't a thing we can do about it. We can't even confiscate their deer, if they got it on trust land. We can close and restrict hunting areas on our reservation, but a non-Indian can go in those areas and kill deer. Our tribal members can't do it. Because we have game refuges on the reservation to enhance and protect the game and to build them up, we rotate our seasons at different times. We have our own season on the reservation. We also have jurisdiction on the north half which used to be our reservation. Because of the _____case, the federal government granted us $129,000 a year to enhance the jurisdiction into that area. We can only pick up our own tribal members if they're hunting out of season or if they're killing too many deer. We allow permits to hunt there, but we can't stop a non-Indian at any time. It really makes it difficult. About a week ago, there was a cattle rustler on the reservation that was caught by a white rancher in Okanogan County, the Ferry County line was right there. Our police were immediately dispatched to the area and that man - his complete description and everything known to us - we pretty much know who he is - crossed the Ferry County line into Ferry County, took Ferry County deputies over two hours to get to the scene because they didn't know where it was. They weren't sure where the county line was even. We know where the county lines are and we feel that we have complete jurisdiction over the reservation. We have a very difficult time enforcing it. There's drug peddlers and things like that in our area. We managed to catch one not too far back. The County released the name of the informant to the newspapers just when we were on a pretty big case and we could no longer use this particular person. We contributed $3,000 from the tribe to the county to hire this person to be an informant. And it makes it real difficult when we can't stop anybody. Even the white ranchers that call on us, there's just no way we can help them. And I'd like to leave the rest to Barry who can speak about the legal factors.

DELACRUZ: Andy, would you leave a copy of that letter for the record.

JOSEPH: I have copies of some other letters that are similar.

ERNSTOFF: I'm Barry Ernstoff. My Seattle law firm represents a number of northwest Indian tribes. I'm here on behalf of the Colville Tribe. The purpose of this afternoon's session, as I understand it, is to find those tribes that haven't had it quite as easy as Warm Springs and to give some ideas as to how cooperative ventures can be put together. And Colville is probably a perfect example. We had some cross-deputization in Colville until about 1975-76 when, in my view, what happens was that the county sheriff began to realize that the tribal police were really more efficient and better trained and more money was spent on them than the county sheriff's office (Okanogan County). So the sheriff did the only thing obviously available to him, he trumped up some charges about the lack of formal cooperation and withdrew the deputy sheriff commission cards from the tribal police officers. Now you're talking about a reservation that's 1.3 million acres, about half

of which is in Okanogan County and it makes up the largest portion of Okanogan County. The number of tribal police officers that were available that are part of the tribal police force is greater than the number of county sheriffs that there are. So we have the situation where basically for free the county had a double police force because the tribal police were patrolling the reservation. He yanked these cards and told the tribal police they'd have to go on their own jurisdiction.

Then the Oliphant case came down, which as I said before, I had some part in, and the next thing we knew, a tribal policeman was arrested by the county sheriff for false imprisonment because he had arrested a non-Indian...before the Oliphant case came down. In other words, it was a purely political vendetta and the local judge, Judge Coles, whose a sort of a local democratic honcho also issued an opinion that the tribal police had no authority to arrest anyone, including their own members. That Public Law 280 basically revoked any tribal powers. We then had to go to federal courts. We won a case in federal court holding that Public Law 280 jurisdiction is concurrent and embarrassed and humiliated the county sheriff, who was then, as Andy told you, defeated in the next election by the tribal chief of police.

Before that happened, though, we attempted to put back together again the cross-deputization situation. And I'd like to point out another resource available where there is that kind of hostility which, at that time, worked out very well and that is the Department of Justice locally around the country has a Community Services Division and a negotiator - a mediator from the Department of Justice's Community Services Division - Community Relations Services or some language like that -- brought the county sheriff and the tribal police together and worked out a working agreement which I can give you a copy of. This is before cross-deputization, before they were moving along towards coming back to a more formal cross-deputization agreements. It was just a working agreement on who was going to call who when there was a felony, and what the tribal police could do without having any cross-deputization and various other limits, short of cross-deputization. But still that would at least take care of problems of crime on the reservation. That was worked out even during this terrible period of hostility between the two groups. I give a lot of credit really to the Community Relations Services representative and the Department of Justice for putting this together. Then, the county sheriff was defeated.

MANNING: Who invited him in?

ERNSTOFF: Well, he invited himself in. He read about the problems; it was in the newspapers, even as far as Seattle, the fact of what was going on between Colville and the local county and we got a call from him and said that's what we're supposed to do - this is Bob Hughes. He heard about it, instigated

it and called us up and said I would like to at least meet with the parties and he's the first person that I know who actually got the parties together. Then the election came up and the tribal chief of police was elected county sheriff, which I guess you can say is another way to overcome these barriers. (Laughter) Just put together your political clout which most Indian tribes have more of than they realize and you can do a few things. And it was not just Indian votes that got this man elected. And then, we began formally negotiating the cross-deputization agreement which I'll just discuss for a moment in light of the questions that were raised this morning.

One of the major things that the old sheriff had claimed was a real problem was this problem of liability. And he kept raising that problem with the county at every meeting. We handled it very simply in one lawyer's paragraph where #1, the tribe agreed to maintain liability insurance and #2, the tribe agreed to indemnify the county. In the event the county was sued for something that was done by a tribal police offcer when wearing the county sheriff's hat. And, in about three or four lawyer's sentences we solved what had been for a year an insurmountable problem of, how do you deal with the county's liability. So, basically, the county does not have to maintain the insurance, the tribe must maintain the insurance and #2 even if there is a suit, the tribe has agreed to indemnify the county for whatever damages are suffered. That matter was taken care of very, very quickly.

In addition, the cross-deputization agreement set out the conditions of training. I've worked with other tribes on this problem where local police chiefs, local sheriffs, will use this as sort of a red herring. And that is, they'll say you're not training them and they'll give you a whole bunch of qualifications for training that your police have to have. And any kind of investigation will show the result that none of the deputy sheriffs who worked with that sheriff and the sheriff, himself, have had any kind of training that they're demanding. It's interesting that Bruce used the phrase Catch-22, because you'll notice, that's what I have in my notes also. It ought to be reiterated again, especially since Senator Gould is here from our state that the statute forbids police training in the state police academy even if the tribe were to pay for it, whatever the cost was, of anyone who is not a state or local government, under the state law, official. And then, they tell you that since you don't have that training, that the BIA police police academy training is not sufficient, even though they're really comparable. The way we got around it, or underneath it maybe, is a better way to say it, is that we had an agreement with the new sheriff of Okanogan County that he would deputize tribal officers who had certain requisite training in the police academy. They, then, were deputy county sheriffs and would qualify to go to the state police academy. They would go to the state police academy if they did not have sufficient qualifications, otherwise and would agree quietly that they would not utilize their deputy commission cards until they

had completed the state training, so that we didn't have that problem, but we had that stamp of being a deputy sheriff to get into the state school.

GOULD: Who pays for the training?

ERNSTOFF: I think the tribe contributed something to the county and the county had to pay a certain amount towards the training and the state criminal justice commission or something pays the rest. In addition, we have a provision in there for 30 hours of continuing in-service training. It's interesting, isn't it, that the sheriff, once he got us to agree to that which we did without any problem because our officers met that qualification, now uses that as a bootstrap to force his deputy sheriffs who previously were highly political, that's how they got their jobs, to have to meet the same qualifications that the tribal police are agreeing to meet. And, therefore, raising the level of the deputy sheriff's office also and of his deputies. That's another way we arrived at a cross-deputization agreement.

Some thing that I'm interested in and I hope to see - we haven't heard it talked about too much - is the reverse cross-deputization and that is the deputizing of some of the deputy county sheriffs as tribal policemen. And everybody carrying federal commissions. So you don't have the problem which you have to some extent. You got to have a track book and a geneological record in order to decide who can make an arrest somewhere. And the Supreme Court's the one who has put us into that position and we're having to deal with it, but at least if everybody's got all the commissions he needs, all his badges and all of his hats, law enforcement will take place and then you can distribute to the courts accordingly.

One point that I would like to mention which came out of the questions this morning was this problem of tracking state law. I believe that Representative Graham, I mean Senator, mentioned this and this is why not just have the same law. Well, at Colville, we have a pretty complex law and order code but the most important section when it comes to this, we found is traffic. In other words, in other areas, you might want to vary the law slightly. Traffic is one of those things, especially on highways going on and off the reservation, we want to be the same. And we basically incorporated by reference the Washington State traffic code. Part of the problem we have, though, is....we've had problems with the State Motor Vehicles Department accepting a conviction in tribal court for purposes of appearing on records and effecting licenses and insurance and things like that. And so, it's not consistent and that's something that the state legislature hopefully could work out. Another reason, though, for not tracking state law which I think has to be thought about while we're talking about all this great cooperation, is the differing use of lawyers on Indian reservations and in the state and county governments. The Indian Civil Rights Act provides that you have a right to counsel at your own expense, something that the legislature should realize

I think, whether it be a state, county, municipal, whatever, government, you have to provide, at least where's the possibility of imprisonment, free lawyers. The result of providing free lawyers to defendants means that you've got to have lawyers as prosecutors and, basically, your legal system, no matter how small the town, you're going to have lawyers on all sides of it and, therefore, the requirements that will have to be met are going to have to be more severe. Tribal courts, as a matter of federal law, do not have to provide free lawyers for defendants. They have to allow lawyers, if someone wants to pay for one, but they don't provide one. And there's much less of a permeation of lawyers in the tribal system which means that some of the very finite differences in various felonies and misdemeanors are going to be missed in tribal court and are not going to be followed. Tribal judges usually aren't lawyers and to some extent, you've got to realize that there are going to be substantial differences between the tribal system and other systems because of the lack of trained lawyers dealing in highly technical kinds of matters that we have in tribal court. Tribal court is more informal and a little more earthy than the state court system. The result is that this year finally after three years of litigation, negotiation, politicization and other things, we finally have a cross-deputization agreement and some joint activities working between these two police departments. What it finally comes down to, I think, though, is that both the decision of the U.S. Supreme Court and the Oliphant case, a highly political decision in my view, of course, I've a prejudiced view, but the Oliphant case which said the tribes don't have criminal jurisdiction over non-Indians, people forget had been won in the District Court in Seattle before a federal judge who felt that the tribe should have that jurisdiction. It has been won in the 9th Circuit Court of Appeals. It got to the Supreme Court, the Supreme Court where, I think, obviously for political reasons, a lot of political pressure, decided that for the first time, the tribe shouldn't have that jurisdiction. That's one of the major problems that we're facing. It doesn't make any sense for a tribe not to be able to arrest a non-Indian whose committing an offense where basically the only police force out in these rural areas are tribal police. Secondly is the problem of Public Law 280, the problem of state jurisdiction on Indian reservations - there's a bill now before Congress - as many of you now know - to allow retrocession, changing Public Law 280. In Washington, the most vociferous and antagonistic anti-Indian fighter has been the State Attorney General, who came out very much against retrocession, against Indian tribes exercising their own jurisdiction on their own reservation, with the federal government and the state keeping out of it. On the other hand, Andy tells me about two weeks ago, Governor Dixie Lee Ray wrote a letter to the right Congressional Committee taking exact opposite point of view from the Attorney General, stating that she thinks that retrocession back to tribes and federal government would be the best thing that there could be for the state. So, again, the issue becomes politicized. I will stop now and be available for any questions when the other presentations are made.

NIEMISTO: I am John Niemisto, representing the Wisconsin Department of Justice, Attorney General's office. A good part of my work at the Department of Justice is in Indian law-related matters. The Attorney General of Wisconsin is a separate office, separate from the executive branch of government's constitutional office. Powers and duties are set through legislation and through the Wisconsin constitution. The Attorney General, Bronson LaFollette, has taken what I feel is a positive approach towards working with Indian communities in Wisconsin. In terms of the opinions that the Attorney General renders, in terms of the advice that is given to local units of government to state agencies, the Attorney General has approached working with tribes, primarily as governmental entities. It's really the only office at state level that has taken a strong position in that regard. I think that's very important; a lot of times it is overlooked, especially when you're involved with people within the bureaucracy, state bureaucracy, that do not have an understanding or appreciation for the legitimacy of tribal government.

Before commenting on the relationship between the state and Wisconsin tribes, it may be helpful if I gave you a little information about the situation in Wisconsin. Wisconsin has 11 different reservation areas. One of the tribes, the Wisconsin Winnebago, do not really have a large reservation, although they do have a great deal of Indian land, land that's held in trust status, but not a continuous piece of land that characterizes a reservation. The other tribes in Wisconsin do have reservation areas, but for the most part, they're not large areas, not like we have been hearing from the southwest and the northwest area of the country. Population-wise, there's not a lot of Indians in Wisconsin - somewhere around 25-30,000 people. The basic jurisdictional relationship in Wisconsin is mixed. Ten of the reservations are Public Law 280 reservations. Menominee Reservation is not Public Law 280, so you have different basic relationships between the state and the tribes based on whether it's 280 or not. With respect to most of the areas where there has been cooperative efforts, I think it's safe to say that they have been started for the most part with the Menominee. I think there's a couple of reasons for that: (1) Menominee is probably in terms of Indian population on the reservation - it is the largest reservation in Wisconsin. Menominee, historically, had very effective tribal government and government institutions which enables state government to recognize and work with the tribe. Also, the recent restoration of Menominee - the termination-restoration process that the Menominee were put through, I think helped the state and many state officials to work with the tribe more closely than might have been the case, otherwise, simply because the state supported restoration efforts. And restoration mandated cooperation between the tribe and the state during restoration to ensure that services were not impaired as a result of that process. That forced in a sense the kinds of communication, the kind of working together that I think has to be the foundation for effective working relations between tribal government and state government. Some of the agreements that were worked

out and we have a couple of other people here that can probably speak more knowledgeably in respect to specifics, with the Menominee, the Attorney General did recently issue an opinion that concluded cross-deputization could be implemented between the Menominee County and the Menominee Tribe. A problem arose in terms of cross-deputization because of a provision in the Wisconsin constitution that said state officials cannot also hold a federal position. And because some of the tribal police have deputy special officer commissions, the question was, does that make them a federal official and, therefore, negate the possibility of cooperation in terms of cross-deputization. Our conclusion was that it did. So, with respect to cross-deputization programs in Wisconsin and Wisconsin law, it has to be limited to tribal police officers who do not have deputy special officer commissions. Related to the law enforcement effort and, by the way, I should also point out that with respect to the Menominee, the Menominee Reservation and the County of Menominee, and the town of Menominee are coterminous, so that you have a single territorial jurisdiction; it is the same. This also suggests at least the desirability of trying to coordinate and cooperate in terms of law enforcement related services. Because the reservations of Wisconsin are fairly small and because of Public Law 280, the state has been fairly active in becoming involved in not only law enforcement but also in the delivery of other government type services to the reservations. That also tends to suggest cooperation and coordination of effort. Some of the services with Menominee that have been made available are juvenile facility services under contract, where the tribal court can make a commitment of juveniles directly to the state facility. There's more of a problem with mental health commitment because state statutes define under what circumstances a state institution can hold a person against their will, if it's an involuntary commitment and the state statutes do not recognize tribal commitments in that area, so there is a slightly different procedure that is utilized. Menominee is really the only reservation that has a comprehensive judicial program, court system, codes and the like. So when we're talking about placements directly from tribal courts, we're talking almost exclusively about Menominee. The state and the tribe also cooperate - the Menominee Tribe - cooperate in several other areas. The Department of Natural Resources has a program with the tribe regarding management of the forests and the sharing of responsibility for firefighting that is needed. With respect to the other tribes in Wisconsin, in terms of cooperative agreements in the law and order area, there are plans being made for most of the reservations to have tribal police officers.. (end of Side B)...

From experiences that we've had in working with the reservation communities in Wisconsin, probably one of the key areas is the need for tribes to have governmental institutions that the state can relate to. It's very difficult for state people to develop a good cooperative working relationship unless there is some type of an institution there to work with. A law and order program, for example, has to have some

structure to it. Somebody has to be in command. There has to be some feel for how that program is operating in order for the state to feel comfortable with it. Now, with respect to some of the other, in other words, where that type of a situation is important, the comments earlier about tracking the state law, I think are important, in a number of areas, with respect to the juveniles, for example, that the state institutions accept commitments from the tribal court. It's very important that the tribal court in exercising its authority to make commitments afford individuals some due process. There has to be an investigation, there has to be some kind of a report. That I think adds some legitimacy to the action and enables the state people to feel a little more comfortable, if nothing else, in terms of cooperative agreements in Wisconsin is the question of funding. The federal government, for the most part, except with Menominee, but even with Menominee, there is a problem, I'm talking now primarily about the BIA and because of Public Law 280, seems to take the position that the state has a responsibility to deliver all government services to the reservation areas in the community. And that the Bureau need not expend any energy in terms of making funds available or trying to secure funds for delivery of services and to a large extent the state has done that. The state does have special programs that are funded with state general purpose revenues, the Relief for Needy Indian Program, for Indian people on reservations; scholarship program for Indian students going into higher education. The state, a couple of years ago, enacted legislation that allows the state agencies to make grants to tribal government the same as the state would do to other units of government. So, there has been in the last 15-20 years or so, there has been a great deal of state direct involvement with the Indian communities. I think that with respect to the funding question, it's going to become more and more critical because of the real concern that a lot of people are expressing at the state level, with respect to tightening budgets. And every program seems to be coming under scrutiny and if there is a responsibility on the part of the BIA to deliver services, whether the money is there or not; as a practical matter, the money may not be there, but I think that's going to create a real strain on the ability of the state to work effectively with the tribes in a lot of areas. I think until that particular problem can be addressed and the lines of communication with respect to this general area have to include the BIA in these discussions as well as working toward developing better communications between the state and the tribes in order to get these kinds of questions on the table and addressed at the front end of any efforts to coordinate and cooperate.

I don't think I will go into anymore detail at the present time. I'll be willing to answer any questions and I do have, Mr. Chairman, for the record, some prepared written testimony that I'll leave here for you.

DELACRUZ: I would appreciate it. Nancy Young, do you want to make some comments?

YOUNG: I am not going to make a presentation. John pretty much stated the views as far as the state. I did bring along copies of some of the agreements we had and if there are any questions, I'll be glad to respond.

WAUKAU: You had me listed as a Menominee Appellate Judge, but the main thrust of my presentation is not as an appellate judge, because we have a situation, where I am an associate supreme court justice which was established by the tribal legislature. The court, itself, doesn't get into the issues of cross-deputization and enforcement. Our work begins after the persons are arrested and charged and brought in and they appear before the courts and their cases are adjudicated by the tribal court system. We have three of these separate branches of government under tribal. We have the legislative, which is the tribal legislature; the administration; the judicial. They're all distinct and separate functions. My main reason for being here today is that I am the administrator for Menominee County and Menominee Town, and I am authorized by my town and county board chairman to expound on the situations as we see it in regards to cross-deputization, mutual agreements and contracts that we deal with the Menominee Tribe on. A little bit of history which was alluded to and I think Mr. Niemisto briefly made some presentation on some of the problem areas. Menominee Tribe was terminated in 1961. We were restored to tribal sovereign status in 1973 and retrocession of Public Law 280 took place on March 1, 1976. We operate with our own tribal court system as of August 9, 1979, with ordinances and rules adopted by the tribal authority and we have some deputy BIA commissions. The tribal police department is responsible for all Indian and non-Indian violations and acts on the Menominee Reservation. Now, in Menominee County, which was established by separate legislative acts in 1960, the county was accepted on May 1, 1961. It was a result of our tribal leaders realizing that the area was great enough and the problems were great enough that we needed a separate and distinct county situation, because prior to termination in 1961, we had seven townships in one county which is Shawans, and three townships in another. We had problems in those areas there. Now I operated as a tribal beat policeman in 1946 and 1947 and served on the Menominee Tribal Council from 1952 to 1961 and saw the tribal process in operation and the tribal system in operation and the tribal police situation in operation and also when the Public Law 280 was invoked in Menominee Reservation in 1954. Menominee County is the only all-Indian county in the country. All of our officers are Menominee Indians. The sheriff is an Indian; the Chief, Register of Deeds is Menominee Indian; the county clerk is an Indian; the county clerk of court is an Indian. We have a board of supervisors which are seven members, one of these is non-Indian.

Now the county is divided up into four precincts. In one area of the precincts is the area that was the land development which was developed in 1968 through the 1970's which was stopped at the tribal insistence. We have one representative that lately was elected from that area. But we handle all of the situations in the county with taxing and budgetary authority developed by the Constitution of the State of Wisconsin. We are limited by the state law to no more than 1½ of the assessed valuation. Now the Menominee County has it's distinct and own law enforcement structure which is the sheriff. We have about eight deputies, four special deputies; we have five radio operators; and four extra operators; we have a juvenile officer... But in the retrocession process, most of that changed. We have a police and fire commission operating under the county that handles all the acts and facets of the sheriff's department. But according to Wisconsin law, nobody tells the sheriff how to operate the department but himself. He is just subject to the laws of the State of Wisconsin and the only one who can relieve him is the Governor. Now I have seen at least five sheriffs in Menominee and have worked with them. We have had some good ones and some not so good, but we have always found the problem to be of funding. Every year, our departments runs over in the area of 40-50,000 dollars based on incidents. But, in the last year, when the tribal police were incepted, in 1976, we had agreement, a contract, with the Menominee Tribe for the county, because there were the only existing law enforcement structure at that time, to do the law enforcement for the tribe. But we had some problems in that and it ran it's natural course and that was in 1976 in March when it started and it was finished in December 31, 1976. We had a new sheriff come in and we did not have that agreement with the tribe anymore. There is one important thing that we learned as a result of that, as someone alluded to before, is the implied liability; that the sheriff, no matter who he deputizes, is responsible for all of the acts and actions of that particular deputy sheriff. We are involved in a million dollar lawsuit as a result of the tribal member being chased by county deputies which are Indians. The Indian had a wreck about 1,000 feet into the reservation area after being chased through a non-Indian area and he claims that the sheriff's department personnel are responsible for that. We are scheduled for briefs for that January 6. But that is one of the things that you have to make sure of, that if you go into cross-deputization, that you make sure that the tribe, somebody mentioned, be held, holds the county harmless on any lawsuits that may be brought out as a result of that. By the same token, the tribal police have to be held harmless in regard to anything as a result of being a county sheriff. Now, in our situation, Menominee County owns the radio system and we have dual dispatching system. The tribe uses our system we maintain it but we don't charge them. And the tribal police have the jurisdiction of all the areas in the county and on the road system except the state and county roads. But by agreement, the tribal police patrol the state highways and the municipalities, which are the two principal

villages in Menominee County, they patrol those and maintain order in those areas. If they have a situation where there's a non-member, they just detain him, they don't arrest him. They detain him until the county sheriff's people get over there and handle it. By the same token, the county sheriff's department has 100% control and patrols the non-trust land areas which are mainly the tax producing and revenue producing areas. Now, we just had a case in which one of our tribal police or county police detained a tribal member without authorization. The tribal police picked him up and the judge threw the case out of court because of lack of jurisdiction in apprehending him.

The Menominee County provides all of the services like Mr. Niemesto mentioned. Particularly, we provide street lighting, ambulance service, 61-42-437 developmental disability, we provide sewer and water and we provide other areas of services.

We have recently established an agreement and a joint operation, for a senior citizens' Commission on Aging. Now, that doesn't seem like much, but when you see that the elderly have to be taken care of and the Menominee Indians have always had the philosophy that you take care of the old people regardless and the younger people. That we realize by combining and having a joint Commission on Aging which was incepted by Menominee County and concurred in by the Menominee Tribe. We have a joint membership appointed by the tribe and by the county for senior citizens commission. As a result of that, they are getting increased funding from the state and federal government for senior citizens programs. If you can work in that area, it is kind of a prelude that you can work in other areas.

There is one important thing that I would like to say; it is this. That there are some areas in the state that I see Mr. Niemesto alluded to, that do not have adequate police because of the 280 situation. Public Law 280. We have some areas in there that the county sheriff's department will provide a deputy under an LEAA project for a certain amount of time. But when the LEAA funding runs out, the deputy runs out. There should be and ought to be a mechanism to provide patrol surveillance and protection to those reservation areas I mentioned, particularly the Stockbridge area. And also the Lac du Flambeau areas. That they ought to have some around the clock protection in their particular areas. I think what should be - we have good working relations with the Attorney General's office with Mr. Niemesto. If we have a problem in county government, we get on the phone and we discuss it with him and we communicate by resolution the wishes of our county or town boards to the Attorney General's office and they reply on official communication.

I think we should work out a contract of mutual agreement beneficial to both the tribal and local government and here is one thing you have to recognize is that tribal sovereignty

has to take a precedence in all of these issues. Most people don't like to deal with tribal sovereignty. But if you sit as a tribal member, that is a number one issue, that you have to recognize what the tribes want, what they want to do. That they have the right to their own determination.

We have joint meetings between our police and fire commission and the tribal police department and their representatives. We discuss almost on a month or two basis or if a situation arises, we discuss that situation. We try to find out how to handle it in the problem areas. We are close to cross-deputization. There are some small definitions which have to be cleared up, which were mentioned. The liabilities for one and the deputy special officer's commission. But the main thing is first, that the tribe has to want it themselves, you can't force it on those people. We are close and I am interested in the areas that do have cross-deputization. I think there ought to be a communication from this group here or any other organization on where cross-deputization is working. Because you have no way, when you set back as a municipal entity; you have no way of knowing where that is working. This is a good format here, you are bringing it up. I'm going to talk to some of these people as we go on. Because there are other municipalities in Wisconsin which want to work on that, you have to see how you do it, what problems you had, how you overcome them. Now, here is one very important thing that I realize. I mentioned funding and our sheriff went over budget. There is a declining level of funding for LEAA projects and projects that provide law enforcement on a BIA level, the Indian reservations and Indian areas. I think there ought to be firmed up some way of providing that funding. Now the individual tribes do not have the dollars at that point in time when the LEAA funding goes out the window, to come up and establish and carry a tribal law enforcement structure. We have the same problem here, I would like to see established a funding subsidy or impacted aid formula situation to where local counties or towns or municipalities would get some funding similar to the funding situation that exists for in-lieu-of taxes for trust lands or lands owned by the federal government where there is a dollar amount provided to municipalities for that. I would like to see that established and that is one problem that our county and town board have. That we provide the level of services to the Indian people, to the area but there is no return on the tax dollars. Mr. Niemesto mentioned that the tax dollars are under close watch at this time. If some mechanism, some congressional act could be amended or established to provide you would get away from alot of criticisms on providing services to Indian people, especially in law enforcement and other areas.

I think that concludes what I have to say but I would like to thank whoever put this conference together for giving us the opportunity to come and speak on the issues, I would like to see something come out of it. One thing I would like to see is funding, alternative funding, and a list of the areas that have cross-deputization working. Thank you.

DELACRUZ: The last panelist is Tom Tureen, with the Native American Rights Fund.

TUREEN: I am going to speak primarily about Maine. I will be happy to talk about any of the other tribes in New England that I represent, but.... It being the holiday season, I am going to talk about jurisdiction past, jurisdiction present and jurisdiction future. Because that is very much the situation, it's the context in which we are living up there.

The past is the period of time since 1820, let's say and prior to July 3, 1979. Because on July 3, 1979, the Maine Supreme Judicial Court, much to my, well, I won't say my amazement, but certainly the amazement of the Maine Attorney General handed down an unanimous decision saying that those federal laws that relate to Indian country apply in Maine. That the federal statute that defines Indian country is applicable in Maine and applies to any areas that meet the tests of Indian country. In short, what they wound up saying was that if there are any real Indian tribes in Maine and the United States has recognized two such tribes so far (Passamaquoddies and Penobscotts), and if they occupy, actually, physically occupy any lands that are part of their aboriginal territory, then those are dependent Indian communities within the meaning of Section 1151, and are Indian country. The state loses jurisdiction accordingly, to the extent that the states do not have jurisdiction within Indian country.

Now prior to that decision, there were three Indian reservations in Maine and they were considered by the State of Maine to be creations of Maine. Now prior to that decision, the state had complete jurisdiction but it wasn't as though there was no Indian reservation there. It was, still, even prior to last summer's decision, a special situation because the tribes under state law had their own police force and the tribes' under state law were given the right to regulate hunting and fishing within their own reservations. And so we - the tribes in Maine have had experience with cross-deputization - those kinds of problems, because they had their own police force and had to relate, for example, to the county deputy sheriff who was the person who would serve process, for example. And in Maine, in the past, the tribes had worked out cross-deputization with the county sheriffs. They had worked out arrangements with the state police to determine when the state police would come into the reservations. Now by law, the state police could come in whenever they wanted, but that created alot of trouble, generally, when the state troopers would come. An agreement was reached whereby they would only come essentially upon invitation or in emergency if the governor of the state or any one of the tribal governors asked them to come in. But everybody would go to state court, the difference was that there was no tribal court and state law would apply to everyone except if there was some particular federal offense. But there was no special Indian country treatment.

Well, as of July, that changed and the situation was thrown into disarray. The State of Maine pulled the deputizations, the commissions of the officers on the reservations and so the officers got nervous about how they were going to function. That gap was then filled by having the tribes themselves commission their own officers, and the federal government then had to decide what to do about prosecutions, because life went on up there and people kept on committing crimes as they had in the past.

A decision was then made by the Justice Department to treat it as Indian country and today, the Justice Department is treating those reservations as Indian country. I might point out here that the only lands in Maine that are considered Indian country are those which are in the possession of the tribes right now, their existing reservations. As you may know, we have rather substantial claims pending in Maine, that cover about half of the state. That area is not considered Indian country under the rubic of the Maine Supreme Courts' decision last summer. It limited to those areas which are actually physically in the possession of the tribe. The State of Maine has filed a petition for writ of certiorari with the United States Supreme Court seeking review of that decision. One of tha arguments that they make, well, they don't really make, they suggest in their brief that the court has to take this case quickly because there are all these claims around and, therefore, there is all this Indian country around. Well, that is not true because nobody is suggesting anywhere that simply because, at least in the East, that simply because a tribe lays claim to an area that that makes it Indian country. And we would agree with the Main Supreme Court, for other reasons, but our position is that that this situation only pertains to the existing reservations. The primary difficulty.....(end of tape)

whether that would work or not, who knows. It seems to me that that approach may have some merit. But that is just one of the three reservations. The Passamaquoddies have got two reservations - one tribe, two reservations. One of them, one of those reservations has decided that it wants to have the federal government set up a CFR court temporarily while they figure out, do their planning and put together on a planned basis, a tribal court. The other Passamaquoddy reservation has said they don't want that; they want to have the state courts continue to exercise jurisdiction until such time as they can get a tribal court together. So we have each reservation in Maine going a different way. One wants to have the state do it temporarily, one wants the CFR court temporarily and one wants to have the tribal court right off, and has it. That, of course, is what tribal sovereignty is all about. You get to make those decisions and go which every way you want. There is nothing to say that they have to do it the same way. We are involved right now in negotiations with the State of Maine with the Maine Attorney General's office and with the Governor of Maine for settlement of the Main: Indian land claims. Now under these

negotiations, the State of Maine will not contribute anything at all, and one might ask why we would be foolish enough to talk to them about anything. The reality is, of course, that legislation is not going to go through Congress to settle the claims of Maine unless everybody supports it, that means the tribes, everybody who is relevant to the situation. That is the tribe, the state, the large land holders and the federal government, both Congress and the administration. And so, for this reason, and not just because the tribes want to figure out a way to live with the state up there, which I think, is true to a certain extent. They have said that from the beginning and I think that they mean it. We have been negotiating with the State of Maine a jurisdictional relationship, one that the tribes and the state could live with in the future. Now I have to be somewhat circumspect in what I say about this because we have agreed, that participants would not talk about it outside. And we are almost done, in fact, I am expecting a package this afternoon with the state's proposal and legislation. We are hoping this legislation will go in in January. One of the things we have talked about, though, is the possibility - this has just been discussed - of not having the Major Crimes Act or the General Crimes Act apply, but having the tribes have their own tribal courts if they want. It is kind of a flip flop version of Public Law 280, and the reason the tribes are at all receptive to this is that, insofar as sovereignty is concerned, once the federal government has taken away the power do something, the tribes don't see where it makes a whole lot of difference which other sovereign is going to deal. For example, in the area of criminal jurisdiction, the federal government has in the area of 14 major crimes removed responsibility for that from the tribes and has taken it upon itself and given it to the federal government and federal courts. Well, it is not a question of sovereignty or it isn't an issue which impinges on tribal sovereignty; whether those cases that the tribe doesn't get to handle go to a federal court or to a state court. That is more a matter of practical law enforcement, which way you get better protection for the people in your community and a fairer shake for your criminal defendants. And it is conceivable that we may wind up with a situation where the Major Crimes Act and General Crimes Act won't apply. I am not saying it's going to happen, but it might. But yet, the tribes would have tribal courts to exercise such jurisdiction as tribal courts would normally exercise. Implicit in all of this is an understanding that we will get back to the kind of mutual aid and cross-deputization arrangement that we had previously. I don't expect that there will be alot of trouble doing that, but where we wind up in all of this is yet to be told. Hopefully, by January, we will have an agreement between the tribes and the state which will be embodied in legislation. What we anticipate is federal legislation to settle the Maine claims. Coupled with that will be a tribal-state compact, which I hope will be amendable in the future upon agreement of the tribes and the state alone, without having to go back to Congress and mess around with them, if we would want to change it. But that's the direction we are headed in right

now and I am sorry that I cannot be a whole lot more specific about it, but I would be glad to say "no" to any questions you might have.

DELACRUZ: That concludes our panelists presentations. We're open for questions.

MANNING: Tom, just answer if you can. Correct me if I'm wrong. If I recall, on the Narragansett Indian settlement, they agreed to have the state exercise all criminal and civil jurisdiction.

TUREEN: That's correct. Insofar as court jurisdiction is concerned in Rhode Island, the tribes agreed to have blanket state civil and criminal jurisdiction. The tribe reserved to itself sovereignty in two particular areas. One is hunting and fishing, that they will be able to make their own hunting and fishing regulations within the lands. And two, we, in essense, pre-zoned the land. They were concerned that they might get zoned out of existence by the town of Charlestown, which they're in. So we had an agreement that Charlestown's zoning laws would not apply, but that the lands would be subject to a land use plan which will be agreed upon in advance and which cannot be then changed without the consent of the tribe. So those two areas we reserved out, but the state courts have jurisdiction over all offenses there. The state police will have jurisdiction and the reason for that is that in Rhode Island, they have never exercised that jurisdiction themselves, at least not for many, many years. And the community is very small and it was simply felt by the tribe that it wouldn't be realistic to attempt to do that. It wasn't something they wanted to do themselves.

MANNING: How about the local police?

TUREEN: The local police will also have jurisdiction in that area.

MANNING: My question then is if that's the case, they signed an agreement to that effect, I don't know whether that....did you make that agreement part of the court settlement or did you just dismiss the case?

TUREEN: The case was....there was a joint memorandum of understanding and that was filed with the court and the case was then dismissed on the basis of that joint memorandum of understanding and more importantly, the federal legislation that embodied it and implemented it. We had to have federal and state legislation to implement that settlement agreement.

MANNING: It's the state legislation that incorporates this jurisdiction?

TUREEN: That's correct.

MANNING: Subsequent to that, they have to go through this whole thing again.

TUREEN: No, No. The whole idea of this settlement agreement in Rhode Island was to make sure....it specifically held open the possibility----the legislation states that nothing herein shall prevent the Narragansett's from applying for federal recognition. Held open the door for recognition but clarified once and for all the jurisdictional status of the lands. One thing I should say, though, is that it leaves open the question of what would happen to lands that would be acquired in the future. If the tribe is recognized and they acquire other lands, and, in fact, they are now seeking with a HUD grant to buy the town Shannock. But there, before those lands are taken into trust by Interior, Interior as I understand, has already taken the position that they would want an agreement with the state and with the tribe over the jurisdictional status of those lands. So, still recognition is not going to make any difference in terms of the jurisdictional status, that would only come up if other lands are to be acquired and other lands, I'm sure in Rhode Island, would be acquired pursuant to an agreement. Maybe the best thing to do with Shannock is to make them a state reservation. That may solve that kind of problem. Federally recognized tribes with a state reservation would clarify the jurisdictional problems.

GRAHAM: My question is for Barry. You stated a while ago that there was a bill pending before Congress that would allow for retrocession. Was this the same identical bill that was presented last session?

ERNSTOFF: I'm not the fellow from the firm actively involved, but it's probably pretty close. I think it's part of the criminal justice reform bill.

GRAHAM: Under the guide of Indian recodification?

ERNSTOFF: No, No. That's different.

GRAHAM: That's a different one?

ERNSTOFF: This is the recodification of federal criminal laws and there are some provisions.

GRAHAM: Is there other material in this bill? What I'm trying to do.....

ERNSTOFF: Unfortunately, or fortunately, one of my partners is working directly on it and I'm a little bit more removed.

DELACRUZ: Carroll, you got a letter and you got the number of that bill. It came to the Judiciary Committee. It was formerly S1. It was revised. It's the total federal code that deals with federal law throughout the United States and Title 18 is the Indian section. And the federal code.....I don't know when the original federal code was passed, but it's all dated. It's been patchworked over the years.

GRAHAM: What I'm trying to arrive at, is retrocession in this bill?

DELACRUZ: In Title 18, yes. And that's what he referred to, that the Attorney General in the State of Washington for twenty years has been offering stuff like that as opposed to the Governor who took the same position as the former governor on the problems that were created.

GRAHAM: In other words, that means that if this would become law and the tribes that had given the jurisdiction to the state could take that back if they wanted to. Do you have..... I noticed that you talked about it a little bit....do you have any evidence that when they've given the jurisdiction to the state that it has not worked well and it would be greatly advantageous to turn this thing around?

ERNSTOFF: It depends on what tribe and what state. The Colville Tribe that I'm here for today definitely has evidence that since 1965 when Public Law 280 jurisdiction was implemented the reservation has suffered in terms of law enforcement. If you study, for instance....Colville's presented substantial evidence before the American Indian Policy Review Commission, a commission established by Congress and about two years ago, studied pretty thoroughly the whole area of Public Law 280 jurisdiction. The conclusions reached, this is a congressional committee, the conclusions reached by the congressional committee, I think probably to their own surprise, was that, and this is words of the commission report that was put out by Congress was that Public Law 280 in most areas was a total failure. And the result was that there really was not sufficient law enforcement, for a lot of good substantial reasons. An area of the Colville Reservation of extensive trust lands - there's no revenue generated for the state to be able to support substantial law enforcement. There's no revenue being generated by taxation on a federal reservation and you've got a certain amount of tax dollars, that money's going to be spent in the areas of the county or the areas of the state in which there are non-Indians living who are paying taxes. That is part of the problem. In addition, this report which is a report of Public Law 280, basically, since 1953, wherever it's been implemented also shows a consistent pattern of discrimination by state courts, district attorneys, police, against Indian people arrested and prosecutions of Indian people where the same thing isn't happening to white people. It just goes on and on and like I say, I am not quoting to you from the various reports that have been done by the National American Indian Court Judges Association and the National Congress of American Indians, they have plenty of evidence of their own, I am talking about an independent congressional committee that came up with this conclusion. As far as Colville, they came up with the conclusion by themselves. In 1965, the original Colville Council that was in office then, requested state jurisdiction presuming that it was going to improve law enforcement on the reservation and the result of the last 14 years had been a terrible one and that they now want to take back the burden of jurisdiction. When I talked to state legislators or others who

are involved in state government who think that Indian tribes are just longingly grabbing onto all this jurisdiction - it costs alot of money to take this jurisdiction back. The Colville Tribe, out of its own pocket, this is not federal funds, pays over half a million dollars a year, out of lease, income, timber income or whatever, to have a police force. I assure you that, representing them, that if the state and county had given sufficient law enforcement, protection and administration enforcement on the reservation, they would take that half a million dollars and have alot better things to do with it. So that it is not a grabbing for power, it is really taking care of the need. For instance, the county which we were talking about, Okanogan County, which has a number of deputy sheriffs, has one part-time deputy sheriff to cover about half of the county which the reservation is on and the rest of them are in the urban area, it is not exactly a city, but the towns where the non-Indians live. One part-time, eight hours a day person couldn't possibly cover the 2,300 square miles of the reservation. So, there are really no police there except the tribal police. And we are looking for retrocession there to be able to take over the problem again. Now, I don't know what it is like in other states, but I know in the State of Washington, we have had these problems and Congress itself has recognized.

GRAHAM: You say - in what report was this?

ERNSTOFF: This is the report to Congress of the American Indian Policy Review Commission.

GOULD: The green book.

ERNSTOFF: Yes, the green book. They're all green but that's a big thick one.

DELACRUZ: Are there any examples where tribes have taken back jurisdiction?

ERNSTOFF: Since 1968, there has not been the possibility of any new extensions of Public Law 280 jurisdiction without the approval of the tribes and to show you, I think some extent where tribes are, I don't think any tribe has asked, except maybe in this peculiar Rhode Island situation, has asked for state jurisdiction. The problem is, there is no means of retrocession, there are no means of cancelling jurisdiction that was taken, even if, by the way, the state approved it, there is no federal means of carrying this out.

ANDERSON: I don't understand why the Menominees, why you want to create a tribal police force when you already control.....

WAUKAU: It's a jurisdiction question.

ANDERSON: Why couldn't you just take and have your tribal counsel appoint a sheriff and two or three of his deputies as your tribal police?

WAUKAU: That is a situation that is strictly in tribal control - that the tribe does not see it that way. We're talking about cross-deputization from one conservation of funds and one operating unit. But the opinion by Mr. Niemesto's office spells out that regardless of how you do it, you must have two separate entities represented. You can just cross-deputize and interrelate on that. Does that answer your question?

ANDERSON: Well, I guess so.

WAUKAU: You know it is easy to spell out that it be done that way, but you get to the actual mechanics of doing it, that is the hard part because the tribe doesn't always see eye to eye that it should be done that way.

ANDERSON: But the tribe controls the county?

WAUKAU: No, they control the tribal government, the county government is a separate, autonomous unit. The tribal, town, and county have coterminous boundaries - we have three governments operating in one.

ANDERSON: I think what you are saying to me is that those Indians who are elected to county government posts don't listen to what the tribal council is saying.

DELORIA: See, there are non-Indians who live within those boundaries.

ANDERSON: I understand that, but all the county offices are held by Indians.

WAUKAU: You have to abide by the constitution and laws of the State of Wisconsin. You can't just put your own thinking in there, you are bound by the two big books that comes out from the state every two years.

DELORIA: Maybe John, you give some examples of limitations on the power of the counties that state government creates that would not limit the tribe and that is why they have them.

NIEMESTO: I think, conceptually, what you are suggesting has some attraction and seems to make sense. The problem is you have, under existing Wisconsin law, a county. The county has responsibility in a territorial sense within that reservation area. The state has jurisdiction over situations involving non-Indians, where Indians or Indian properties are not involved. The tribe has, in terms of its governmental function, different purpose, different objectives, different laws to a certain extent. It needs, in effect, a separate government, in order to implement that. Now you can solve the problem in a couple of ways. Simply eliminate the county and go back to the situation which existed before where you have adjacent counties sharing responsibilities for certain areas, but in terms of control, it creates a problem for the tribe because, then, the tribes does not have control over county government. But, that is really the reason why the dual system is required.

WAUKAU: Could I add to that? Prior to 1961, we were in two counties. We had O'Connor County and Shawano County. Now, the reason we had our own tribal police structure, even though Public Law 280 was invoked, that we had to have, because I posed the question to our District Attorney of Shawano County: "What would happen if the tribe did not have its own law enforcement situation?" I was on the Law Enforcement Committee at the time. He said, "When the bodies get that deep, then we come in and spend some county dollars." And that kind of answers what we are talking about here. That you have specific jurisdiction questions. Our tribal police were deputized as deputies of Shawano County and also of O'Connor County. There were kind of lopsided from carrying too many badges. That's what happened. It's not a facetious statement. But that is exactly what happens.

ANDERSON: The second question I have is, where does the county derive its revenue?

WAUKAU: We have a development area in the county which is 5% of the total area, which is a lake development area which provides the taxes, the tax basis.

ANDERSON: You levy property taxes on that?

WAUKAU: Property taxes, that's right. In fact, we just got through with our town and county budget in November and our levy's more reasonable than some of the other areas.

ANDERSON: Are those monies sufficient to run the county government?

WAUKAU: Nope. We just about make it. That's what I mentioned, the impacted aid situation.

DELACRUZ: Let me ask a question along the same lines. You represent the Attorney General's office, the tribe and the county. It appears to me that Wisconsin recognizes Menominees as citizens of the state; they recognize their government, they recognize the county government. It seems to me that there is a responsibility for the State of Wisconsin, if funding is your problem. Does the Governor's office recognize that, too, or just the Attorney General's office?

NIEMISTO: I can't speak for the Governor's office. I think they're, as the executive branch, the people that have to, along with the legislature, take the hard look in terms of where dollars go. As I indicated there are alot of services that are paid for by the state and probably will continue to be paid for by the state. With respect to the tribes, and Menominee, I don't think is an exception, there seems to be a sense of, I don't know if it's fear or caution, would be a better word, about becoming too dependent or involved with the state in terms of funding. Once you start breaking down that relationship between the federal government and the tribes, there is a real danger. You know, now we have an Attorney General in Wisconsin that seems to be taking an objective approach. Five years from now, that might not be the case, and you may

be reverting back to the situation that has existed historically and that is for the states to try to wrest from tribes control, jurisdiction. So they are very cautious - the tribes are very cautious.

GOULD: Bruce, what was the basis for the sheriff refusing to take a prisoner from tribal officers? He said it was a foreign nation, but there is really no legal basis in that, is there?

HALEY: Well, his legal basis is that we better go back to school, is what he said. It was - basically what had happen, the county to the south of us had issued the warrants and the county we took the prisoner to, which was the closest state jurisdiction.

GOULD: Was that Snohomish and Skagit?

HALEY: Right. He just didn't want to accept the responsibility. Sheriff Boynton was not there to accept the responsibility so we were basically told that they were not going to touch us with a ten foot pole. Again, alot of things have changed since then. We are on the sheriff's radio frequency now in Skagit County. We attend, as we discussed this morning, the county -- I'm a representative on the county law enforcement administrators board.

GOULD: How did the change come about -- was it a change in sheriff or a change in attitudes and beginning to understand?

HALEY: It's the same sheriff; it's just an educational process between him and myself, and again the officers on the street level being able to relate to the county officers and all of a sudden, the deputies saying that tribal enforcement officers know just as much as I do. He has better training responsibilities available to him.

GOULD: But, somehow, you had to get around his ego problem in order to get him to understand that or accept it once he put himself out.

HALEY: I don't know if I'd want to call it ego problem, I think it was just ignorance, he just was not aware.

DELORIA: What if this alleged perpetrator had just walked in there and surrendered? "There is a warrant for me in the next county and I want to surrender here." Would he have said, "Go back to school, you have to go down there." What's the practice?

HALEY: I don't know because alot of the counties in Washington, and again, it is civil liability, is having some very difficult problems in basically warrants from county to county, alot of sheriffs won't accept any prisoner unless a certified copy of the warrant accompanies the prisoner, and that may include if a person turns himself in. We didn't have a certified copy of the warrant, all we had was, we had talked to the chief of the warrant division of Snohomish County, and he

said, "The warrant is good. We will have a deputy enroute from our jail to the Skagit County jail to pick that prisoner up." And I was only asking for, maybe a half hour, holding at the Skagit County facility. And that was one of the problems, but we have that solved now.

GOULD: Andy, you mentioned that your officers cannot prosecute non-Indians for violating the hunting and fishing regulations? I'm going to show my ignorance. Is that because of state law or is it because regulations are tribal regulations or what is the situation that allows that?

JOSEPH: Because of, I guess, the Oliphant case, they don't have the jurisdiction to prosecute them.

GOULD: Prosecute state regulations?

JOSEPH: If they catch a non-Indian hunting on a reservation, on deeded land, that has been sold by another Indian allottee to a non-Indian and becomes state's tax land, then they can't prosecute him. Even if they catch him on Indian land, they can probably confiscate his gear.

ERNSTOFF: It's very complicated. On trust lands, in the reservation, a tribal police officer, who has a federal commission, can arrest someone under federal law. There is a federal law that says it is illegal to hunt, trap or fish on trust land without lawful permission. That has been interrupted to mean without the tribe allowing you to do it or being in violation of tribal reguations. So, there is no problem on trust land or fee land. On fee land, because of the Oliphant case and a recent 9th Circuit decision in the Crow case, it's a strange kind of situation. I will tell it to you the way the law is, even though it seems very complicated. And that is the following. As to a non-Indian who does not reside on the reservation, this means even a non-Indian who owns land on the reservation, but doesn't live on it, such a non-Indian may be prohibited entirely from hunting, trapping and fishing on an Indian reservation. As to a non-Indian who resides, even though he doesn't own, on fee land on a reservation, he cannot be prohibited completely from hunting, fishing or trapping. But he can be regulated as long as it is a reasonable and non-discriminatory regulation. So you can have seasons, bag limits, permits and things like that.

GOULD: You mean tribal regulation other than state regulation?

ERNSTOFF: Right, tribal regulations. So some non-Indians on fee land can be prohibited from doing anything. Some non-Indians who reside there can only be regulated. Then the problem comes down in either case, what is a prohibition or regulation when you have no court power over there. You can't bring them into state court unless they are also violating state laws, which they are not necessarily doing. You can't bring them into federal court until it is on trust land. So even though you have the right of prohibition or regulation, you don't have the power to arrest and to try. The only powers that

remain over non-Indians on fee land are the power to exclude from reservation which you can only do to someone who's not a resident of the reservation. Or, the power of forfeiture of game. Not of arms; the court has said you can't take away his gun. All you can do is, perhaps, take away the birds, or whatever he has got. But even then, you probably have to have a full scale hearing for it. So effectively, the tribes can't really even regulate hunting and fishing on the reservations under tribal law. There is a serious question as to whether the state can. That's a case that's now in litigation in the 9th Circuit. ...(End of tape)...

It will be a violation of state law to hunt, trap, or fish on Indian reservation; but, yet you do it in violation of existing tribal law. Then, even for instance, let's say the state has a season and it's open for deer hunting, but the tribe has decided to close it to deer hunting. If the state agrees that we can close the reservation to deer hunting, even if they've opened it. But we don't have any enforcement. Then we could have a state prosecution, which would be fine....a state prosecution of someone who violated tribal law while on the reservation. In other words, the state would be acknowledging tribal law and allow prosecution through the state court system. Then we'd have some court to bring these non-Indians to. As it is, everyone admits that they are violating the law, but there's no court that has any jurisdiction over them to prosecute them. So the state law could be changed -- an amendment like that. Let me give you a kind of example, though, where the state doesn't cooperate in things like this. We had won a case against the state - the Colvilles - saying that the state does not have jurisdiction to regulate hunting or fishing on the reservation, only the tribe has that jurisdiction. That's now back on appeal to the 9th Circuit. When we won that the first time around (the technical reasons come back and forth), the state game department objected on the grounds that - well, how would you know when these non-Indians left the reservation - how would you know that the deer or fish that they caught were taken on the reservation under tribal regulation and not taken off the reservation in violation of state law? And so we proposed a tagging system. In any place in our reservation where we sold tribal permits, you could come back to us and get a tag signed off with a seal by a tribal game officer, saying that they were taken on a certain day at a certain place. That way, when you get off the reservation (and tagging is done all the time), if a state officer stopped you, game officer or anything, you could show him that you had a permit or a tag for those fish or game. But then, we got an injunction against the state in another case, a related matter, and that got the State Department of Game angry. Ralph Larson, the State Game Director, just got angry, that's all. And he proposed to the State Game Commission at a meeting which I was present and testified, that they remove that regulation. All that regulation did was to protect the non-Indian hunter or fisherman, so he couldn't be prosecuted when he left the reservation with fish or game legally taken on the reservation. It was a protection for him. It gave him

sort of a permit. And the State Game Commission voted to eliminate that regulation. So, it's no longer part of state law.

GOULD: When was this?

ERNSTOFF: Maybe seven months ago, six months ago at a full Game Commission hearing. And I testified and I said, "This isn't for the benefit of the tribe. This is protecting your constituents." And the sportsmen groups were there. They testified on the tribe's side.

GOULD: Was there an effort to change that legislatively at this session? I don't mean to get into individual problems..... We'll talk about it later.

DELACRUZ: That's an attitude of the Attorney General's office and Game Department. They do that on the east side, but on the west side, they won't bother us. And they don't require people that don't need a fishing permit to come into the national park. You have to tag your stuff when.....

GOULD: Why don't we discuss these things later so I don't take up everybody's time.

ERNSTOFF: I think....if I could just.....one final statement, not directly on this, but what this suggests, though, is that someone said earlier, it's a matter of personalities. And what it suggests is that that's very much true. I think that if you eliminated the elected officials--politicians, the Attorney General, and all that--and you dealt on a people-to-people basis, you won't see the kind of objections. The non-Indians of the Colville Reservation never objected to the tribe exercising jurisdiction over them because they found after a while that instead of waiting an hour for a policeman, they only had to wait two minutes. Even at Suquamish, a little reservation where the Oliphant case came up--at the beginning of the tribe's exercise of jurisdiction, the whites were angry as anything. Within about two years, though, after the Oliphant case, we had a whole group of non-Indians on the reservation petitioning the federal government--some sort of petition they put around--to get back tribal jurisdiction because they found that for the first time they had a local police force. So, I'm suggesting it's not--and the same is true, I think, of the local state game officers, the local state police, things like that. There's no problem among the local people. It's a conceptional problem for people like Attorneys General and chairmen of legislative committees, who aren't there where it's happening, but, conceptually, they don't like the idea of Indian jurisdiction.

GOULD: Your fallacy is that you don't get rid of politicians.

ERNSTOFF: Oh, I'm not suggesting it. I'm suggesting that politicians probably, though, could learn alot if they really explored the actual pragmatic facts, and not just presume that white people don't want Indian jurisdiction. Because you'll find where it has worked, that it's not true, and that non-Indians

do not object to Indian jurisdiction if what they see is an improved criminal justice system of some sort.

DELACRUZ: You alluded to training this morning. Police officers are required. And there's a difference, I know, from the Bureau training--they already go through at least what the State of Washington requires. They are the same. Did either one of your tribes use state cooperative agreement act to get your officers into that?

HALEY: I have officers who have been through both. And what we've done now the tribes in Washington State have received some funding and we're holding an academy for tribal and state officers that are certified by the Bureau of Indian Affairs and the Washington State Training Commission. It's more or less a first and what we hope to do is to make it much easier for tribes to receive cross-deputization. It's a model program which we hope to have funded on an annual basis and not because we don't feel that the Bureau or the state is not addressing the proper needs, but because we're on a low priority with the state for what officers we do get in, because of their mandatory training laws for their own officers. And the Bureau of Indian Affairs may only put on three classes for the whole United States in a year. And we have a backlog now of 30 students that were going to start training January 14th that are tribal officers and six state officers that work with Indian tribes. And all of them will receive certificates from both the Bureau of Indian Affairs and...we hope this will be a first start inter-agreement cooperation.

DELACRUZ: I have another question, Bruce. I know some people in the audience would...they get this large tribe, small tribe--and it's large tribes who take care of some of these things. And I want you to point out loud and clear what the Skagit Cooperative of twelve tribes that are into it...what are the sizes of them?

HALEY: Okay. I have four tribes that I deal with and we're dealing with maybe--the most we have--the largest tribe, which is this one with tribal community is less than a thousand members. And a couple of my tribes are 250-300 people and no reservation--would have no support from anybody moneywise or anything else if the cooperative enforcement, for the Skagit System Cooperative, as we call, hadn't come about where they had decided if we can get any money--and at first, they asked for money from the Bureau on Public Law 638 and some other sources--and were denied because of their size. But because of forming the cooperative and it being sort of a model because these are four tribes that didn't get along prior to this, putting it nicely -- and were able to work out a management system. The Skagit System Cooperative is not just an enforcement division-that's just a branch. We also have the management contract, the biology and enhancement contract, the enrollment contracts of these tribes. And we operate under a board of directors with representation of each of the tribes. And we just now got into nuclear contracting and our tribes stopped two nuclear plants going in on the

Skagit River. And these are just little dinky tribes along the river system that were able to fight a multi-million dollar power company in the State of Washington and in the State of Oregon. I don't know if that was the state's position, but the city of Seattle sure wanted it.

GOULD: You say Seattle wanted it?

HALEY: Well, not the city of Seattle, but in that area that had to ...the power. But we drew some grants in testifying and before Congress and some of the other committees, and bringing our....the politics in the county. We were able to stop through the county commissioners the relicensing for the plant. And we lobbied; we did alot of things county-wide and state-wide and federally to get that stopped. And it all started because there were four volumes, each volume about this thick, that came on the nuclear plant and there was one-half a sentence that talked about Indians. And that was "and the only people to take fish commercially were the Indians." And we didn't feel that the Indian issue was addressed sufficiently--and then received grants from different foundations to study the genetic problems with Indian people of that area, the fisheries' problems, the socio-economic conditions, and through education and working with other intervenors in the nuclear project, we were able to get it stopped.

DELACRUZ: I have another question and I don't think you dwelled on it too much in your statement. Since the Boldt decision, alot of tribes are exercising law and order jurisdiction over their members outside of their reservation, exterior boundaries in their fishing areas. How are you working that?

HALEY: Basically, the reason that most of the smaller tribes now are able to have a law enforcement agency is because of the Boldt decision, or United States v. Washington, which was just affirmed by the United States Supreme Court last July, and made us eligible for Public Law 638 funding from the Bureau of Indian Affairs. But, prior to that, being Public Law 280 tribes, the Bureau said, "The state has jurisdiction over you--we don't have the money, and so if you have tribal funds, you may want to assert concurrent jurisdiction. If not, then the state will take care of you." But because of the treaty rights in regard to fishing under the Boldt decision, money didn't come down. Alot of the tribes then, all of a sudden, put together law enforcement programs to address the issue, basically of fisheries enforcement. But it all came about by the treaty rights that were negotiated in 1855 and 1856, depending on what treaty area that you were in in western Washington. And under that treaty rights, besides the right to take fish and game, they also reserved the right under the same treaty that Barry talked about, to deliver up lawbreakers to the proper jurisdiction. And that's where we assume at least within the Swinomish and the tribes I work with, a concurrent jurisdiction with the state. And "usual and accustomed" -- that's why we patrol three counties for our tribes. It's not just where the reservation boundaries, not just trust lands, but we patrol everything where there may be an Indian that is recognized by the federal government

as their Indian country for that tribe. And this was after alot of testimony by anthropologists and other people like that.

DELACRUZ: Do you have grievance with the state of fisheries control and.....

HALEY: Right, we have, at this point, non-written agreements with the Department of Fisheries. Just last month, we met with the chairman of the Natural Resource Committee for the Washington State Senate, and represented to the state Fisheries Department, and after giving our presentation and talking about the training of my officers, the chairman of the Natural Resource Committee for the State of Washington turned to the Department of Fisheries and said, "Why don't we commission them as State Fisheries Officers because they're better trained?" And, of course, the Department of Fisheries was not really that thrilled about it. But, we are proposing at the state's insistence a cooperative model, a written agreement that we hope to have presented at the next legislature of the Washington State Senate.

ANDERSON: _____ handles the fishing problem?

HALEY: A cooperative agreement not only in enforcement, but the fisheries problem between the state and the tribes.

ANDERSON: You're Sheriff?

HALEY: No, I'm with the tribes.

ANDERSON: Oh, I see.

DELORIA: I'd like to ask anyone on the panel about.....Part of this analysis that we keep running into seems to come down to things like ignorance and communications problems between two governments and attitudes. Taking those things for granted, even if you straightened out those problems, can you identify some substantial policy reasons that would constitute problems of the two governments working cooperatively? Standards in the law, ability to change the standards, change the criminal code when you want to, the supervision of the personnel and what other kinds of issues come up once you get everybody educated and everybody good attitude, what are the remaining problems?

NIEMESTO: I think one thing that seems to be a major concern at least to alot of people at state government level, I'm not sure how the tribes perceive it, but the idea of having pretty stable government in operation--I think I've mentioned this before--the idea of creating the institutions to deal with delivery of government services. I think that when that occurs, and I've heard it in terms of these discussions that were held here earlier, alot of the reservations - larger reservations have that pretty well in place. Menominees have that pretty well in place, but with respect to some of these smaller reservations in Wisconsin, I think that tends to be a major obstacle.

DELACRUZ: Would you say that's happened at Menominee? Because you have direct government to government relations with Menominees in the State of Wisconsin?

NIEMESTO: I think it's both. I think that, in terms of comprehensive planning, kinds of things that government likes to do, the Menominee Tribe and the State of Wisconsin, in terms of some of these executive offices at least, have been communicating fairly well. Approaches have been compatible. They also have the technical people to implement. And I think that's important, certainly with respect to the operation of the court system--the decisions are good decisions. People who have a reason to watch that process work feel that the Menominees are doing a good job. And talking primarily about those situations where there's some interaction, the juvenile commitment kind of situation.

DELORIA: In the discussion, both with respect to re-establishing the Menominee government and negotiating the Maine situation, is it possible to make a judgment about which kinds of things seem to be the important consideration? Was it the ability to have legislative jurisdiction and define what a crime is and change your mind later on whether to adapt that to new circumstances, whether the state agreed with you or not? Or was it the ability to control the implementation of the criminal justice system, hiring and firing police, training them, telling them what to do? Is there a way of making a judgment about which of those is considered more important?

NIEMESTO: I think, in terms of one of the...Wisconsin...conceptually, I don't think that inter-government agreements work very well to define jurisdiction. Jurisdiction is so tied to the law that I think that that process has to be utilized whether it's opinions in legislation or litigation. But, in terms of implementing whatever jurisdiction exists, you can do a great deal in terms of just making some assumptions or concessions, if you will, whichever way you want to look at it. But it's in terms of implementing whatever jurisdiction exists that is the area where inter-governmental cooperation seems to work very well. If you're talking about trying to resolve jurisdictional questions, it doesn't seem to work at all. I think one of the main areas that continues to be a problem is in the hunting and fishing area--questions about who has what authority. Very difficult to resolve that through agreement.

TUREEN: That's a matter of bargaining. The question is whether you've got any kind of leverage to force....unless you have any kind of say, in terms of deciding what the substantive law should deal with--the jurisdiction should be unless they've got to.

DELORIA: My question is what is it that you want jurisdiction for? So you can say what substantive law is? ...hire and fire policemen?

TUREEN: Yeah, I understand the question--which is more important? Is it more important for a tribe to be able to make law or to enforce it? Between those two, to me, as a lawyer representing tribes, obviously more important is the latter, because you can, at least in a negative sense, you can change the law in the way you enforce it. You may not be able to make new laws, but you can sure eliminate any ones you don't like by just not enforcing them. And I think in terms of where the tire meets the road, most tribes lined up with pretty much a common law set of crimes. Right? They may define them differently, it may be written more completely, but, basically, you don't wind up with anything too radically different than what is normally accepted in most American states as a set of prescribed behavior. In terms of my clients, I guess some people who feel very strongly about the ability to make laws as well as the ability to carry them out -- I think on balance, they, when they think about it, they see the latter is more important.

ERNSTOFF: I would be with Tom except in one distinction, and that is that the whole category of regulation that has to do with on-reservation natural resources--water, fishing, hunting, air quality--things like that. That's one area if you start getting into it, where tribe has a substantive difference with possibly surrounding counties and with the state--and where the questions of setting up some kind of cooperative agreement or perhaps a legislative treatment of it, becomes more important. Except for those areas, where there is going to be substantive difference, I think Tom is correct--it's a question of implementing, not just because of a feeling that we'll only have respect for Indian police and Indian judges, but because until there are Indian police and Indian judges, at least at reservations like Colville, there really isn't any impact of state police and state judges. They're just not around, they're not really doing it. So, that to me, implementation is important. When you start getting into areas, for instance, of air pollution--where the state wants an economic point of view to develop industrial needs somewhere and the tribe doesn't want industrial development because they don't want the fumes coming across to the reservation. Or water codes, where the state has interest in dams or power, whatever else, and the tribe wants water to be pure, I think you will get into substantive differences in terms of certain jurisdiction.

NIEMESTO: Just one additional thought on that--at least in Wisconsin with respect to most of the reservations, tribes are very interested in the implementation of government or the exercise of government in terms of implementing programs, control of the programs on the reservation. There really doesn't seem to be a whole lot of disagreement over state programs, for example. But the tribe wants to be involved in the administration of those programs on the reservation. And I think that is something that most of the communities are striving for, and, in fact, with respect to the making laws, in many cases, we see, as with the Menominee, and it was mentioned earlier today, the adoption of state law, without going through the process of changing--maybe changing the

penalties associated with certain conduct--but, basically, accepting the substantive law of the state in many areas.

DELORIA: I asked a question this morning and was unable to smoke out an answer--maybe I'll have better luck this afternoon. Have you been able to identify any clear federal role in an evolving cooperative relationship, from the Bureau of Indian Affairs, from the Department of Justice? Have they had any experience? Are they oblivious to this? Are they encouraging? Are they discouraging? Are they out to lunch? What's the personality--I can't seem to get a fix on where the fed's are.

HALEY: We deal quite a bit in regards to funding that I see..... under Public Law 638 funding what tribes need to assert their sovereignty and jurisdiction--under.....so they can guide themselves. And our problem is we're told that the agency and area and, basically, when we come back to the central office here in Washington, D.C., they're not giving us the money. LEAA is phasing out the Indian Desk, where alot of the money is coming from, to implement programs because the Bureau of Indian Affairs can't get the money until two years down the road. And now, the Bureau is losing money. It's all going downhill because I guess not enough money is being given for the tribes. And it's expensive for a tribe to start this and eventually, maybe they can be able to be self-generating, like the Colvilles are getting to be or have been. But, for us smaller tribes, we have the same sovereign power and the same rights as the larger tribes, and yet, we're not able to have our own programs going on--tribal funds--and the Bureau is cutting down, so we're having to do the same.

DELORIA: But alot of what we've heard today has to do with improving communications or opening communications where there was none before, adjusting relationships and talking about relationships, none of which costs much money.

HALEY: Oh, I thought you were talking about what do we feel is a principal need at this point from the federal government.

DELORIA: I want to know what their role is completely. Their role is always bucks. But is there any other role?

ERNSTOFF: Part of the problem is generally where the state and the tribes have to cooperate or get together is where Public Law 280 somehow has brushed, in some way, because that's where the state is going to have jurisdiction, for the most part. And, as you probably know, the Bureau's view is wherever Public Law 280 touches, the Bureau is out of business. They don't have to and don't want to get involved at all, because it means there's no federal responsibility. So, if I can answer your question, I think the Bureau has prematurely given up any involvement in trying to work some of these things out by what I think is a clear internal BIA policy--that Public Law 280 forecloses the Bureau involvement. The only federal agency which I have seen make any effort at all, as I mentioned earlier, is the Community Relations Services of the Justice Department, which, in our case, did a heck of

a job. And probably isn't that well known about, of course, it's one guy and he's got every community relations problem in the state on his desk--Chicanos, Blacks, and anybody else that's having that kind of an ethnic or minority group problem, and Indian is just another on the list. That's the only agency I've seen willing to participate. The U.S. Attorney looks at it purely in terms of jurisdiction, what he can prosecute or not. Has no interest in facilitating agreements and things. The Bureau, as I say, I think, has, as a matter of policy, rejected any involvement where there isn't pure federal jurisdiction.

TUREEN: In Maine, they just cross their fingers and hope for the best. Same thing in Rhode Island.

HALEY: I think, basically, what has to be done is the states, especially the Public Law 280 states, have to sit down with the tribes and recognize each other as governmental entities, and at times, there is a problem that the tribes feel with the state in getting this done, because the state does not recognize alot of the sovereignty that the tribes say they have.

AUDIENCE PARTICIPANT: I would like some....I'm very interested, recognizing Reuben Snake from the Winnebago Tribe in Nebraska. I think alot of the questions that were directed here--we're talking about the opposition of the jurisdiction issues here. And knowing that the Winnebago Tribe did not have criminal and civil jurisdiction. What effects does that have on the tribe as far as not having court, not having criminal and civil jurisdiction, and not having more or less a say-so in their own court program. I'm interested in something from him, because we, in Oklahoma, are developing a--we're in the infant stages of developing law enforcement and.....

MANNING: Reuben, would you like to respond to that?

SNAKE: No. ..(Laughter).. We went through about a seven year court process of retroceding Public Law 280, which was an expensive and very difficult thing for them to accomplish. And ever since that time, you know, the State of Nebraska has been opposed to the other two tribes in Nebraska, retroceding from 280. We have some very complex problems...on the reservation in relation to law enforcement. When the state assumed law enforcement on our reservation, the Bureau went out of law enforcement business and we had to rely upon the county and state highway patrol and, eventually, the state got around to hiring a couple of special state deputies. When the Omaha's receded, they put those two state deputies on the Winnebago Reservation, and they're virtually all the law enforcement we have on the reservation--is those two state deputies, because the county seat is 20 miles away and it takes them a half an hour to an hour to respond to a call. The town on our reservation--the village of Winnebago is an incorporated municipality, but they have alot of financial problems and they can't maintain adequate law enforcement within the village. So, there's all kinds of problems involving law enforcement

on our reservation, the inadequacy of it. And that's why, you know, I tried to get involved in this particular organization, because that and a number of other problems we want to resolve with the State of Nebraska.

AUDIENCE PARTICIPANT: The other question is, do you think a tribe would benefit by having our own law enforcement system and our own court system? The Indian Child Welfare Act...I guess what I'm trying to get at is, in Oklahoma, the Cheyenne-Arapahoe Tribe--we're in that very stage of development--law enforcement programs and working in that direction...to have a court and that type of thing. I'm just interested because they are having problems in Winnebago because they didn't assume jurisdiction and they lost a majority.....

MANNING: Could I just ask you -- didn't I hear a gentleman from Oklahoma today tell us that there are no reservation in Oklahoma?

DUNBAR: There are no reservations, but there are trust and allotted lands that are not reservation status--there are no boundaries, there are just little charts of land located all over the State of Oklahoma there--like reservation status, where the federal government does have jurisdiction.

DELACRUZ: I'd like to respond to you....and I'd like to go back to the State of Washington. When LEAA was passed, there was alot of....supposedly, it looked like there was going to be a few dollars for tribal court and tribal police systems, where the first step in some of the tribes....were able to get Indian people into the Indian Desk at the national level and state level. We proposed, at that time, some inter-tribal police systems and inter-tribal court systems, but because it looked like there was, at least in federal dollars, every little tribe up there wanted to establish their own court system and their own police system--30 people, 60 people. And that's just unrealistic. So it took almost seven or eight years before they started going into those inter-cooperative systems. Moneywise, unless a tribe has its own resource, and who knows, funding may get tougher--I think the reason I asked the question back about Wisconsin about the relationship with the state. There's something that I think and I know alot of tribes fear it and alot of tribal leaders with 638 contracts are getting tied to too much dependence on state funding--that you've geared the Indian Affairs in the United States as their policy for years trying to push all these things out from under the federal jurisdiction. And I think the tribe has to look at its resources and really take some realistic looks at the results of the situation. They're just going to be able to maintain areas of jurisdiction if you have....where your dollars are spent.

MANNING: I assume in Maine, Tom, that the tribes that are going to try to put their own system in are expecting some...well, not only getting land in settlement, but will be expecting some money that will help them implement whatever they want to do.

TUREEN: They're looking to deal with Uncle's dollars with the BIA contract and it's going to cost them--well, we've got the tribal police already--the Bureau funds them. They're looking to do their courts with BIA funds, not tribal funds, but BIA funds as well....638 monies....and that's the expensive.

HALEY: One of the other areas is that alot of federal support is very short-term. And it's like the show--you get support and then you no longer have the support of the federal government, not only in money, but in backing; therefore, you get--why should the state or its political subdivisions take you very seriously? You just get going, just get things operational, and then the support is withdrawn from you. A case in point--tribal police agencies throughout the United States met and decided there were some definite problems in training and technical assistance that is needed to upgrade professionalism in Indian law enforcement country. LEAA came out and told us right at a public meeting that there was money set aside and would be available for a National Indian Law Enforcement Association. I wrote that grant. I met with many people at LEAA and was told good grant-the money's there-no fear. And this was conveyed to tribal police agencies throughout the United States. And then I received a phone call....and said, "I'm sorry, you're not going to get it." And no real explanation-after raising the hopes of Indian tribal police for professional standards, goals, and alot of other things, so the tribal police began to feel--who's really backing us out there? And it all comes back that they have to rely on their tribal managers and council people, because alot of the promises that are coming down the road-when it comes down to signing the dotted line and let's get it going, it doesn't come through. One of the things is, like Joe was talking about, is the inter-tribal court system. That was originated out of the Quinault Tribe-that's the very first rough proposal was out of Quinault and has since been developed. We are the grant recipients because we have the area, in a brand new building, to house the inter-tribal court system and their staff. Again, it's servicing 14 tribes from the larger tribes in western Washington to the smallest tribe. The corrections is housed at Swinomish or will be next year-will be 12 different tribes. Our program is four tribes. It's only through these cooperative efforts of where the tribe is working together and recognizing their individual sovereignty because we each have our own tribal codes, our own things that we have to live up to. But the tribes have to band together to be able to do anything anymore because we've very hesitant on support from state and federal governments.

One question for the panel-maybe David could answer this. My understanding of the funding of these projects is that there's a finite amount of money available. And say in the 280 state where the tribe assumes jurisdiction from the state or in a case where, like Maine, tribe has not been recognized and they want to set up their own law enforcement systems, and they need this funding. But they're not given new money, they're often taking money away from the other

tribes. So, is there much friction developing between the tribes?

DUNBAR: There's always been a problem with the recognition of new tribes, because that doesn't increase any of the appropriations that are available from the trust responsibility. Tribes that are present often object. So, that is a problem and, of course, in the LEAA grants, when their budget was cut, the national efforts....courts that come out of the Indian Desk are down to the bottom of the priority list now. So, the tribes herein should start going to the state planning agencies for block grants. That may be a problem, also, because most of the money is given to continuation projects.

GOULD: Don't they have a three-year limit, though?

DUNBAR: Yes.

GOULD: So if you get into the system and wait your turn for the three years, you'll get there, maybe.

DUNBAR: If you are a continuation project. Some of them are only kept for one year. Some of the projects come out of discretionary grants. So, you might have some tribes initiating some efforts and the pot runs out of money and that's that.

HALEY: Several of the tribes that I represent are LEAA certified and we were basically told by our regional board that--put in our applications, they would look at them in three years, and then try to receive some sort of priority. And it doesn't really give you much of an incentive to even put together a program.

DELACRUZ: There's a question back here, but I want to make a comment on this, where tribes, when you're talking about federal budgets and federal processes, and if you follow, especially the Bureau program. The LEAA was established for so many years, the Bureau was supposed to be working that into their budget process. And every year, the administration, OMB, sets the Bureau's and Interior's budget. There hasn't been the dollars to pick for any of these programs. So, let's just spread the dollars thinner to any new tribes coming in. And, eventually, that is going to create a problem. Some of these tribal governments began to read some of the budgets, the way the money is distributed to different tribes and see a couple hundred thousand dollars over here for the same amount they used to get. I see that the Bureau just hasn't picked up any programs.

AUDIENCE PARTICIPANT: Alright. Question. I'd just like to respond to Sam's inquiry about the BIA's role in cooperative agreements. Essentially, the BIA plays neither a positive nor negative role. They did not encourage; they did not discourage. They have provided, however, funding for the tribe and I believe that really in the situation that the Bureau has not been consistent in their treatment of Public Law 280 tribes. And I think that's something that might be looked at. With respect to their funding, it seems to me that that

ought to be given alot of consideration. The Bureau of Indian Affairs really is a federal program that says when it presents its budget request to Congress that these funds are to assist tribes in developing their own law enforcement programs. Their budget request doesn't limit their program to enforcement of federal laws. They explicitly say they are assisting tribes to enforce their own. Several years ago, they got a significant increase. That was to be the first of a two-phase increase. It is my understanding that ever since then, the office demanded a budget that said you have not justified your second stage. And they have a very complex system of recording law enforcement incidents into a computer and that process of justifying funding of BIA's support of tribal law enforcement is still going on.

TUREEN: I was just going to say that friction is obviously going to come if it isn't here already and I'm just going to predict that it's not going to only be carrying with it antagonism towards newly recognized, but I would rather consider them long-ignored, tribes. I think it's also going to turn inward because the Bureau's treatment of already or long-recognized tribes is anything but equitable. And it depends as I understand it on the political clout of the various tribes in various areas and historical accident and alot of other things. I understand also from OMB, those faceless folks over there, that Indian affairs is the one area in which they don't scrutinize things internally. They look at the budget and that's it--you know, the total figures, and they don't look at how it gets spent out on a tribe by tribe basis. And that has, of course, contributed to perpetuation of those inequities. It ain't just for the new tribes' folks, it's for the old ones, too.

DELACRUZ: Does anybody else have any questions? If no one else has any more questions, there's alot of people here on tomorrow's agenda. If you want to get on an agenda and make a presentation to this hearing, would you please see Tassie, so she'll put you on the agenda. If there's no more questions, then we'll recess.

MANNING: Those of you who don't have a program, tomorrow's agenda will start at 9:30.

<u>December 18, 1979</u>

DELACRUZ: Robert Neumiller, Chief of Police, WolfPoint, Montana....is Robert here? Charlene Marcus, Indian Justice Specialist, State of New Mexico; Bruce Haley; Sebert Young Bear.

YOUNG BEAR: Good morning, I'm Sebert Young Bear from Pine Ridge Indian Reservation and I'm the vice-chairman of the Public Safety Commission. And we are set up under Public Law 638, a contract from the Bureau. I heard some statements made yesterday and made me feel like I belong to the wrong tribe or something because we never had any cooperation from state or from the Bureau as far as law enforcement. Then, back in 1972 and 1973, money was free for some reason. I think it

was because of the Wounded Knee takeover they spent alot of money on law and order. Then, our law and order kind of deteriorated again. But, it was always....for my part, I always blamed the Bureau for this because of the funding. They've been free during certain administration with their money, then again, they're pretty tight with their money. And where it causes a kind of inter-fighting within a tribal government is because once we get our money through the Bureau, then if we want to improve our law and order, then we have to take money away from education, welfare, employment assistance, aid to tribal government. And it kind of causes us to get into inter-fighting with the local superintendent because of the programs that they want to promote within the agency. This is why we went from a 13-man police force--now we have a staff of 69. And this was this last two years while we were under 638. And this is why I'd like to ask for some kind of assistant or help within our police--or agency of law enforcement, because all we're doing is we're just fighting among ourselves over money--because there's never a straight funding source coming to the tribe, whether it's through the Bureau or the tribe. Because we either take it away from the welfare kids or we take the money away from our children going to college and high school. So, this last time, our budget is $1.5 million under the contract 638. And they give us a $300,000 add-on appropriation, but we never received that money yet--$300,000.

DELACRUZ: The area Pine Ridge is quite a large reservation.

YOUNG BEAR: Yes, we're second largest Indian tribe.

DELACRUZ: Second largest Indian tribe? Well, how many acres?

YOUNG BEAR: Fifty-five hundred miles.

GOULD: And how many people?

YOUNG BEAR: We're close to about 14,000. And this is why I think something should be done on this analysis, that's coming out of central office to area office. We're constantly fighting over money. We take money away from one agency, one program. And as far as state relationship, it's pretty poor. This one county sheriff that we have in Shannon County is very cooperative with our local policemen, but he lives right in Pine Ridge, so he has to cooperate. ..(Laughter).. But he's been pretty active. But that's our problem--is money source as far as law enforcement. We went from Bureau--we went from tribal police to Bureau, then, back in early 1970's, we were under the Buy Indian contract. And that kind of fell apart. Now we went back to Bureau and now we're under Public Law 638.

DELACRUZ: Were you ever under any LEAA funds in your programs?

YOUNG BEAR: Very little. And our court system is always in a constant battle of trying to figure budget, money for the budget, which they'll kind of negotiate with Bureau and LEAA and tribe.

ANDERSON: Can you tell me where the tribal council receives its monies?

YOUNG BEAR: Our biggest share of the salary for the tribal council is coming off our income off our tribal land. The biggest share of our money comes out of the Bureau. And we have a four cent sales tax that we get directly back from the state back into the tribe. So, our income is very limited, as far as that. We have all kinds of resources on and around the agency, but it's like I said, we never received any of that, but we're still in a fight over our Black Hills plan, which is not over.

? : Sebert, do you have any idea how many million dollars the Pine Ridge Reservation, Pine Ridge people, because of the federal programs, the Bureau, generates to the counties?

YOUNG BEAR: It's in the millions of dollars and we never see any return from it.

ANDERSON: What was that...?

DELACRUZ: No, I'm talking about the different federal programs, the BIA, the federal funds that go into an area; it's hundreds of millions of dollars.

GOULD: Where does it go to?

DELORIA: Salaries....federal employees.

GOULD: In Pine Ridge?

DELACRUZ: The whole area of South Dakota.

YOUNG BEAR: This is our attorney for Public Safety, Bobo Dean.

DEAN: Yeah, I'd just like to explain that on the law enforcement budget, with the question that Mr. Young Bear was raising with reference to the band analysis is something that was a problem for the Public Safety Commission in the past year. And it illustrates, I think, the Bureau of Indian Affairs funding issue. The Bureau has, for the last several years, each year funded law enforcement at Pine Ridge--at one point, two million dollars. Since the Bureau has gotten no increase in its appropriation, the only way that the Oglala Sioux Tribe could increase the funding for law enforcement is either you take it from the very limited tribal income, which is simply not feasible or to reprogram or rearrange, which, under the so-called band analysis, the Bureau does allow tribes to do, rearrange the funding of BIA programs--education, social services, law enforcement, conservation programs--the different programs the Bureau funds. Each year, the Bureau allows the tribes to have an "input" into that process. The tribe concluded that it could not increase the law enforcement budget by decreasing education and other important programs. But the Bureau had constructed on the reservation, and is constructing, three new detention facilities to allow prisoners to be confined in their home communities out on

the reservation. It's a very large reservation. Those facilities were constructed by the Bureau -- they've been in the works for a long time. The Bureau planned no increase to allow for the operation and equipment of those facilities, so, in the coming year, these facilities have come and are coming on line with nothing in the budget to operate them. And the Bureau's position was that the tribe within its 1.2 million would have to operate those or it would have to cut. That's $300,000. The tribe refused and it went to its congressional delegation and ultimately by communicating with the Congress, which it seems to me is a long way around to deal with this problem....it got the Congress to provide to the Bureau the $33,000 needed to fit in with this Bureau plan. Now, it seems to me that that shows the cumbersomeness of the funding process and that one of the things that I really think would be useful for the commission to address is in discussing the federal role on Indian reservations--is just what role should the Bureau be playing in providing financial assistance to tribes in operating, not luxury law enforcement programs, but essential law enforcement programs?

ANDERSON: How do you derive the 1.2 million? I know, it's Bureau, but is there a formula whereby.....?

DEAN: No, it's not done by a formula. It is, as I understand, and I cannot speak for the Bureau, but, my understanding is that each reservation that has a Bureau-funded law enforcement program has over the past several years, received the same amount that it got last year, with very modest adjustments to reflect any change--and the changes have been very small-unless, through the band analysis process, the tribe has said for next year we want to reduce education or social services and increase law enforcement. Through the band, they can do that. But otherwise, it is just a recapitulation of whatever has gone on in the past, unless the Congress, through an add-on, puts something else in.

YOUNG BEAR: And also, with those three holding detention centers, Wombly, Porcupine, and Oglala, they're building a 45 prisoner facility. This is a correction facility--and there's no money to staff those two, either--that's in Kyle and Pine Ridge--and they're big jails.

GOULD: You had three hundred thousand dollars annually?

? : It was $300,000 annually for the operation of the three facilities. Actually, there are four, but one replaces an old facility. So, there is some increase as you.....
(end of tape)....

YOUNG BEAR: Pine Ridge had been using an old jail facility which was built in the early 1900's with a capacity of seven. This old facility had a daily average of 45 prisoners. There is usually a ten per cent rise each year. This year has been quiet. Most of the daily average of 45 are in for alcohol related offenses.

There is usually a system of selective enforcement on the reservation. For example, two years ago, I grew out long hair to support my son who has become very active in native religion. Prior to this, I had always been very athletic and so I had short hair. After I had my long hair, I was driving in the neighboring Rosebud Reservation and was stopped by a state trooper and was yanked out of my car for the first time ever. When I had short hair, I never had any problems like this.

GRAHAM: If all these offenses are alcohol related, do you have any alcoholic treatment centers?

YOUNG BEAR: We have a project recovery which, if funded by ONAP, but it is insufficient.

DELORIA: Do you still have a work release program?

YOUNG BEAR: We started out with a work release program under the law enforcement department and it was very successful. We started out with 14 cows and built up to 4,000 whereupon the tribe took it over and it is now no longer available to the law enforcement department.

GRAHAM: In Montana, alcoholics are treated as having a sickness and are put into treatment centers instead of into jail. You should look into this approach.

DELACRUZ: The problems are in obtaining federal money to do the job completely. We will receive money to build a jail, but then we will not be given sufficient funds to have the needed support services, like dispatchers to make the system effective. So tribal jails and law enforcement systems do not meet the state standards. Tribes are trying to maintain services to their people but they do not know where the funds will be coming from for the next year.

GOULD: Why not build detoxification facilities instead of jails?

YOUNG BEAR: Pine Ridge is trying to build local facilities so we do not have to remove prisoners from their local communities.

ANDERSON: Do you have any cross-deputization agreements?

YOUNG BEAR: No, not between Pine Ridge and the state beyond the one sheriff on the reservation.

DELORIA: What is your relationship with the FBI?

YOUNG BEAR: Our relationship with the FBI is poor. Some people are above the law and others are not.

MANNING: What do you mean by some people are above the law and others are not?

YOUNG BEAR: I mean by the system of selective enforcement. Some people are prosecuted and others are left free.

DEAN: Since the tribe has contracted law enforcement, the selective enforcement problem has fallen. Even the FBI officials admit this. I would like to see it worked out so that we could have federal status for the tribal police officers since I feel this results in better law enforcement overall.

YOUNG BEAR: We have a problem obtaining funds for new vehicles. In Porcupine, we have three vehicles and all have around 130,000 miles on them and one uses eight quarts of oil a day. But we cannot get BIA to replace any of them.

DELACRUZ: Could you tell us about your tax agreement.

DEAN: The state collects a 4¢ tax in the reservation area and shares the proceeds with the tribe. The state was afraid to enter into this agreement but at least it would be getting some tax money out of the agreement that it would otherwise be losing. So now the state does get some benefits and the tribe benefits also from its share of the revenue, which amounts to between 132,000 to 134,000 dollars per quarter.

DELORIA: Has this tax agreement ever been challenged?

DEAN: The agreement was challenged in state court, but the suit was dismissed. Also, the legislature has considered abolishing the authority of the state to enter into these agreements, but it has not done so yet. The state has also entered into agreements with other tribes.

DELORIA: Have the tribes ever complained about the FBI services?

YOUNG BEAR: They once sent a letter offering to split seven major crimes with the tribes.

DELACRUZ: Has the U.S. Civil Rights Commission ever held any hearings up there?

YOUNG BEAR: They did meet in Sioux Falls, but not on the reservation.

HALEY: I want to talk about two things today - Funding and Cooperation. On a daily basis, we work with seven federal agencies. Since we are a P.L. 280 state, the local BIA Agency serves 12 different tribes, four of them in our cooperative, and it has just two law enforcement officers. They spend their time on small items and we cannot get cooperation on large items. They spend most of their time at the one non-280 tribe which also has the largest tribal police department. It is not so much disinterest as it is a lack of personnel.

The FBI is basically used as a training source by my officers. The FBI is very dedicated at training. The FBI has now assigned an officer to work with us out of Everett, Washington. He now comes to our office instead of us having to go to him. We can work with him and now we are developing a mutually beneficial relationship.

The U.S. Attorney's Office - Reservation crimes are always a low priority. They are like doctors and do not make house calls. So we must travel over 100 miles to them, and we can never meet with the same person. It is always a different person and so each time, we must educate the person from ground level.

The U.S. Marshall - We did not work with the U.S. Marshall until the Boldt decision where they had to serve the court orders. They did a good job and were diligent.

The National Marine Fisheries Service - The Service has the ability to board boats to check for fishing violations by using U.S. Coast Guard boats as platforms to serve from. They use the Coast Guard to place officers abroad big boats. Several times, the Coast Guard had to come out and rescue some state officers and small craft against non-Indian gill netters in Puget Sound that were attempting to sink their boats. We found that the National Marine Fisheries Service, while undermanned, were trying to do their job but again, a lot of it was just talk. They were talking about the good job that they were going to do. All the manpower that was going to be brought in from the United States, from around the United States. How the Coast Guard was going to get more craft from other Coast Guard districts and that there was still just a very few of them out on the water enforcing the federal court rules in regards to illegal fishing, or what we call back in Washington State allocation fishing where the Indians have the right to fish but the non-Indians don't.

The last is that we work closely with is U.S. Fish and Wildlife. And we've found that we really don't get much support out of them. We've had occasion on the reservation where in regards to duck hunting and where non-Indians have come on the reservation to duck hunt and deer hunt, which is closed. We've called U.S. Fish and Wildlife and they have basically told us that they are just too busy and can't do it. The last instance we called them, they told us that the very next day, they came up to one of our smoke shops and Indian curio shops and spent the day there confiscating all the dolls that were for sale because they had some type of owl feather on them that came out of New Mexico--and that it was a protected species. And they have three agents there that spent all day taking those little dolls. And we felt that it would have been nice if we could have had three agents to stop the shooting of the ducks and the potential danger to the Indians in the community, with the use of the weapons on the reservation. Those basically are the agencies that we work with, and it's--I'm just astounded at being a P.L. 280 reservation that we get involved with these agencies which we're not

really supposed to. The other is in regards to funding. In 1976, when I formed the agency that we have now, the federal government gave me money and said hire 11 officers and this equipment--and then, operate your program. So, I hired 11 officers, I got things going, I gave alot of tribal people alot of help for profession, for tribal sovereignty and jurisdiction through having an effective police force. Then, the next year they said, "Wall, sorry, but we're cutting your funding in half." So it ended up I had to lay off over half my department, after giving them hope, after going and talking to different county, state, federal law enforcement agencies and trying to show them that we're starting what we hope to be an effective tribal police agency, and we want their support. And I was told by these county, state, and federal officials that they've been told that before, but it always seems to go away. And I said, "Oh, no, not this time. We have federal funding and we're going to make this program work." And the federal government, what they giveth, they can also taketh away. And they did. And since then, we've managed to use tribal funds through taxes and other things, other programs to bring back the other six officers that were laid off. Again, it took almost three years to bring them back. And in this time, alot of the people on the reservation and the surrounding communities lost alot of support that they gave us in the beginning because of that. The other thing is very similar to what the gentleman from Pine Ridge was talking about. We got 1.3 million dollars to build a criminal justice facility on the Swinomish Reservation from EDA and in that, included a correction center, police department, courtroom, and offices of the court, Indian health, alcohol programs, social services, daycare center, and a meeting area. After this facility was built and we were moving in, I also contacted LEAA at that time, this was back in 1977, and the Bureau, in regards to staffing for my correction center, to let them know that eventually when it gets built and we move in, we'll be trying to receive staff to make that facility operational. And what we were working at that time was bringing in five tribes in the northwestern part of Washington State as sort of a cooperative correction facility. Well, last year, I went to LEAA and requested funding for my correction facility for just staff and operation equipment for a year and was basically told that there was no money available. After showing a letter from the State Criminal Justice Agency, recommending that it be funded. So, then, now, we have no place to put prisoners. Our tribal court could say, "Three days in jail," or whatever, but there is no sheriff's department, unless I want to go to Port Angeles, which is a couple hundred miles away and a couple ferry boat rides that will take our prisoners. So, we can't complete the full criminal justice cycle by having the correction facility. When I'm talking about corrections, I'm not talking about just locking him up in a cell and just leaving him there. When we instituted a plan in our grant where we have work release facility, alternatives, we wanted a community service officer who could act sort of like a parole, probation counselor. Located right in our facility is the alcohol program of the tribe and Indian health services, both of which had made a commitment to assist those that were incarcerated.

DELACRUZ: Where does the county and state fit in on all of this?

HALEY: Well, they recommended that the federal government out of Washington, D.C. would pay for it. That was fine, but they didn't have any state block funds that they could commit at this time because they'd all been committed.

DELACRUZ: Even on...you got Skagit County there. You haven't looked over there?

HALEY: No, they won't. Their jail has been condemned by the federal government. They will take no federal prisoners. And that's what they consider us now, that we're no longer a coordination. They consider us a federal type, so they won't take our prisoners. And Snohomish and Watkin Counties indicate that they are too full of their own prisoners. And most of the tribes that have contracts now with county sheriffs are finding that they're not being renewed because of the problem. And it's known all over the State of Washington that most of the jails in the State of Washington are either going to be condemned or something in the very near future. There are very few that meet state standards, and as the state and federal governments increase their standards in jails, they're not increasing their funding for the state and county jails. And they're not meeting the standards, so eventually probably most of their increase, which I understand, is going to be the state legislature has voted through money to upgrade most of the jails or buildings. Again, I doubt we would be very high on the priority list for incarcerating prisoners in the county jail. So, the Bureau has approached me in regards to incarcerating all the agency prisoners from the 12 tribes. But again, it's if we can find the money, develop the package, and we'll try to get you the money.

DELACRUZ: Where's the 12 tribes and their leaders fit in all this?

HALEY: Well, they've talked to their leaders, because the leaders want correction facilities for, you know, who their courts sentence. And because we're the only tribe in the Puget Sound Agency that has a facility that can meet the standards of the federal government. We have the only facility, whether it meets it or not. And the counties are no longer honoring jail contracts, the different tribes have indicated to the Bureau that they want someplace to put the prisoners so the Bureau has approached us, and if the money can be found, then we'll be approaching all the tribes for tribal resolutions to attach to our grant proposal. But, the thing is that the five tribes, seven tribes in the Northwest part on the original grant application have already given us support. So, it would just be adding the remaining five tribes and they're all in agreement or have indicated to the Bureau that they want this type of a facility.

MANNING: Could you describe the difference, if there is any, in the cooperation between-and you've described yesterday how you and the state cooperated. I appreciate that you're a P.L. 280 state. How does it differ in your cooperation or non-

cooperation that you get from the federal government in their jurisdiction in the 14 major crimes. You seem to have a good relationship with the state people. Are you getting the same cooperation? Is prosecution slower? Are convictions higher?

HALEY: In regards to federal government? Federal government has never prosecuted anything we've turned over. It's not that much, because we are a P.L. 280 and most of the crimes that we investigate, once we determine that it falls in the purview of the county sheriff, we will call, or a state patrol, depending upon the crime. We will turn the matter over to them. On major crimes, we will also send in a report to the Bureau of Indian Affairs, which is the proper channel to go to the U.S. Attorney. And then, I've talked to the Bureau people. They present the case to the U.S. Attorney's Office and nothing to this point has happened.

MANNING: That chain goes then from you to the Bureau and the Bureau takes it to the U.S. Attorney's Office. You don't go directly to the U.S. Attorney's Office?

HALEY: No, we're not supposed to, but, I just talked to my agency special officer, and if things don't change, then that's the way I'm going to do it so I can answer back to my tribe....

MANNING: Now when you say nothing is done, let's take a federal offense. You mean they don't prosecute a federal offense?

HALEY: No, because they say that because of P.L. 280, we should attempt to go through them first.

MANNING: On any offense, even though it's a federal offense.

DELACRUZ: How about on Boldt enforcement? If you have a tribal member who's violated his tribal laws, will they take those?

HALEY: Yes, we have a court. And we've cited-we can't cite non-Indians we don't have the jurisdiction, unless it's on the reservation, the boundaries itself. We've turned in reports to the federal government in regards to non-Indian commercial fishermen under the Boldt court. And we have indicated that we would be willing to testify, to identify the boat, to identify the people on the boat, mainly through pictures that we take, which is under federal crime. And federal, well, we've turned them over and nothing is being done. I've called and asked the U.S. Attorneys and they keep giving me, "We're working on it." Again, not much was done about even the non-Indian commercial fishermen who were cited by the federal officers either.

DELACRUZ: What about on Indian violators? Was the state bothering them or did they cooperate with you and bring them back to you?

HALEY: Yes, the state-any citations of our tribal members by the state that the tribe has jurisdiction-that we can assume any jurisdiction over, the state will turn over to us. And I've just meet with members of the U.S. Attorney's Office and some

other people out of Solicitor General's office in regards to working out a similar arrangement in writing like we have with the state to turn over federal violations of our tribal members over to tribal court. That may be, but we hope to have it a two-way street where they'll take our reports and take action on them. Because if we take action on our own people and they don't take action on non-Indians, then justice is not being served.

ANDERSON: What is the size of your force right now?

HALEY: The size of my force right now is 14.

ANDERSON: Where did you get the money for those? You said that back in 1976, the federal government said, "Get yourself a force of 11 officers, and the next year they cut your funding by 50%.

HALEY: With tribal funds, with CETA funds, state CETA funds and Indian CETA funds. Again, CETA is going out of existence. Right now, a person can only serve 18 months on CETA. Top pay I can give them right now is $650.00 a month. My officers being well-trained and not wanting to lose, I might pay them $1200 for the same duty but on BIA contracts. The tribe also pays out of their own money that they generate by tax to their own people. They give me money for personnel. The tribes in the Northwest mainly expected those that are involved in the fishing area, that is not only a personal revenue, but that is a tribal revenue. We have a 4% fish tax, where of all the fish that is caught and turned into a buyer, that fisherman then turns in 4% of that amount to the tribe as a tax. And that tax was passed by the tribe, 3% of that was to go to enforcement, after the Bureau pulled their money, and that's a sizeable amount. And the other 1% was just generated a year ago to support public relations and public education of the non-Indian community of the Indian people. And we've hired a public relations specialist, an Upper Skagit Indian, a graduate of the University of Washington Journalism School, to do that for us.

ANDERSON: How much money do you get from them, whatever that federal source was? Is it BIA?

HALEY: BIA?

ANDERSON: Per year.

HALEY: A hundred thousand. $123,000 in 1980 which is a double from last year. And the only reason it's doubled is because we've separated the budgets. Before they gave me $50,000 and the only reason we keep five men is because we took money out of management and it was supplemented with private funds.

ANDERSON: How many people does that support?

HALEY: That's five people.

ANDERSON: No, I mean how many assistants?

HALEY: Between the four tribes?

ANDERSON: Okay, four for enforcement. I thought it was more.

HALEY: Four for enforcement. It was 12 for our correction....

ANDERSON: No, I mean how many constituents do you have. How many Indians?

HALEY: Okay, we have approximately a total population of enrolled Indians of the tribes, about 2,500. And again, it's over three county areas.

GOULD: Practically all of it or a major part of it is fishing enforcement.

HALEY: Yes. And one of the problems we have that I wanted to bring out in regard to federal role and problems is that they give me so much money for fisheries enforcement and now, this is the first year, I've got a Bureau contract for one officer for law enforcement on the Swinomish Reservation. And the problem is we have officers coming in and out of our facility 24 hours a day. And yet, the area director out of Portland issued a memo saying that fisheries enforcement officers cannot get involved in anything in regards to law enforcement, but fisheries matters. So, where in the past, I've had people come in that have been beaten up, bleeding, technically, if we render first aid, take the person to the hospital, we're in violation of our contract and can lose all our funding. Where we've had people come in that have been bitten by dogs and taken to the hospital or we get family disturbance and I mean it's really quite a fight. My fisheries enforcement officers which may be right there have to be very selective in what to do in their duties. And I feel that it's quite a restriction to put upon my officers and myself and the tribes, to lay down that a fisheries enforcement if it's not anything to do with the fish, we can't handle it, because it loses us respect in the tribe because all they see us just standing aside and not really getting involved. It loses us respect in the non-Indian community because we can't always assist in everything. But one thing that I have notified the Bureau in writing and told my officers is that I don't care whether it's a fisheries matter or not, any agency, federal, state, other tribe will request assistance, you will give all the assistance necessary and then, we'll try to sort out the paperwork.

MANNING: You've testified now for two day. I want to compliment you. On behalf of the Commission, I appreciate your participation again this morning. I don't think you were involved in the discussion yesterday, I just wanted to know whether or not you would agree with the statements made yesterday that P.L. 280 states, or the law itself has been a failure and that it isn't good and probably should be negated. Do you personally agree with those statements?

HALEY: Yes, I would.

DELACRUZ: Okay, then we'll move on to Charlene and New Mexico, where everything's fine.

TSOODLE-MARCUS: I'm Charlene Tsoodle-Marcus. I'm the Indian Justice Specialist for the State of New Mexico and I'm under the Criminal Justice Department, which is the real state agency and funded with real state money. My job responsibility is to assist the tribes to improve their criminal justice system, which is the police, courts, correction, prevention, juvenile delinquency. And I don't have to divide my work up into non-Indian versus Indian. I am there specifically to work on full Indian projects-I've had that luxury-to be able to work in my own area. At some state agencies, sometime when the work gets low, they shove you into non-Indian stuff and you have to work in non-Indian areas to justify your salary. I haven't had that problem in New Mexico. Therefore, I service 26 tribes in New Mexico. When I say 26, I'm counting the individual Navajo chapters as a single tribe. Yesterday, the Navajos made a presentation and again, they cover all four states. It's the largest Indian nation. And part of their Navajo population, of course, covers the New Mexico area also, in the corner, the McKinley area. I worked for the state for seven years and I've been staying up with the existing systems within the tribes and trying to stand between the non-Indians and the Indians and that was one of the hardest jobs I ever took. It was difficult because one wanted you to downgrade the other and the other-the other-and finally, I got it all worked out, it turned out to be a really good position to have in the state. I think that Indian justice specialists in every criminal justice department in every state should be a visible thing, because it can, these Indian justice specialists can watchdog all the federal and state block funding that are going on in the state level in the justice area, so that they can make sure that those funding levels are reaching the tribes. Because, after all, the tribes are counted in the population that bring in those monies. And it's a right, not a gift. So, I think that Indian justice specialists in states should be employed so that they can work in the area of Indian justice. Most state criminal justice departments look at just the non-Indian justice system and they don't have anything open for Indian justice. But I think one of the components that should be open there is the Indian justice system specialists also should be included in the state criminal justice department, because they really assist in coordination of justice efforts at the local level. Because most of these Indians are going off the reservation and committing crimes off the reservation. As long as you have that, you will have need for an Indian justice off the reservation also. At one time, there were Indian justice specialists in some of the states that had heavy Indian populations and as I said before, they were doing this very thing--is watch-dogging the federal and state funds, and making sure the tribes get a portion of those justice fundings. But, as LEAA took federal cuts, the place where the cut occurred was these Indian justice

specialists-and we lost alot of them. There's one in Arizona, there's one in Utah, I believe and we lost most of those Indian justice specialists at those state levels. As a result, I think I'm the only one that's left now. I'm the only one that got picked up by the state. In terms of LEAA money, it's supposed to be seed money and somebody's supposed to come behind those seed monies and pick up those programs. My state was the one that picked up my funding right after LEAA funds ran out in my budget. And I think I was snuck into the budget or something, but I got through.

That brings us to the discussion concerning the panel today and that was the federal role in the reservation criminal justice. Again, specialists in the-the cut-out of the specialists in the Indian populated states is another example. But it's a very minute example of federal control over dollars that are improving justice systems in the reservation levels and at the state levels. Again, I see justice responsibilities-the responsibility of the federal, state, and local tribal governments-each has to work accordingly, coordinating with each other in order for the total system to work. Another important role the federal government plays is that it often holds the strings to those purses that again improve those systems. It also holds the key to all the operations in some cases, where there are federal contracts. At one time, LEAA was and is as of today, I believe, still a really important funding source for some tribes. For some other tribes, maybe they're so rich that they don't need that assistance, but in New Mexico, there are alot of tribes there that do not have any economic basis. In other words, they don't believe in digging into the land and pulling out stuff from it and we don't have uranium and coal like the Navajos. So, there's very--there's hardly anything as far as economic base on their reservation. Most of the income is made by Indian members going off the reservation and making their money out of state and returning back. So there's heavy Indian population moving across the lines daily, moving across the state. Again, there's another concern about Indian justice there. So, as I said before, the tribes in New Mexico are not self-sustaining. They use alot of federal assistance, as much as they can. They try to find as much funding as they can. And I believe this is the way it should be because again, federal responsibilities for funding toward the tribes to assist them. Just like the health department or the health funding area has their own funding for health. And I don't believe that justice has their own funding for justice. I think that's kind of a separate funding area that should be developed. I'll talk about that a little later. Now we come to the problem that, again, LEAA became the major funding. My question always was why did it become the major funding source when BIA was already out there responsible for justice improvements. And the answer to that was BIA wasn't doing, was doing a miserable job of improving justice systems at the tribal level. As a result, LEAA took over. As a matter of fact, in 1972, when I first, as I said before, I'd been working for the state for seven years. I can pat myself on the back. I was the one that developed all these police

departments in New Mexico under LEAA funds and developed all the courts and correctional and prevention programs out there under LEAA funds. Because at the time BIA just was not doing anything in terms of improving the systems out there. And in 1972, I went to this nearby pueblo, Pojoaque, it's called, about 600 people. There was a guy out there with a club and he hung it on his side and he was the law enforcement officer. He was untrained; he didn't know what he was doing, but he was out there and I don't know about if he's better but it sure saved alot of money. What I did was to send him off to training. Now he needs a salary and I can't find the money for his salary. ..(Laughter).. But, anyway, we had guys going around with clubs and acting as enforcement officers because there was nothing else there. This is the way I found the system in 1972 and 1973. And I was appalled by the fact that there was no equipment out there and BIA, every time they had a little bit of money left at the end of the budget, they would get that money, then they would use it and buy 16 handcuffs, just kind of like throw them out there and say, "Okay, just run after them," and this is what you'll get this year in enforcement budget. So, as I said before, LEAA was a godsend. But now, it's steadily decreasing. On a nationwide basis, let's look at it, take it away from the New Mexico point of view. There were funding requests from tribes and villages nationwide that totalled over 18 million for FY78 coming into LEAA. LEAA Indian Program requested only a mere 1.8 million, that was a sharp cutback in the FY77 funding level of 3.0 million. Meanwhile, other programs in LEAA, non-Indian programs, continued to increase their funds. And this inequality of cutting the funds at the LEAA level, occurring only in the Indian area.....(end of tape 8)....

were not being decided on the need for by the tribes, but rather somebody's figure of giving, for instance, one year, I was given a $12,000 figure or rather, it was a $100,000 figure to build a correctional facility. And it was the hardest thing, as a grantsman, I had to run out there and find a way to fit all that into that $100,000 budget. And this is the kind of planning that was going on at the time. Again, tribes and native villages all nationwide do qualify for state and discretionary funds and they're not getting them from the state or federal level. In some cases, either both, they're being turned back on both sides of the story, as these two gentlemen just said. And I think that this is again the inequality of funding that's going on at the national level. In light of the justice needs of many of the tribes, these were the first kind of needs that the tribe, these improvement projects, you had to be innovative. And what was innovative to the tribe and what was innovative to the non-Indians were two different things. Innovative to the tribes was one police officer that never existed there for years and years and years. That was innovative to the tribes. Innovativeness to non-Indians was a computer system or a recording system that was going to compile information, those types of projects. So, like we were talking about two kinds of things in the planning area. And I believe that again, the second problem that we were finding at the national level as well as in New

Mexico, is that we didn't have a strong LEAA Indian Desk that could really speak up for us in terms of vigorous leadership. And I believe Mr. Dale Wing is sitting in the audience. Well, I was hoping I'd see him because it's not anything personal, but when it comes to Indian justice improvement, I don't care who gets hurt, because I think that Indian justice improvements have to be made. And it's going to have to be made over alot of dead bodies. And I think that LEAA, again, Indian Desk administrator was weak and he wasn't aggressive enough to push our funding levels that were needed. And I really feel that an aggressive staff is needed there in order to push the funding levels that are needed. It needs a strong and vocal support and which way should I point, up there or there? The support is needed everywhere and especially at the main place, which way is it? That way? And I think that that's where a vocal stand can be taken. People have to be working on those levels to bring, increase the funding levels for Indian justice. And that's just not for New Mexico. That's for all tribes. There's no separate funding level in the justice area. We're using CETA manpower money and what kind of people is that going to bring. Not very much. And we're like the gentleman from Pine Ridge that were robbing the health authorities of money that could be used for children, when in actuality there should be a separate justice funding level that could be used to fund justice programs. And that's not currently available to us. Again, we need an LEAA Indian advisory council at that national level that can kind of oversee some of the input that's going in from the Indian LEAA Desk, and the funding allocations that are being made there, because again, it's like they're throwing out a few dollars and all those Indians are running after it. And we're all fighting each other to get it and whoever gets it then becomes the bad guy and whoever doesn't get it becomes the poor miserable loser. And I think that this is the kind of thing, that this lack of money is doing to us, that's causing fighting between tribes because there just is not enough money there to fund the tribes at all. Again, as I said before, an LEAA Indian advisory council is needed to be sure that the tribes are equally funded and that the funding is based on the needs they have, instead of throwing something out there and expecting them to take it. And I think that the tribes want to plan for themselves, but planning takes money. Again, as I said before, there's only, there's a few persons at the LEAA Indian Desk that are making all these decisions regarding Indian justice. And I've yet to see how those decisions are made as far as the funding allocations that we're receiving at the local and state levels. Again, there's a need for justice planning because there's duplication of law enforcement services, even at the federal level. For instance, here is a perfect example, the BIA. If you can get a contract within four years, once you get the contract, you get out there and you're supposed to be able to run your own enforcement system. That doesn't happen in some cases. What happens is the Indian police officer goes to the scene, he does a preliminary inves igation. Then he finds out his federal jurisdiction, he calls up the BIA special officer, he goes to the scene. He makes a preliminary

investigation, instead of taking the preliminary investigation of the tribal police officer. He does a preliminary investigation, and then he calls the FBI. And then he tells him to come out and do another investigation. So the FBI does another preliminary investigation. That's three investigations so far. And by the way, by the time the FBI gets there, the crime scene cannot be protected anymore, because it at least takes from six to seven days to get there. And at that time, the evidence is just completely-you know, whatever there was. If it's a federal crime, evidence is needed. And it's completely wasted at the scene. Three preliminary investigations-now why couldn't they just have taken the preliminary investigation of the tribal police officer? Is he-it just seems like he's not--there's still the stereotype that the tribal police officer can't do the job and he's just not well-trained. I don't think-you know, I think it has to do with training. I think it has to do with a suspicion that they're not trained. And somebody has to make some of these levels know that, "Hey, we're able to do this by ourselves, now. We're not ignorant anymore. We can do investigations by ourselves." And I think that then by the time it gets to the U.S. Attorney's office, he throws it out for the lack of evidence. And he sends it back to tribal court. And then when it gets to tribal court, they lost contact on what it was about at the beginning because they weren't even there for the preliminary investigation. They went and got it investigated so much that by the time it got to the Attorney General's office, it gets sent back. And then, the tribe thought, "Gee, I thought I got rid of that case a long time ago. What happened?" It comes back to tribal court and the poor tribal court tried to hit this guy up with a lesser crime, so then he won't just get away. And then in some cases, they just let it go, because they don't even know what it's about anymore. And I think this is the waste that's going on in terms of federal dollars, if you ask me. And I think that this coordination is needed at the local level and at the tribal level, and all levels therein, so that persons can-I don't know what happens when the state police come in-maybe he does a preliminary investigation also.

DELACRUZ: I wanted to add here. Sometimes one more layer that happens here after all these investigations. The FBI comes in, determines it's not the Indian jurisdiction, they turn it over to the county or state, so then it goes through their process before it goes.....

TSOODLE-MARCUS: Okay. So a case we all know, we all know how complex the jurisdictional problem is. It can start, but it always starts at the tribal level. Who is always there? The tribal police officer, he's the one that gets to the scene first. And he starts calling everybody else in. He has to call everybody else in. Even under-there's one tribe in New Mexico-that even under his contractual duties that he's been given, he's contracted this whole thing. He still has to call the BIA special officer and FBI to come in. And so I think that there's alot of-there's much to be said about

tribes being able to run their own system under contractual money. I think there's alot of ties there that the BIA and the federal government do not want to cut. And it's like a-just like a placenta-it just hangs on there. And I think that the baby grows up and it leaves. And I think there's alot of people there that are wasting alot of time and alot of money. And those kinds of things should be coordinated through planning. And I think that all these discretionary dollars, as I said before, all these monies that are coming to LEAA could have been used to again supplement the system. But again, those LEAA dollars are being cut back. And then we go back to the lack of adequate BIA law enforcement programs, which we talk about over and over and over again. We've been talking about it since I got into the Indian area. And I think we just completely agree, just run out of words as to how to describe it anymore, because we have just talked ourselves thin and I don't know who's going to do anything about it. But I do know one thing, and that is, the BIA law enforcement program continues to be inadequate and we continue to live with it. And I think that, inasfar as the Bureau of Indian Affairs, Indian law enforcement police courts and corrections take a very low priority. As a matter of fact, social services and all those kinds of things, not even social services, but employment is a real high priority there. But law enforcement takes somewhere down the line. And I think that again we reiterate what we said over and over again. The BIA chronically mismanaged and underfunded justice programs. And they spent millions of dollars on the administration with high personnel to do it. The BIA has provided little or any planning or technical assistance to the tribes. And for the most part, are insensitive to justice needs at the local level. Again, over 50% of Indian people are not even eligible for BIA law enforcement programs in some cases. As the prime agent of federal government trust responsibility, the BIA has really failed and if that's what they're giving us to keep it quiet, then we need to do something about it, to improve that system. Again, LEAA Indian Programs, inasfar as the Carter Administration, they consider the transfer of LEAA funds to BIA even if it, even if the BIA has done a pitiful job up to now. So, as you said before, Joe, when the BIA had it, justice improvements were low. When the LEAA came along, it went up. And now, it's going back down again, because I think LEAA Indian Programs are being completely coordinated with BIA and it's again, it's not answering to justice activities that the tribes need to promote the levels. LEAA dollars were reaching P.L. 280 tribes and implementing off-reservation programs even. And BIA dollars were not, in some cases. LEAA served 180 tribes and aboriginal groups while the BIA only served 89. LEAA programs provided really needed program flexibility to tribes and villages, while BIA held a rigid kind of program on the tribes, with all kinds of things to meet.

Let me say a little bit about data, being inaccurate. Right now, alot of funding depends upon statistics, because non-Indians like to see statistics, they like to see justification. Well, it's really hard to write proposals and give them to

the proper people when and, in fact, you have an inaccurate data collection system. And the BIA spends "globs" of money on information systems. And they even got the Stanford University in California to calculate their statistics and collate. Alot of money was spent. And then last, two months ago, I thought, "WOW! I'm really going to get a good picture of the crime on the reservation." Because as an Indian justice specialist, I have to represent all the tribes in the state criminal justice plan or we don't get the assistance. And so I went out there and I asked them for the information. It comes in the little yellow books and I picked up all the yellow books and took them home and I really expected to find alot. There were a bunch of zeros and nothing on some of the pages. And then I went to the BIA and I said, "What's happening here?" And he blamed all the tribes and said, "Aw, they're not reporting. They're not reporting at all. They don't want the system. They don't care for it and they won't report." And I told the BIA man, "Well, what are you guys doing to go out there to give them TA to help them. Maybe they don't understand some of those forms." And as a matter of fact, it took me five hours to learn what that system, how it worked and how it looked, because I think simplicity is really needed because some of the tribes, the small tribes, I can just see some of those small tribes looking at something like that and saying, "Heck, we're not going to fill this out. They're crazy." And I really feel that a simpler kind of data collection system was needed here, but again they gave them an elaborate system that nobody is using. And all those yellow books are just stacked up. There's paper computer sheets going back and forth and it says nothing on them. And it's a beautiful system which is not being used. That's another waste. Again, as I said before, tribes and, tribes need the improvements at the local tribal level. And there has to be a big reorganization in the area of Indian justice because they are not getting the kind of priority they need to get from the Interior Department. The Interior Department administration of Indian justice programs has been so unsatisfactory that some tribal law enforcement experts have raised the idea that all Indian justice programs be moved to the Justice Department. But this, again, needs to be evaluated in research to see what is best. Again, we come to another thing that's needed-comprehensive Indian policy. We're still relying on that seven year old Indian message from the former President Richard Nixon to determine official U.S. policy with Native Americans. That needs to be updated and something needs to be developed there. And I believe President Carter has promised alot of us alot of things and has yet to deliver us one full-time White House staff to work on Indian affairs. And I think up to now comprehensive Indian policy is really needed from the Indian people, not from alot of non-Indians that think they know about Indian people, but from Indians themselves. And I think that future funding should be available to Indian justice staff at the state level, because I know that the state agencies need them to coordinate with the tribes and to coordinate in off-reservation crimes. As I said before, right now we put in a joint non-Indian and Indian justice program in Albuquerque because we were getting 10 arrests of

Indians per day in downtown Albuquerque. And it was becoming a hardship on the non-Indian justice system. And there was a non-Indian court judge there, and every time they came to him, he just didn't know what to do with them anymore, except to just lock them up. And some of them had alcohol problems. So we set up a program called the Pre-trial and Exoffender Program and we set it up to handle Indians off the reservation in the city, in the Albuquerque city. So what we had is we got five counselors now working there. And they go each day and they check the non-Indian court docket to find what Indians are coming into the court. And then they make themselves available at the court session and they offer alternatives to the court, non-Indian court judges. That saved a bunch of our Indian people from going just to jail over and over and over again. It's handling alcohol problems, they're setting up treatment programs and they're saying to the judge, "We're going to give you-there's three other alternatives that you have for this person." You can go to a nine-day treatment center or he can-you want to bounce him back to the reservation because they have a good correctional facility there that will watch him, that will give you the progress report on him. And we'll take care of him and make sure that you know the progress on this person. And that non-Indian court judge always says, "Sure, anything," than to send him to jail, because I think it's reduced the amount of cost on non-Indian facilities to do this-to bounce the Indian offenders back into his own system, where he can find the treatment he needs and where he can be handled according to the way their people want to. In some cases, there are some Indian programs off the reservation existing in non-Indian communities that can be used and aren't being used. And I think that this program with the four or five counselors that we have, that we decided to expand it, putting alot of counselors into the McKinley County area, where we have a large alcoholism problem. Again, our crime picture in New Mexico looks like this: all alcohol-related. We don't have, there's Part I and Part II: alcohol-related crimes fall in the Part II area. Part I crimes are minimal, but Part II crimes are increasing tremendously. And we are in need of a treatment kind of program to assist us to correct some of the alcohol problems. I look at that particular crime area as a treatable crime area. In other words, those crimes in that area can be treated so that they don't continue to appear there. Whereas in other areas, there may not be room for treatment anymore for some of the other offenders, but in the Part II area, under alcohol-related crimes, there is a need for that. Again, in answer to all of this, what New Mexico did to try to bring some relief and I understand it's still, this concept is still questionable and it still remains on hearing, I believe Mr. Dale Wing, he told me where it was at, at this point, it's still pending in some session at the White House. And it's going to go, undergo hearing, but the concept that we put together came from New Mexico because we were, we had experienced all of those issues that I brought up. And in answer to those, we developed a concept from New Mexico and tried to sell it nationwide. And, of course, because it throws everything in one pot, of course, BIA wanted their

own little thing, were totally against it. Maybe that's why it hasn't gotten through yet, but the abstract says here that it was called the Institute of Indian Justice. We were recommending that this new office be set up at the national level so we can take care of Indian justice needs. And we proposed that it be put under the Office of Justice Assistance Research and Statistics, which was OJARS, and that it would be created into an Institute of Indian Justice. Again, the Institute would consolidate law enforcement programs that the BIA and the Indian justice programs and the Law Enforcement Assistance Administration so that it could, so it is only, it says here, that it was only logical that since the other federal law enforcement responsibilities are Justice Department agencies, that better coordination and better efficiency could be attained by this type of consolidation. And the Institute of Indian Justice would provide financial assistance, technical assistance in training to Native American jurisdiction in the area of justice only. Within the Institute, we proposed three bureaus - financial, assistance-technical assistance bureau, and a training bureau. And again the Institute would be administered by, of course, a presidentially-appointed administrator. And an associate administrator would be designed to work with the three bureaus and other Justice Department agencies to effect coordination of federal law enforcement and criminal justice activities on the reservation. Within the financial assistance bureau, we proposed two programs. Pilot projects, this would, this effort would be similar in nature to the seed money program of the present LEAA. And programs funded and pilot programs would receive funds for a period of up to three years. And evaluation, that's what's going on now. Evaluation of the program would determine its eligibility for funds after its pilot-project status was adopted. An ongoing program with funds provided to Indian jurisdictions for ongoing projects would replace the current BIA law enforcement contract program. In other words, keep the programs on the reservation that are justice programs ongoing. The intent would be to provide adequate law enforcement and criminal justice support to ensure the safety and security of the Native American population. Within, again I talked about technical, or rather how many coordinators would be in this particular institute, but what it's trying to do is it's trying to bring justice activities together so that it can be centralized and so it can be, it can work towards the improvement of Indian justice activities at the local level, at the tribal level. They know what their need is and they could go directly to that Institute and request those needs for their reservation. And they can also coordinate with state planning agencies through the state because I believe that the state is the one that's going to assist you in helping you to develop programs off the reservation in state-owned jurisdiction so that you can handle some of the Indian population that's being troubled off the reservation because it's no longer, Indian offenders is no longer just a problem on the reservation. It's a problem off the reservation, also. Non-Indian communities are feeling it. And I think that there's another portion of funding that's needed to handle programs off the reservation so that Indian offenders are given an equal chance in the non-Indian justice

system. And I believe that right now in New Mexico we have 45 inmates in the state penitentiary. And most of them are Navajo. We've got about two Pueblos or so. And the other day I got a letter from them and they asked me or rather the Attorney General came to me also because they wanted long hair in the institute and we discussed that. We also wanted several other kinds of things - culture programs. And I was wondering to myself--where am I going to find the money to get that kind of program?--because they do need equal opportunity as other inmates, because in the penitentiary these Indian inmates were being called "shadows" because they didn't speak up for themselves. They didn't ask for very much. And all the non-Indian inmates were getting all the educational programs and they were getting, they were going before the parole board, they were being released on different kinds of things. And you can't be released unless you're going to do something. And there was no assistance to Indian inmates in the penitentiary to help them get into some of these educational programs so that they could try to rehabilitate themselves. They also wanted a medicine man program to be put into the institution. And those are needs that they're coming to me for and I'm wondering where I'm going to find the funds for those kinds of things. If you guys have any ideas, anybody, I'll be glad to listen to them. Another need is that many of the non-Indian communities have needs in their own areas for Indian offenders, because there are many, many Indian offenders getting into trouble off the reservation. We funded an exoffender program that was to help Indian inmates be released into their own communities because it's difficult for them to fit back into their own community once they get out. And as I said before, those are the kinds of justice needs that are at the local levels. They're in institutions; there are juvenile programs; there are state agencies that have never--state jails, county jails that are working with Indian offenders that don't know what to do with them. And those are the kinds of areas, too, that need programs, specially designed treatment centers, because they do live under tribal sovereignty--that is the sovereignty they're returning to. And I think this is--these are the kinds of justice improvements that are needed. And as I said before, New Mexico offered this concept up and it's still floating around. And I hope that somehow justice funding will get consolidated so we can really get those monies to the police, courts, corrections, prevention, and juvenile delinquency. Thank you.

MANNING: Anybody have any questions?

ANDERSON: If you had your druthers, if you couldn't get your own proposal for an Indian Justice Department, where would you rather have the funds - BIA or LEAA?

TSOODLE-MARCUS: Well, I'd like for the state to--I was kind of glad that the state took me on because it's kind of like telling me--my own dream was that, at the state level, I would get the state criminal justice department to recognize the fact that there's

another component now. And that's Indian justice, because the Indian is coming off the reservation. But I was kind of glad in a way that I was funded by the state, as I said before, I was snuck into the budget, because I think in 1972, our legislature in New Mexico argued whether or not I was a resident. Because I was, you know, fully written into the budget. And they argued about whether I was a resident of the state because I was off the reservation. And we got over that, thank God. But now, we got into problems over them actually funding me and I got them to fund me. And I just didn't get it by standing around and hoping somebody treated me fair, but I made the contacts and I lobbied, and I did all sorts of things to have the criminal justice department fund me under their budget and they did. And I was grateful and I think that should be done in every state so that an Indian justice specialist could work on Indian issues off the reservation, because you need somebody there to do coordination kinds of things. And I had a workshop a month ago where I brought in Indian tribal leaders. And they came in and they wanted to hear from the non-Indian justice people what the problems are out there. So they wanted to talk about it--so we had a workshop--a two-day workshop. And we had them come in and they all discussed different problems and I think that this is the way that some of this coordination can be started-at the local level.

ANDERSON: Are these little yellow books that you spoke of--are they used nationwide?

DELACRUZ: Yes, that's the BIA tracking system of how good of a job they're doing, how many intoxicated Indians they arrested on this reservation--a record. And that's how they kind of justify their funding.

HALEY: You've got to account for every half hour of your day.. patrol.. And the thing is that.....

DELACRUZ: Well, that's really essentially what it is--they're trying to get it so they know exactly all the hours so they can get the...but really what it boils down to is that--it's a numbers game of how many arrested.....(end of tape)

GOULD: ....and it's always bothered me, but I also have to be able to offer an alternative. What would be a good way to determine appropriation for it? For criminal justice.

DELACRUZ: I think Charlene made a very, very excellent presentation. The thing is, nobody's looking at law and order, police as a single function. I think the whole problem is that we wait and which most of us don't look at.

GOULD: But how do you take a number of dollars out of that?

TSOODLE-MARCUS: Okay, at one time, well, there's another expenditure that BIA did and that was they flushed alot of money into the planning area and they ran around and got consultants to develop these workbooks. And all this planning that was done in this work-

book and they turned them in and they figured that's how they were going to figure out how much money they needed in the justice area. And I've yet to see the dollars that's going to fund those planning books that, you know, the results that we came out with. Those books are still in somebody's bookshelf wasting away. So again, we do local--I think that each of the tribes has their planning capabilities and it's just how to--how can they get their needs known? That's--and I don't think that there is very much known, I mean very much effort being made to know them, because when they do find out, they're always told there is no money.

GOULD: The dollar amount aside--which is always a difficult situation --once you have the dollar established, how do you allocate it to tribes? Through the justice system, which sounds like an Institute of Indian Justice sounds like an excellent idea, but how do you allocate the money - by residents - by the number of Indians in the tribe or the reservation or do you do it by a program need or grant or block grant or what?

DELACRUZ: Let me try to respond to that because I want to move on. The tribal requests that she talked about from 189 tribes that are going into this pot to tie together their own tribal justice system, which is not just law and order and jails and stuff for the appropriation request (this is for LEAA) - was 18 million dollars. And that came from - and that budget was 18 million put together from I don't recall how many tribal comprehensive plans for law and justice. This is what it would take for the 1980 appropriation to really get us off the ground and get the thing started that was promised when we started LEAA and all this stuff's been happening. And it was from comprehensive plans - some of those comprehensive plans did get in and like she said, they use it to put a budget together and now it's sitting on a shelf somewhere. I'd like to get the last witness and then come back for other questions.

GRAHAM: Fine...you bet. Okay, Robert Nuemiller from WolfPoint.

NEUMILLER: Okay, my name is Robert Neumiller. I am the chief of police in WolfPoint, Montana. My background consists of practically 18 years of law enforcement, 15 of those years I have spent in WolfPoint, 12 of them as the police chief in that community. WolfPoint is situated in the northeastern corner of Montana and is in the center of the Fort Peck Indian Reservation. The location of the town and my job, I think, gives me a good insight on this shady area of gray that surrounds alot of these problems. There is one difference in my presentation. I will be able to shed some light on the effect of some of the jurisdiction and federal disputes on the reservation as it pertains to the white communities as well as the tribal communities.

WolfPoint has a population of 4,000 people. The population of the entire reservation, which consists of a little over tw million acres of the Fort Peck Reservation. The entire population is 10,000 within the county. Approximately 4,000 of the Sioux and Assiniboine tribal people reside in the Fort

Peck Reservation. WolfPoint is the largest town - it's also the county seat in northeastern Montana. Copper, Montana consists of about 1,200 people and is approximately 20 miles away. We have three small communities: Frazier, Oswego, and Brockton in the area, in the reservation and these smaller towns are composed by the Indian community.

The structure of our jurisdiction is as follows: city government of WolfPoint and the city police if WolfPoint are run by the city and we are under state law. The tribe exerts no influence over any of our officers. The tribal government and the tribal police on the reservation enforce the laws that are set up by the Fort Peck Tribal Council and these laws - when we enforce these laws, we enforce them as tribal officers. The tribal police enforce our city laws as city police officers. The state, in our case, the county of Roosevelt Sheriff's Department is not cross-deputized. The state exercises no jurisdiction over the tribal people on the reservation. The federal government, in the areas that I'm going to touch on you understand is going to be law enforcement - the federal government agencies' jurisdiction consists of felony cases that involve Indian persons on the reservation and pertain to the major crimes that an Indian person may commit or may be involved with or within the interior boundaries of the Fort Peck Reservation. We also have a BIA special agent stationed in Poplar, which is just east of WolfPoint, and his function is comparable to that of the FBI in that he investigates felony cases.

It's going to be kind of hard for me to explain this as I've worked with it for all these years. And some things that are very clear to me may not be to you, so if there's any questions while I'm giving this, I want you to please raise your hand and I'll attempt to answer it. One of the things I think that I'm going to be happy to bring out is the progress in certain areas that we have made in WolfPoint with the white police and the tribal council. I didn't realize before I got hear how good we have it in some respects. One thing - the city and tribal relations work together. Now, by that I don't mean that's a polite thing - I mean that I attend tribal councils. The tribal council chairman and law and order committee or any of their committee is not above contacting me, involving things that I might help them with. I'm certainly not above contacting them and I do quite often. I meet with the tribal council. One of the things that has brought about a problem - where you have no jurisdiction on the reservation are the law. Several times the city of WolfPoint will pass an ordinance, which it is empowered to do by state law, and the city does. The last one that I know of was an open container ordinance because of the great amount of people walking around carrying liquor in their hands - stuff like this. The city, by passing this, gives us the authority to enforce that law against white people. What we did was approach the tribal council and explain how our ordinance would work, what we intended on doing. The tribal council took upon themselves to study our law and at almost identically the same time that our city ordinance went into effect, a tribal ordinance, reservationwide, went into effect.

The two laws were almost identical. Therefore, the city police then could enforce the liquor law against tribal people and take them into tribal court. The tribal officers, in turn, acting as cross-deputized city officers, could arrest a white person and send him to white court. So, this kind of illustrates the relationship that we have in this particular reservation. This is not so on the others, Crow Reservation - it's different. The Flathead Indian Reservation and some concurrent state and federal laws. So, when I talk about the reservation in Montana, I'm talking about mine and possibly some of the others, I don't know. One of the things that we have encouraged and by that I mean all of the law enforcement officers, is to have tribal officers go through the Montana Law Enforcement Academy in Boseman. Now, prior to this time, some tribal police officers went to Brigham City to their own tribal school down there, which is comparable to any of the state's enforcement schools for police officers. In the State of Montana, we have the Police Officers Standard Training Council, which sets guidelines and for which they will issue a, what they call, a basic certificate for police officers. Once an officer has obtained, I believe it's 400 and some hours of training, he is eligible for this basic certificate. I contacted the Montana Law Enforcement Academy and told them approximately three years ago that we had certain tribal officers that desired to go through the school. Because of the jurisdictional problem on the reservation, the Montana Law Enforcement Academy was reluctant to do it. Moreover, and this stumbling stone was eventually resolved, where the state subsidizes the cities, and subsidizes the cost of city and state officers attending the school, it did not for tribal police. Now, this has subsequently been taken care of. The tribal police are going to the Montana Law Enforcement Academy. Okay, in this area again, we sat down in kind of a joint effort, and what has happened is that we have now two or three of the tribal police officers in our area that do have the accreditation from the Montana Law Enforcement Academy. Whether or not they're tribal or police officers doesn't matter. They have it, and the results are good for our community. One of the other things that we did approximately four years ago - the State of Montana went for a new form of citation book for enforcing traffic laws. In other words, all city, county, and state jurisdictions would use the same kind of a book. I contacted the State of Montana and asked if we could not receive for the tribe a uniform citation book that had included on it a section for tribal jurisdiction, for tribal court. This was resisted, they gave me several reasons for not doing it. We had a few run-ins with these people. The end result was that the Fort Peck Tribe now use identically the same citation books as we do. So, a city police officer can ride with a tribal police officer. They both use the same book. And the only difference is there's a small check made in front of city court, J.P. court, or tribal court. This is the only difference that we have. One of the big problems that we have detoured is the business of duplication with the tribal police. Along with the books, we also have a standard booking form. The Roosevelt County, through help from civil defense and LEAA funds, approximately four years ago, built a new

complex, along with the county, the highway patrol, city police. Primarily, I would say 90% of the booking work done on arrests and everyday procedures with law enforcement is done by the city and the tribe. Our work is not duplicated in any way. If a tribal officer arrests a white person, the booking sheets along with the rest of the report are done by that tribal officer and do not have to be reviewed by myself. That tribal officer can sign a formal complaint and have that person brought into court. We, in turn, do our own work. If we arrest a tribal person, he's taken into tribal court under the identical officer's reports, the booking procedures. We, in turn, sign our own formal complaint against that person. Part of this, I think, is that several years of working closely with the tribal courts and we incidentally also had a tribal court located in our building, in our law enforcement complex to serve the Indian people in WolfPoint. Headquarters for the reservation and tribal court systems is in Poplar, Montana, which is 20 miles away. But, we have an associate judge in WolfPoint. One of the - I suppose - suppose concerns of alot of the local people on cross-deputization is brought about by the jurisdictional problem. And believe me, I have worked with the jurisdictional problem for years and years and years. And all I can see is gray - one of the things that clears this area of gray is - I have publicized now, at different meetings, and I've also publicized in the paper - simply that tribal police are cross-deputized. Whether legally under state law or federal law, they could be in a pure sense cross-deputized, I don't know and I'm not going to open that can of worms here. I know that it is working on the reservation. And for the 12 years I've been chief, it has worked. The established ground, I think, for cross-deputization - one of the things that I did, and this was brought about by the fact that I not only cross-deputized one of the tribal policeman, I hired him for my department. And I have a unique situation in that I have a tribal person, who is a state police officer. And legally, under the state, his authority, I suppose would not be recognized; however, he is on a state-based police department, it's a city police department. And again, I've had him for five years and I have no intention of getting rid of him for any reason. And this is where, we have actually one step further than cross-deputization. And that works.

One of the problems that we run into - and I think this is probably one of the reasons why the state doesn't like cross-deputization - is the fact, in our case, the Fort Peck tribal council has no charge against an Indian for perjury. That being the case, an Indian person could go testify, could arrest a white person. He could testify in white court - he could perjure himself, and incidentally, this has been done - one case. The white courts have no authority to charge that man with perjury, because it's not a felony, and it can't be prosecuted under federal statutes. The Fort Peck tribes just don't happen to have a section on perjury. And this is one of the reasons that this problem of cross-deputization. Now this one fact right here has caused me more problems than anything in the world. Before I was really entrenched in this and several times since, I contacted the district judge who is stationed at WolfPoint. I contacted

the justice of the peace, and I also contacted the city magistrate, and I just came right out and asked, "What are you going to do? Some attorney comes in here and tries to get his client off as a result of being arrested by a tribal policeman. Are you or are you not going to allow that man's testimony?" And they said, "Yes." Now the one thing that stands out here is that we have a fantastic crime rate - we need all the help we can get from both sides and I think this problem is much bigger than any petty bickering that could be done on both sides. And consequently, so far to date, I have had not one case thrown out of either city, J.P., or district court, due to the fact that he was arrested by a tribal police officer. There has not been a case thrown out of tribal court because a person was arrested by a city police officer.

MANNING: Has any lawyer used it as a defense yet?

NEUMILLER: Not yet. One of the reasons is because if an attorney uses this as a defense, he is going to run into alot of barbs, because I wouldn't want to be the judge that allows that defense to go in on the reservation. Now, we do have a weapon by working together. And it's a powerful one. And as I stated, I would not want to be the judge that would allow an attorney to take a run at the court and be the judge to sit there and say, "Alright, this man legally is not a tribal police officer," because what we've had is 12 years of working together. It has worked. And with the problem of jurisdiction and stuff like this, I can see no better way than to absolutely blow the whole thing.

MANNING: How are your judges? Are they elected or appointed?

NEUMILLER: The district judge is appointed. The justice of the peace is appointed. And the city magistrate is elected. In our case, he was appointed, because no one ran.....(laughter)

MANNING: Has the tribal council considered making a penalty for perjury?

NEUMILLER: I don't know.

MANNING: Have you ever taken up.....?

NEUMILLER: Not as an issue in itself. I would say that, offhand, that if the issue was really brought out and that this was really a dangerous area, and like I say, so far it hasn't been, that I would venture to say that the Fort Peck Tribal Council would institute a perjury section.

DELACRUZ: Does the Fort Peck tribe have any ordinance or anything that they can regulate attorneys that practice in their courts are very familiar with tribal law and stuff that they won't accept - go improve that before they practice in their court?

NEUMILLER: We have a rather unique situation. We do not have any attorneys that practice in tribal court. Furthermore, none of our tribal court judges have any legal background whatsoever - none. The Fort Peck tribes do not have a prosecutor. They do have a person that is just a layman, that defends some

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tribal cases. And alot of cases we go in and pretty much defend our own cases by the facts in the case. So, in this area, the Fort Peck tribes, they really have no legal people at all. This has, of course, caused some consternation for some people, but it also cuts alot of corners. In alot of cases, our tribal court system that has come under fire for not being very professional, but sometimes that tribal court justice is.....

MANNING: I didn't mean to interrupt your presentation.....

NEUMILLER: Now, along with the good, we do have problems. And this is primarily why I am here - is several times I have outlined these problems - these problems have been taken to senators. The city has, and county commissioners of Roosevelt County have all tried to do something about this and also the Fort Peck tribes. We arrest nearly a thousand people a year, of which probably 500 are trapping, making approximately 460-500 people that the WolfPoint City Police Department, consisting of six full-time officers and one part-time man, will be actually incarceration offenses - that we put the people in jail. The tribal police statistics also compare with ours. So, as you see, by approximately every four years, we arrest the entire population of our town...(laughter)... These cases are mostly handled through tribal court and city court, depending on the jurisdiction. The FBI enters or should enter about 125 cases per year in WolfPoint alone. And of these cases that they should enter, these are felong cases that involved major crimes, approximately 20 cases will ever be prosecuted. The other cases, again we're hearing the same thing, I didn't realize that the problem was so nationwide. The others are thrown back into tribal court. The tribal court judges can't handle them. I have so far this year, we've had 24 burglaries, 32 thefts of a felony nature, assaults-12, forgeries or stolen vehicles-13, homicides-1, vehicle burglaries-13, rape-2, vandalism amounting to a grave amount of damage-23, child beatings-1. The statistics that we have again are my own. Now, the reservationwide, of course, they're alot worse, because Poplar has alot higher crime rate than we do. It's a smaller town. It's much worse. Okay, the local tribe and city officers, 90% of all of the investigations for the felonies. Now 90% of all this investigation is done by the tribe or city. And in WolfPoint, primarily the city police officers do the felony investigations. We've had alot of training, several of the officers have and in some cases the tribal policemen are not stationed right in WolfPoint, being on a reservationwide basis, so that it is more convenient for the WolfPoint police officers and primarily myself to take these cases and work them. The FBI takes all of the information, the statements, the evidence and turns it over to the U.S. Attorney. The tribal policemen - no city officer - can even talk to the U.S. Attorney about a case that he refers back to the FBI. Sometimes then these case are taken care of days later. We can sit and hold evidence, we can't even lock a person up for a felony without authorization from the U.S. Attorney. But we can catch a person in the act of burglary and have to turn him loose. We can get evidence, preserve evidence, we have the facilities

of the state criminal investigation laboratory in Missoula, but it does us no good at all because the FBI agents aren't there. Sometimes it's two or three days before we see them. During that time, there are several things that can happen, witnesses, for one thing, can be intimidated. And by intimidated, I mean that we have had several people literally had the hell beat out of them and be told that if you testify against me in federal court, you won't be around. Evidence disappears. Alot of evidence that we need sometimes to tie up a case disappears, and before we can even get it to the FBI. We have FBI agents in Glasgow. They're 50 miles distance. The U.S. Attorney's office is in Billings, which is 320 miles from WolfPoint. When a federal case does go to court and the U.S. Attorney do decide to prosecute, the federal court is now held in Great Falls, Montana, which is also 320 miles distance. I think that the money spent in the federal court system is fantastic. I have no figures, but I know what they pay me to go down to Great Falls and back for two days and testify for 20 minutes. It's hundreds of dollars because of the mileage factor, plus the fact that, I don't know if any of you have been in Montana, if you've been up there in the winter, some of our roads you travel with an airplane or snowmobile. There isn't any transportation. This poses a problem. I think one of the big things that particularly galls me is the FBI's attitude, pretty much the same indifference toward the local people. And by indifference, I mean pretty much indifference to what we think, pretty much indifference to what the tribal people think or law enforcement officers at all. The working of reservations appears to me to be beneath their dignity and to them a waste of time. These men have had training, they're attorneys. And their legal training consists pretty much of being an attorney. And all at once, they find themselves on a reservation where there's a crime problem. They're working with people that they are not familiar with and frankly, don't care about. Sometimes cases are presented to the U.S. Attorney by the FBI and the client before we're even through getting the evidence. In other words, I'll tell an FBI agent we had a break-in last night, we think it was this guy. And so far, we've got this. And I have had this happen several times. He simply sat down and called the U.S. Attorney and said, "Well, they think it's this guy, but they don't have the evidence." So the U.S. Attorney says, "Decline." We're still getting the evidence. But at that point, that case is down the tubes. It's no good at all. I think one of the big problems with the FBI is they have very little rapport with the local Indian people. Now, they have very little rapport with the local people at all. And primarily, where they're assigned to work with the Indian people, they have almost none. Another thing that we experience is a rapid turnover of FBI agents that work on the reservation. They can't get off fast enough. They want to get someplace else. One of my friends was an agent on the reservation told me that the thing he wanted.....(end of tape)

is looked upon. I think that this division is the one that's responsible for Montana and Idaho.

One of the things that I was told and showed by an FBI agent very graphically. I turned five cases over to him one morning involving felony burglaries. I had all of the information. I had all of the evidence and had worked for over 200 hours collectively between the city and the tribe. And we had both confessions, signed confessions, by the people involved. I gave him everything I had and he said, "Thanks, you just cost me 50 hours of paper work." Now this is an attitude that I get into time and again. They do not want cases. Now, I also have some insight as to why this is. The reason that the U.S. Attorney wants the cases from the FBI is that these guys have, in past years, especially in the last seven or eight years, become what I would call glorified legal secretaries. In other words, that case has to be presented in such a precise manner and each witness and each piece of evidence tied to the other in such a correct, precise manner that the FBI's legal training, in their reasoning, is the only way this can be done. So, consequently, the U.S. Attorneys will not accept acase from any local jurisdiction and they don't want to go through the work of sitting down and having their office personnel or them do this work themselves. Consequently, the FBI right now in WolfPoint approximately 5% of what they do is investigate and the other 95% is done by us. We do probably 50% of the paperwork, well, I would estimate more than that, probably 75%, counting our own paperwork that is completely duplicated by the FBI. And then, these cases are typed up based on our statements and our officer's report on the case.

One of the areas that, I think I'll touch on two cases that kind of illustrates how this works. Two people were very viciously stabbed approximately three months ago in WolfPoint as a result of some sort of an altercation. Two people went to the hospital, they were taken up by my officers. The people that were responsible for doing this - this incidentally was done to Indian people - and the one that did the knifing was also done by an Indian person. My officers arrived on the scene and took both the people that had been stabbed to the hospital. They lived. But they obtained full complete statements from them. The tribal police was notified what happened and as a consequence, the tribal officers managed to cut the people off before they got to Poplar. They were running for Poplar. They were apprehended. The tribal officers on that end then talked to the person that did the stabbing. Two days later, this case was turned over to the FBI. Well, it was turned over then, but the officers, the FBI didn't arrive until two days later. What they did is they talked to the person that did the stabbing and it wasn't very long. They come back to me and I said, "What are you going to do about this because we have the knife, we have the evidence, what do you want me to do with all of our statements". And he said, "Oh, you won't need them because I talked to the guy and he said it was a result of an argument earlier. So I called the U.S. Attorney and he declined." To my knowledge, neither person who was stabbed was talked to. Okay.

Another case in point - three people were shot. And the way that this was done was quite unique. A person fired through a closed door of an apartment house, knowing that these people were inside after challenging these people to come out and fight. Well, the people inside locked the door. They didn't want to argue with a loco guy. So this guy sprayed the inside of the apartment with a 22 rifle. Three people were hit and they were hit in the legs and all three were hit in the buttocks. They lived and weren't in the hospital for very long. But the FBI that was working on this case called the U.S. Attorney and simply told him, he said it was a result of a big drunken brawl. He said and these three guys had threatened this other guy earlier, that's why he went down there with a 22 and did it. So, it's one of those things, this case was not prosecuted. Now over and over and over this happens.

One of the things that probably hasn't been brought up yet is the impact that it's costing the local police departments to be on a reservation and even though there is this cooperation from the tribes, it costs us 80% of our total police budget for tribal work. One of the problems that we have is that, I have a map of Roosevelt County, and this is truly a checkerboard design. Now, the shaded areas in the map are tribal land and the white areas of the map are lands that are owned by private property and are taxed. Of course, the tribal land cannot be taxed in the State of Montana. So what happens is approximately half of our land base in which the county and cities derive alot of their tax money is not taxed. We have made some attempt, we're getting subsidy for the city of WolfPoint for helping the federal government. All requests for funds have been denied. All requests for additional men under any type of federal program have been totally denied. Requests from the state for help have been denied. Finally, we went another route and started requesting an additional agent. Now, this was not just the city of WolfPoint, but this was a combined effort of the Fort Peck Tribal Council and an effort by the city of WolfPoint, myself, the mayor, county commissioners. The request was absolutely denied. We also have talked to the U.S. Attorney on trying to present cases to the - directly to the U.S. Attorney. This has been denied. There are no federal grants or funding for law enforcement that touches the city of WolfPoint. In some cases, and here I am not, I do not have the extra case to tell you exactly which programs touch the tribes, but no program touches the cities. No BIA program, no tribal program, no federal program touches the cities on these reservations. We appealed to the tribe for help and this was denied. And probably, this is the only one that I can think of that was justifiably denied because the Fort Peck tribes are also throwing every man they can get onto the streets for prevention of crimes, of burglaries, felonies, knowing that if they do have happen, there'll probably be nothing to come of them as a result

The FBI says there is no problem. Now I have in my files and with me, in case any of you would like to look at it later, the complete process by which the local agencies,

tribes, and cities request help from the FBI - it was given to the - sent to our area representatives, our senators. This is forwarded to Webster - Webster gives it to the area office in Butte. It's sent to the local police office. The same field agents that we have a problem with reply there isn't any problem. It goes completely back through the same process and comes back to us as - there's no problem, no justification for placing another agent there.

About the only thing that the federal government now moves very quickly on is murder, which we have some of. When there is a murder that takes a two-week investigation, we can plan on no federal help at all for those two weeks. I don't care what happens. The federal government has moved out of juvenile crime almost entirely. The same thing is true with some homicide. One of the effects of this - I'll illustrate a case that we have had just recently. We had a young man that was juvenile. He was about 14 years old - he committed 13 burglaries in the city of WolfPoint. Where he committed others, I don't know. These were primarily in grain elevators and business places. Thirteen burglaries and the federal government finally decided to step in. The tribal court could not handle these burglaries. They have no juvenile system. But after 13 times around, there was such a feeling generated in the community by the police agencies here - both the tribe and the locals. They finally took him. They put him on federal probation and sent him to a type of a foster home or school. This was about two years ago. This lad returned in September and while he was back, he did three more burglaries, and the last one of which he was caught at the site. There was a couple of thousand dollars worth of damages and we again contacted the FBI and the U.S. Attorney's office and got the same thing - it's not worth it - it's not worth handling. I contacted his federal probation officer and instead of this guy being charged and taken through court as a criminal court case, he was shoved onto the probation office. And they decided to let him go to North Dakota. So, consequently, there was never any prosecution on this case. While he was in North Dakota, I fell on information that this same lad had also burned a large grain elevator complex in WolfPoint that was valued at $500,000 - it was a half a million dollar loss. And after developing some information, I contacted the FBI agent in North Dakota and asked if they could interview this kid in regards to this fire, that it was quite serious. And he told me that he couldn't talk to him. Apparently what happened is shortly after the kid got to North Dakota, he wanted to come back to WolfPoint. But on the way back, he burned the school in Fort Yates. We were not even able and have not yet been able to contact this kid because of the fact that he is now under federal jurisdiction. So, here we sit. Whether this fire will ever be resolved or not, I don't know. I talked about costs, cases and possibilities. This one case has cost somebody approximately $530,000. Now,

this, to my knowledge, I don't know what's going to happen.

One of the problems that we have in the tribal is civil problems and, in that the tribal court has no access to the state institutions. The tribal court cannot commit a mental case or anything like this to a state institution. And there is an interesting situation that has been in effect and that is pertaining to marriages. Indian people can be married by a J.P. or by the church or by the district judge. Marriage licenses are obtained, two tribal people can be married. Now, according to the tribal ordinances, they can grant divorces. In fact, three days before I came, one of the things that we were always wondering about did happen, where two tribal people were married, they were granted a divorce in tribal court, and the man went to re-apply for a marriage license to marry someone else, which cannot be granted by the tribal courts. It has to be granted by the county seat and he was told that he was not legally divorced. This case was taken to Cutback, Montana and class action was filed in the district court to resolve this. He was very much looking forward to it and for some reason, his case has been dropped. The guy withdrew his papers altogether and backed out of it entirely. So, what's going to happen here, I don't know. This is one of the problems, unfortunately, that the city and tribe working together are not going to resolve. The tribal judges get real....about this and we're kind of reluctant to force anybody.

One of the biggest problems that we have is drugs on the reservation. The FBI will not take drug cases of any kind, not felony drug cases which involve the selling or manufacture of drugs, which are felonies, the FBI will not touch these.

MANNING: Why? What do they tell you?

NEUMILLER: They leave it to the federal drug agency. Now, the tribe cannot handle felonies; therefore, what happens is the reservation has become one of the centers of drug traffic and alot of this is done by Indian persons in the whole end of the state. This is giving the tribal council fits because probably the Indian people in the community and the Indian council, even more than the whites, fear this drug problem. And they're looking at anything they can to do something about it. The tribes have no jurisdiction at all and, of course,.. .....

MANNING: How about.....?

NEUMILLER: Okay, this is one of the things that I wanted to bring up. We had an idea. I have a drug team that I use in WolfPoint, consists of one of the county men and one of my officers. We met with the tribal council and what we did was devise a scheme whereby we could use our resources and the district court to get pulls, in other words, pulls on telephones. Legally with legal jurisdiction to do so by the district court. In other words, it wasn't a Watergate, it was all legal and aboveboard. However, we could use the resources that the tribe did not have and we could use the legal maneuverings that

the tribe could not use to get information, to develop information, and to in fact, set these people up. Okay, the tribe agreed to use their muscle on a federal level to gain help in trying to pull somebody into this area. This whole program working together took us two years for the drug enforcement administration to send two agents into WolfPoint and they were there one day. That, so far to date, has been that total sum of law enforcement. The thing that we run into is that a state agency will not come in WolfPoint even though it's our jurisdiction, because of the fact that if they arrest an Indian person, they can't prosecute him. Federal wants nothing to do with it whatsoever. So, consequently, what WolfPoint faces is the fact that because of this reluctance that we don't have the services available to us as a white community that we would normally have if we were off the reservation. So, this is one of the things I think that hasn't been brought out is that the impact of this type of federal, well, dispute, whatever you call it, does have an adverse effect on the cities. It has an adverse effect on their ability to enforce laws and stuff like this. The apathy that is generated because of the feeling that nothing will happen is one that is terrible and it's - there's a feeling of mistrust in tribal courts for not doing a job that they cannot do. And they should not have to do.

DELACRUZ: Robert, how much longer do you have to go? I'd like to break for lunch. If you've got much more testimony, you can pick it up after lunch.

NEUMILLER: Certainly.

MANNING: For those of you who weren't here yesterday, there is a restaurant downstars that you can utilize for lunch, rather than trying to find a restaurant outside. And we'll be back at 1:30. We'll try to start promptly.

LUNCH

MANNING: Again, with our Chief of Police at WolfPoint. Just please continue on with your presentation.

NEUMILLER: To continue, I'm Robert Neumiller and I'm the Police Chief in WolfPoint, Montana, and WolfPoint is in the Fort Peck Reservation. When I stopped my presentation, I was talking to you about one of the final problems that I have to present, and that being of the drug problem on the reservation. And I have explained the problem that we have with - in relation to the prosecution of felony-type drug cases which is pretty much non-existent on the reservation.

I think one of the cases that illustrates this is a case that happened just two weeks ago in WolfPoint where the local drug team that I mentioned before that I have and work with developed information that there were two people selling large amounts of drugs, predominantly marijuana, out of a trailer house in Poplar. As a result a warrant was obtained. I'll regress a minute--one of these persons was a white person over which we had jurisdiction. The other one was tribal, which in the

case of a felony, we did not have jurisdiction over. The district judge was contacted in our area and we did obtain a warrant for the arrest of the white person that was involved. The two people that served the warrant was one of the sheriff's officer and my sergeant, who is on the drug team. They served the warrant on this person and at the same time, they had a search warrant. They did obtain a large quantity of marijuana. They obtained drugs--more than enough evidence that this person was in the business of manufacturing or sale of drugs. This person was arrested on the spot and the evidence was all obtained. Now, what happened is that the tribal person was in the house when this happened. He simply walked out of the house. To this day, he has not been picked up. The white person was brought in and was immediately arraigned and place under, I believe it was, $2,500 appearance bond to appear later. I had information that there was probably alot more marijuana, drugs, pills, whatever that the other fellow simply got rid of. At that same time that this person was arrested, the FBI was contacted and the BIA. Two days later, I found out that it was reported to the sheriff's office that the U.S. Attorney apparently didn't think that the warrant that was issued by the district judge to seize this property to arrest this other individual was sufficient for prosecution. So, I think this case right here very clearly illustrates exactly what is going on.

Now, in addition to this, the Fort Peck tribes, who have always made an effort to stop the drug traffic, is completely powerless to act in this instance. The most that this tribal person could be arrested for would be for misdemeanor possession of marijuana, for which he would receive a very minimum fine. Again, the tribal courts don't have the - well, call it muscle - to enforce these laws. I think the apathy that is generated because of this feeling that nothing will happen, even if I do testify is one that plagues the Indian people, as well as the white people on the reservations. I have run into this many, many times where a person tells me, "What's the use of testifying? It won't do any good, because nothing will happen, anyway." Now, I think there's a feeling of mistrust in the tribal court system and by this, I don't mean by the white population on the reservation, I mean also by the Indian population on the reservation. The backlash, of course, here is local. The problem is not that of the tribal courts--tribal courts are doing the best they can with what they have. They cannot do what they are not designated by law to do. In other words, they cannot handle these felony cases. But, because the tribal courts are in the local jurisdiction, the tribal courts are the ones that get the blame, not the federal court system or anything else. To me, this is wrong and I've seen this going on for years and years. Some of this problem we try to dispel simply by telling people that we come in contact with exactly where the tribal courts' jurisdiction does lie and the fact that those tribal judges are powerless to do...I think this brings about this feeling, a very bad feeling, the tribal people get preferential treatment. I think this whole system in the way it's working now fosters a mistrust, bitterness, that shouldn't be there. And I think alot of us are privileged, particularly

me in my position, are privileged to see the inside of what works. And I get to see the frustration of the tribal councils and I get to see the workings of the tribal court. And as a consequence, I have an insight to these problems that most people do not - neither the white population or the Indian population. So, consequently, I welcome something like this that at least for the first time in 15 years, I have been able to talk to anyone outside the local jurisdiction about the problems which exist...it's an encouragement that someone is looking for something.

The Indian people at our councils and courts are fighting the same problem we are in law enforcement. Because of our joint inability to resolve felony crimes by Indian persons on the reservation, the Indian community is forced to live with a stigma that they're protected or pampered. Our tribal council has worked with our city law enforcement officers regardless of jurisdictional disputes, time and again to improve the law and order on the reservations. And, in each instance, we have had good results working locally, except with regard to federal prosecution. We have jointly run our heads against a brick wall time and again when it comes to federal prosecution.

And as far as any immediate solution to the problem, there are a couple that I can think of. I think that jurisdiction, tribal sovereignty, and state sovereignty are all touchy subjects and I've done alot of work with them. And I feel that as a police officer whose primary function is to protect and preserve the peace of all the people in the jurisdiction--this is something that I'm going to stay completely out of, except that in some cases, my feeling is that jurisdiction could be used as a tool in solving some of these problems. Now by this I'm looking at both state and tribal jurisdiction and what I'm going to do is I'm going to give you an idea of a program or something that maybe you can think of, talk over, that might benefit the tribes on the reservation by the use of some state jurisdiction and might also benefit the white community by the use of tribal jurisdiction. Now, what I'm going to do--this is a 6 point--well, program, you might say -- that I have thought about and I've thought about this for quite some time. I'll go quite slowly and again ask me questions if you want to. The first one and the one that would be most important is let the state assume jurisdiction of felony cases presently handled by the federal government with local prosecution and local juries. Now, I will explain this--these would be the cases that the tribes do not handle anyway. Felony cases are out of the jurisdiction of the Fort Peck tribes.

GOULD: Are you talking about all 14 crimes?

NEUMILLER: Yes.

DELACRUZ: Don't say all tribes. Some tribes have updated their codes where they have.....

NEUMILLER: Right. No, I am talking about - only about those tribes that

would not be handled anyway under tribal jurisdiction--that would be out of tribal jurisdiction. Okay, secondly, the tribal courts retain all of the jurisdiction they now have over misdemeanors. That's not changing their system in any way, shape, or form--not their function, not their structure. One of the big things is the juvenile cases. Possibly some system which would allow the tribes to refer juvenile cases to district court for handling under the juvenile system, which has access to all the state agencies. Now, the one thing that I want to emphasize here is the word "refer" by the tribal court system.

MANNING: Go through your suggestion and then we'll come back.....

NEUMILLER: Number four - to allow the tribes to refer certain civil cases, such as divorce cases, mental cases, severe alcohol cases to district court for handling. Number five - to make state training available to tribal officers, which it is now to a great extent and allow them full status as city or state officers for enforcing those laws pertaining to making arrests of tribal felonies. They already have city police status for white arrests in city court. This change would not be as drastic on our reservation as it would appear to be because most of the ground work is now done.....

.....thousands of dollars that are poured into this system could be detoured to local agencies and courts. Now, by this, I mean to help alleviate the caseload on the local district judges, prosecutor's office, also to the tribes for upgrading in manpower, equipment, or whatever is necessary for the tribal law officers to function in their role as investigators ...tribal or state police officers--also probably to the local counties or cities who would have the responsibility of enforcing this type of law. I think one of the things that I am purposely detouring is the issue of jurisdictional rights by the state or the tribe. And the reason that I'm going to do that is because of the fact that I have been through this, I've seen it from both sides and I think that a piece of jurisdiction that benefits a state could also benefit the tribe--a piece of tribal jurisdiction that has benefit to the tribe could also benefit a city. There are things that our tribal council can do that we cannot. They have a rapport with the federal government, they have in's and out's with the federal government that we do not. Our roads are closed and theirs aren't. We have access to the state agencies such as the mental health center in Warm Springs, Montana. We have access to several alcohol state-funded rehabilitation centers and the tribes do not. More importantly, we have access to several juvenile centers that are well set up in the State of Montana that the tribes do not. So, consequently, a piece of jurisdiction from the state that allows us to handle these type situations with ease, I think, could be delegated to the tribes. By the same token, the tribes wouldn't have to give up any tribal sovereignty in any way and I don't think that the tribes should. Now this is my personal feelings and I'm speaking from my own experience. I think that the tribal police and tribal

courts are able to handle their people in their own courts. The fact that it was a different system than ours is unique and I think this is something that the Indian people believe, think that the tribal courts have to have the rapport with Indian people. And I don't think that the tribal courts should be circumvented. I do think that basically what it amounts to is that the prosecution of felony cases would probably stop many of the cases from coming to tribal court because many of the cases that the tribal court handles are from the same people who perform these same crimes over and over and over and appear in federal court. So, quite possibly another side benefit of this would be that the tribal court system wouldn't have the terrible load that it now does. The other system that would alleviate some of this is something that I've heard talked about here several times and that is a United States magistrate being placed on the Fort Peck Reservation. We do have one now. We have a U.S. magistrate. He is also the city attorney. But the only thing that he does at this time is set bond for the Indian person that's arrested on a felony offense--sets bond pending an appearance in federal court. Now, if we did have a magisrate in WolfPoint to handle the lower felony cases, it would be beneficial; however, the big problem remains that the major crimes, felonies that do exist, would still have to go to court in Billings or Great Falls, Montana, and would still have to be prosecuted by the United States Attorney. One of the other problems that would have to be solved is that the U.S. Attorney would have to station someone in WolfPoint. In other words, someone that could be accessible to us locally on a need basis, day-to-day, that we could present cases for prosecution. And I have been informed at different times that the United States Attorney's Office will not do this. Their cases have to come from the FBI. U.S. Attorney's system in WolfPoint would possibly speak only the part of our criminal justice system--where it affects the major felonies. But the ultimate placement of this case would still be in federal court, 150 miles away.

This first thing that I presented, like I say, is something that I have thought about for some time. One of the reasons that I even mention it is because of the fact that we have had cooperation in so many areas from the Fort Peck tribes and something like this I know would cause alot of consternation in some circles but when you look at it from either side, you see that something like this if it was implemented probably wouldn't cause that much problem-at least on our reservation. In fact, it probably wouldn't cause any.

MANNING: Thank you very much and we'll start the questioning with Joe.

DELACRUZ: Well, now that your recommendations have stripped the tribes of all their powers, my first question, are you familiar with the recent Child Welfare Act that gets into juvenile crimes and a process for these things to be handled by tribes and referred back to tribes from state court, etc., that this became law and hopefully, we'll get appropriation to handle it this year, recommendation was to turn that over to you, but if there's appropriation, there's definitely going to be money.....

NEUMILLER: Okay, now this I was not aware of, just exactly what this consists of. Some of the things that the tribal court system is trying to use so far, some of the placements have been a long drawn out process that involved the social services welfare department that the tribal judges have to go through because they don't have the authority. In other words, a tribal judge can't just, you know, decide that a child needs to be placed here and do it. They have to go through so many different agencies in order to get it done. And I think that probably something like this would streamline the process.

DELACRUZ: Yeah, and I found out on that that in some states they've worked that out with the state courts and stuff where all those things are referred back to the tribe, the tribal social health service divisions. There's group homes that are on some of the reservation. I know Yakima has one, there's one in western Washington and they have them in Albuquerque. And those things have been worked out. The Child Welfare Act was worked on several years to take, address some of the problems with children and juveniles. Although the bill didn't come through exactly what Indian people wanted and the regulations. It's addressing the problems, that you're saying to turn over to the city, county, or state. Again, Indian people, self-determination are taking care of their own people.

NEUMILLER: Well, this is why I think in this presentation, let me emphasize the word refer. I think that there should be a tool for tribal courts to use that they don't have. Our district court system could be used as a tool as they wish.

DELACRUZ: The other thing is that across different states where panels deal with what tribes feel they don't have and what people have toll them they don't have. And every tribe is at a different level of exercising what they do have. I think at Yakima the officers there have just updated their codes to take care of alot of these things that you're told they didn't have. I know in southwestern New Mexico, some of those places.... The other question I had was when you're speaking of felonies that we can't handle, what are you classifying as felonies? Are you just speaking of the major crimes?

NEUMILLER: I'm talking of the crimes that now fall under the jurisdiction of the FBI. Now these crimes, again, this is the problem, these crimes are not only out of our jurisdiction, they are also out of tribal jurisdiction. The tribe has nothing to say about these crimes. Now again, this involves federal statutes that would take changing, but they would involve crimes that the Indian tribes do not now, at least on our reservation, have any part of enforcing at all. Well, one of the problems is that when we have a trial--federal trial in Billings or Great Falls, Montana, the jury is comprised of people from around the state. Now the Indian person that goes to trial in Billings or Great Falls in 350 miles from his reservation. Now, say that this system was implemented in which the--instead of the federal court taking this, the local district court could handle this, the jury would not have to be drawn from all over the state. The jury would be

drawn from people in that area. Now, tribal people do sit on our juries in district court. I don't know how it is anywhere else, but they already do.

DELACRUZ: In our jury, non-Indian people sit on our juries also.

NEUMILLER: Well, see, we don't. Well, in tribal court, no, we don't. In federal court, yes, but in tribal court, no. My people do not sit on juries. So, it would be probably to me anyway a better judgment of a jury--probably to the person that was there to have at least some of the people that are from that part of the country sitting on the jury, which now it's like traveling across the country. It's a completely different world. There is no feelings for the reservation or the people involved....

DELACRUZ: Yes, another question I had. You referred that it would be better to--for alot of these things that are referred to the city or state because of the history of repeaters of the same people in tribal court. Do other courts in their jurisdiction have this problem in Montana?

NEUMILLER: Would you repeat that, please?

DELACRUZ: Well, you said that it would be if you turn some of these jurisdictions over to the city or county or state--it would be--the way I heard you say it. It would be good because of the repeaters that you have in tribal court--the same people. Don't other courts within their jurisdiction have the repeater problem in Montana?

NEUMILLER: I'll answer your question. In the first place, I made no mention of turning any jurisdiction over to the city--none at all, or to the county. To answer the second question, this is a common type thing through all the court systems. Most of the major crimes are from repeat offenders. What I talked about in referring cases to a district court, as far as the city jurisdiction, absolutely not. Tribal court would maintain their jurisdiction, just as we are now. In other words, we would not, as city police, we would not change. Tribal police would not change, nor would the structure of the tribal court or the city court, nothing would be affected except for the fact that the tribal police would have training, probably on an assessment basis - the state would have to provide training that they now don't get.

DELACRUZ: That was another one of my questions. In Montana, why don't the tribes have access to the institutions?

NEUMILLER: The tribes do now. One of the things, of course, is this jurisdiction. The tribal officers are police officers and stuff like this. Now, I should make myself clear. I am talking about those tribal police on the reservation. Now, off the reservation, it's different in the state on Montana. In that off the reservation, there's no status at all. It's all under the same jurisdiction, so a tribal person on a police department in Glasgow off the reservation, it wouldn't matter whether he was tribal or not. He would go through

the same, he would be a state police officer. And the problem comes in with the jurisdiction. One of the reasons that alot of the education was denied from tribal police was because of funding. And as I pointed out before, the state provides most of our costs in training in the Montana Law Enforcement Academy which lasts, different schools, 16 weeks. Okay, the tribes would have to pay for this where this was picked up on a state basis by the state funding. And the tribes were reluctant to send their officers because of the cost involved. And when you have a department that is quite small, as the tribal police did, you can see where the absence of one officer. However, there have been several of the tribal police that have recently gone through the Montana Law Enforcement.....

DELACRUZ: You went through...I thought on one of your recommendations when you're speaking of juvenile problems or child problems that there was no access to state jurisdiction.

NEUMILLER: By tribal court, that's correct. The process by which the person in our situation was placed in a state institution--a petition is drawn before the district judge in our county, stating that the person has a mental or an alcoholic-related disease and that it's bad enough that he should be committed to an institution for treatment. Okay, the tribal courts do not now have that opportunity to do this because of the fact that the Fort Peck Tribal Court is not a recognized court of record and, therefore, not recognized by the State of Montana.....

DELACRUZ: And then there's not inter-governmental cooperation in those areas where even - there doesn't need to be accorded from if a health clinic or the social service department refers someone that wanted the use of an institution for alcoholism say, they can't...they're not...the state won't accept them.

NEUMILLER: There is cooperation in that the county welfare does provide welfare and social services for all people in the State of Montana and 80% of our welfare and social service.....

DELACRUZ: Will they take a referral from the tribal institutions, such as the tribal social health service division in conjunction with Indian health?

NEUMILLER: Yes, they will. This is on the local level. But you see, we still run into the problem of that person that's in need of care being able to be put into an institution such as Warm Springs State Hospital, our state mental institution or the alcohol rehabilitation center....

DELORIA: You're saying what they're doing now for involuntary commitments is that the state courts are just going ahead and committing people, reservation people? They're not?

NEUMILLER: .....can't do it.

DELORIA: So how are people being involuntarily committed or they're not?

NEUMILLER: Well, this is one of the problems that I was addressing. The fact that the Fort Peck tribal system, Fort Peck courts, tribal courts don't have the authority now to refer these people or juvenile offenders to our local court systems which is right there, not 200 feet from their front door, where our district judge sits in the courthouse. These people cannot go across the street--our tribal judges can't go across the street and say, "Hey, let me get this person committed."

DELACRUZ: Have there ever been any attempts to inter-governmentally work out these authorities or jurisdictions? I mean other than arguing over who's got the authority.....

NEUMILLER: Yes, there has. I don't think there's been any argument over who has the authority. I think again here is a problem of, you know, where do the laws pertain. I don't think there's any problem. In fact, the tribal courts would gladly refer some juvenile cases where they could be dealt with properly. We don't have a juvenile institution on the reservation. We have a terrible juvenile problem. What we have to work with is an informal social service system that is integrated. The tribe and county social service system works together. But what it is is it ends up in sort of a shambles because of the fact that you see you have no direction from the top, you have no guidelines from the district judge that says this person will attend this institution for 90 days to be evaluated to see what's wrong with this person or this person can be sent to the alcoholism treatment center. Now Fort Peck tribe has what they call a half-way house, which is again a commendable effort by the Fort Peck tribes to combat one of our worst problems that we have and that's alcoholism. And this building is in Poplar and it's run entirely by tribal persons that do have experience with this, but again, this is an informal thing. Again, it costs the tribe money to run this thing.

MANNING: Carroll, you have any questions?

GRAHAM: Well, sure, I have alot of questions and time will permit. It seems to me like in your testimony and I'll ask you if this is fact, and we've gotten it from alot of other sources over the past two days. It seems as though that the FBI and the United States Attorney is not responsive to some of these major crimes that are presented that they should take a hold of and do something about. I've repeatedly heard this. You think this to be a fact?

NEUMILLER: It's absolutely true.

GRAHAM: I think this is, I know, coming from the reservation that I do in the Crow and the Cheyenne, I have two of them in my district and I hear this common complaint all the time. You may try to get a hold of the FBI for two weeks, they may never call back, they never respond, very rarely. And by that time, the evidence is cold. If it ever does go to the U.S. Attorney, the evidence is gone, some of the witnesses change their minds, are gone, so it's thrown out. There's

nothing ever done about it. And I think that's the weakness in the whole system. It's not good for the Indians or it isn't good for the non-Indians.

NEUMILLER: That's true.

GRAHAM: That's all I'm going to say.

MANNING: That was a good question...(laughter)...

GRAHAM: Well, I did ask him if that was what he said.....

MANNING: I want to thank you for your presentation. It was most interesting and I know it opened alot of our eyes to some unbelievable situations that you've described. I think that probably it's a fair statement to make that your attempt to resolve them with your six points basically is because you feel that the justice people aren't doing their job in the major and minor felony areas. Would that be a fair statement?

NEUMILLER: This is true. I think if the federal agencies were doing their jobs as they should, I think alot of the problems of state jurisdiction, at least in law enforcement would not even be there. I think that the fact that the federal system works so slow, so sluggishly, that in some cases it is responsible for people being killed. Repeat offenders are never grabbed. They're never taken into custody. And I think that becuase of this, one of the biggest causes of hard feelings that exists is because of this situation. And as far as I'm concerned, my interest is in the, as I said, preserving peace on the reservation. All people and I need the tools. I don't have them. The Fort Peck tribes needs the tools, they don't have them. And the tools have to be found someplace and they're going to have to be found by people looking at some other approach, maybe it's different...

MANNING: Or at least as a stop-cap until the tribes can get to where they should be. You mentioned--I just want to run through some of your testimony for those of us who weren't here at the morning session in the event that we get into any participation or there are people out there from the federal departments that might want to respond or discuss it. You said that in a year's time, there's approximately 150 cases that the FBI should handle. Is that correct, something in that area? And that about 20 will be prosecuted and the rest go back to the tribal court?

NEUMILLER: That's true.

MANNING: ....just trying to see if my notes are correct. Okay, I don't think that this is probably a fair question to ask you, but again, the reason I asked that question this morning of that other law enforcement officer, because of the discussion again yesterday. Everyone says that P.L. 280 is not working, and yet it seemed to me that in every state that had P.L. 280, they don't have the problem that the non-280 states have because they can get to state court with the

felony cases that normally in a non-280 state just go back to the tribes. Now, will somebody enlighten if that's so.

DELACRUZ: I want to point something else out, too, Speaker. We're a 280 state. But the things that are referred back to a tribal court, either by the U.S. Attorney, the FBI, or even a federal court of appeal, they turn it back to tribal court, at least in some of the tribes in the State of Washington, those tribes are handling those cases. And it gets down to a point of recognition of that court which I think you stated that no one recognizes the court of.... And the court, and staff can handle all of this.

MANNING: Well, that's another answer, to get the appropriate court, where you don't have it at the.....

DELACRUZ: Well, there's no recognition of the court. Well, how are ... handle it?

MANNING: Now the other thing, though, that--didn't someone say yesterday that many of these federal cases are being handled by the state? Wasn't there a testimony to that effect yesterday?

DELACRUZ: No, I didn't recall....

MANNING: I thought someone when I asked them that said that they go to the state courts and they attempt to find a state violation rather than consider it a federal offense. I thought someone told me that....

DELACRUZ: But that's why a question on 150 of the 14 major crimes, off the top of my head, I don't know what those 14 crimes are, but they're under federal jurisdiction. I feel that's more than there is in the whole State of Washington.

NEUMILLER: I'd like to comment. Flathead Reservation in Montana has concurrent state and tribal jurisdiction. Now, I don't know the basics, and I'm not familiar...as for tribal court not being recognized, you're referring to being recognized as a legal entity by the State of Montana?

DELACRUZ: To refer cases back, I think Flathead, under concurrent, are working very similar to the way some of the courts are in some of the other states when there is recognition of that court under.....

NEUMILLER: The tribal court does not have to be recognized by the State of Montana. In fact, the tribal court--the State of Montana doesn't even enter into--in that these...consists of federal or tribal--the state doesn't enter into it at all. We don't have any state jurisdiction.

MANNING: The other thing that bothers me is that the referral back to the tribal court, they can still--the best they can give them is $500 and six months. Does that solve the problem?

DELACRUZ: That doesn't solve the problem. I'm surprised that none of

the witnesses brought up the efforts of the Senate Judiciary Committee to update the federal code. It was S1, now it's another bill number, and Title XVIII in there--that's alot of Indian people that have been following it. And alot of state attorney generals because it's clarifying some of these jurisdiciton things that people are arguing over and people are suffering over because...trying to get together....

MANNING: We're now finished with all the formal presentors of the morning and afternoon. And as we did yesterday, those of you in the audience who wish to comment or question, please feel free to do so. Sometime before we finish, I'm going to ask -- we have a visitor from Canada here who -- I'm going to ask him to perhaps give us his impression of what he's heard here in the last two days. But we'll save him until the end.

HURD: Do I get to ask a question first?

MANNING: Surely. So does anyone wish to say anything that's in the audience?

DEAN: I'd just like to briefly respond to the inquiry that was made about 280. I think there are two things that my clients that were here earlier who have left would like very much to emphasize. One of the problems in 280 states is the problem of unresponsiveness. In other words, the county sheriff or the state or whoever it is, doesn't respond any better than the FBI or U.S. Attorney. But there's the other.....
(end of tape)....

HURD: ....Manitoba prior to that before I became Governor General. My concern in terms of sort of advising those persons that I work with in the Department including the Assistant Deputy Administrator for Corporate Policy is because two things are happening in Canada inspite of the government being in somewhat limbo. One was started under the Trudeau government namely a Constitution reform in Canada which natives in general and Indians in particular have sought and are seeking some involvement in the reform of the Constitution of Canada namely the British North America Act which is a British statute and it may seem strange to you in part is that Canada of all of the common law countries that got its independence by one way or the other, Canada is the only country in the British commonwealth that must go to the British crown to ask if it could reform its Constitution. Australia does not do this, New Zealand does not do this. No other country in the British commonwealth does this. British North America Act is a British act. The reason why the Canadians have not patrioted and the Canadians butchered the English language because there is no such word as patrioted. So we got one now. Patrioting the Constitution is because of the last hundred and some odd years, is because the Canadians have not agreed on how to amend the Act, the Constitution. So that Indian people, National Indian Brotherhood and the rather articulate provincial associations across the country as the Manitoban Indian Brotherhood, Upward Ind..an Association and other associations, etc., have sought involvement in the reform of the Constitution of Canada and an entrenching of "their rights." Mr.

Trudeau refused any participation on behalf of the natives in general and Indians in particular. Natives include a very wide population in Canada. The Indian Constitution in Canada include the Eskimo, as well as the Indian and what we traditionally know as the Indian, but Indians statutorially is only included in the Indian Act. Eskimos are not included in the Indian Act and the statutory documentation of the Indians. The Clark Government before it fell did promise that the Indians would be involved in Constitutional reform in Canada on those issues affecting the registered Indian in Canada namely the Indian whose registered under the Indian Act. And that has spurred in many ways the involvement of Indians and their excitement in a possible revision of the British North America Act or whatever Constitution is evolved out of Canada.

The second thing, of course, is the Indian Act itself. Canada's registered Indians are governed by one act of the Parliament of Canada; not many or hundreds or several as in the United States. One single act. That Act has not been revised since 1951. And there is movement, there has been movement now for the last couple of years to reform that Act, revise that Act and the Indian participation in it as to its revision. So those are the two sort of processes that are going on in Canada and I should point out that I'm sure that all of you know that Indians in many ways look to the United States for those things that they perce ved to be areas of sovereignty, self-determination, territorial integrity, etc. They also look to the United States to see what they do not want to see in the Indian Public Law 280. The federal government of Canada, on instinct somewhat, in the Department of Indian Affairs also look to the United States, probably in some ways perceiving what they may not want to see as has happened in the United States, namely sort of conclaves of jurisdiction that somehow defy their perceptions of a federal structure, i.e., a central government and a provincial structure. Provinces also look to the United States in part because they perceive two different types of things. If you are from Alberta, you may well perceive the fact that since you are wealthy, one of the wealthiest, if not the wealthiest province in Canada, you are willing, therefore, to take whatever jurisdiction you can get over Indians including Indian land. You, too, are from the poor province as probably Manitoba, you probably look to the United States to see whether you can find any patterns NOT to assume jurisdiction unless the federal government of Canada is willing to fund that 100%. In B.C. (British Columbia), those who are from the Pacific Northwest knows that since B.C. joined the union in Canada, B.C. has always been very much paranoid about the whole issue. In fact, in B.C., there are no Indians. If they were not conquered, it's a fact that we forgot the army, but at least we ran over Vancouver Island and that makes everybody assimulated or a part of something. B.C. is not covered under treaty and is not covered under the law, Proclamation of 1763, so they think they're home free. So, all Indians are B.C.ers and there are no problems even though George Manuel says there are.

All I'm suggesting is this: there is a network of things going on in Canada in the attempt to evolve what might be the pattern in Canada, relative to the revisions of the Indian Act, relative to the reform of the Constitution and, obviously, the Constitution reform is down the road. This is not made an immediate process. There are those who are betting on twenty years, so Margaret Thatcher may have awhile yet to decide whether or not she wants to pick up the Indian Act. On the other hand, the Indian Act is probably very imminent. One particular reason for that is the discrimination clause as perceived in Canada, very heavily by non-Indians, I think, although that's not clear, is that after the Indian man marries, based on the Indian Act, marries a non-Indian woman, she becomes Indian. If an Indian woman marries a non-Indian man, she's kicked out. That case now will be heard, strangly enough is on the agenda of the Human Rights Commission of the United Nations and Mr. Clark and MacDonald, former Minister, now Minister, but Minister without portfolio, of External Affairs has been very much concerned about that, the international publicity, going to the UN. The Supreme Court of Canada has ruled, of course, that is not discrimination in the traditional sense because of the 9124, the British North America Act, can speak to the Indians and Indian lands as the authority or whether the heading of Parliamentary power. With reference to the specific things that have been said here, obviously, the Indian population on the whole in Canada has been looking for some indications and movements for and acclamation of their national status, of the nation's status, the affirmation of treaties as treaties. The Supreme Court of Canada, as well as the Privy Council in England prior to the Supreme Court of Canada being court of last resort about 1952 even if Privy Council, House of Lords in England rule that the treaties made between the British Government and the Indian nations are really nothing more than private contracts and come under the rules of interpretation of private contract law. So, in essence, raised the whole issue of the nature of treaties and status of treaties as law. Their role and their relationship to statutory law, Indian Act, Constitution Law and private law. Second is that not only are they seeking what might be called elements of sovereignty, elements of self-determination as they see south of the border but in some areas, there is the beginnings of sort of the assertional fact even though there is no statutory basis for them to live. The Indian Act in Canada is basically an administrative act in which the bands become essentially extensions of the Department in terms of welfare payments or that rounding up maddogs or I think they have some weak control under the Indian Act which is their responsibility.

So that what assertions are becoming to take place are essentially contractual between Indian bands and the Department. One of those is in the area of law enforcement. There are few areas or few bands in Canada that have what might be called constable programs and they contract through the Department of Indian Affairs. It goes back almost to Sam's question yesterday as the distinct between making law and administering them. And in this particular case, I was rather

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surprised at the answer yesterday because somebody said we have a distinct as I understood it, we'll have it administration rather than acting because at least we don't have to administer that which we don't like or something to that effect. I don't know that the National Indian Brotherhood or Federal of Saskatchewan Indians and the Manitoban Indian Brotherhood would agree with that because I think that to be able to act upon some things indicates a degree of sovereignty which they do not now have. I mentioned this for the reason that two incidents have taken place very recently and I think this whole area you have been talking about goes to the issue because I think the Indian communities, the Indian bands in Canada have said: OK, if we don't have sort of a solid notion of what our treaties are about that they have a status at least of statute, that we are not granted some degree of self-determination and sovereignty. We have a kind of administrative unit of the Department. One of the areas we might be able to enter into is the area of law enforcement. And obviously, you get in a sense that, really begins to talk about the question of sovereignty and territorial integrity in this type of thing so that our recent incident or a recent incident in a band which includes part of the city of Montreal, one of the more wealthier bands in Canada. A member of the tribe was shot by the Quebec police force, who entered the Reserve. The Reserve now has forbidden, unless they've changed since my arrival here Sunday, have forbidden the Quebec police force from ever entering the Reserve. What's going to happen there, we don't know with reference to any kind of chase or any kind of pursuit that may go through the city onto the Reserve. Can the police force of Quebec enter? What if there's a shootout between the Constable of the band and provincial police force and they have indicated that they will shot and they will stop the Quebec police force at their Reserve. As you know, you must frowned a great deal in the sense that the St. Regis Band last winter blocked, charged toll, of the Thousand Island Highway because they were protesting withholding medical funds, medical services by the Department of Health, Welfare of Canada out of the Universal Health System to the St. Regis Band. Sl, all they did was simply block Thousand Island Highway here and if you would try to go up the Thousand Island Highway into Kingston or Montreal or down to Toronto, you would have to pay a toll to the St. Regis Band. That became a very sticky issue, because that was an issue between the three agencies then. One, it's really a part of the Federal Highway System although it's under territorial jurisdiction, until you had a kind of collision or potential collision between the RCMP, as officers of the federal government in the right of the Crown of Canada on the OPP, the Ontario Provincial Police and St. Regis Police System and there were lots of Americans who came up who were a bit annoyed. Why in the hell do you let Indians take over? We don't let them take over the United States and they certainly can't take over I-70 and charge toll, like they can up here. The crown must be caving in. Manitoba's also having certain problems in the north with and Manitoba's quite different situation because Manitoba does not have its own conventional police force. It contracts with the Federal Government and the RCMP in Manitoba is not

only a federal police force but it becomes a provincial police force. Whether or not the RCMP officers who are provincial and also federal, depending on what they're doing, can enter or not, a Reserve, as the Ft. Alexander Reserve, a very large reserve, northeast of Winnepag or the Tribal Council of the southwestern part. All I'm indicating to you is that there is certain movements in Canada and they're not, I think, unrelated to some of the problems you are working on. They're not unrelated in the sense that the Indian population in Canada is extremely well aware there are planeloads of people coming out of Ottawa every day to Washington and various other parts from the National Indian Brotherhood and various other regions who're looking at, solving the band's self-determination, the court systems, etc., etc., etc. Obviously, there are things that Canada has gone through as the United States has, all the way from apartness to simulation to togetherness to verticalness to horizontaless, back to simulation and now something else. I guess the question I would like to ask and it's a difficult one and I've been tempted to ask awhile ago. How would you advise, unlike you in many ways, talking about the problems of uniformity, problems of administration, problems of coordination, I think these are all the things I heard here basically, why the system didn't work. We need to talk more, I'm always suspicious of that one. We need to have more coordinators, I'm always suspicious of that one. We need for you to pledge, I think that's barking up the wrong tree at this moment. What we need to do is maybe institute other forms of bureaucracies, call them institutes of Indian justice or whatever you want to call them, I'm not trying to be derogatony about the presentations, I'm a bit suspicious of that. Public Law 280 hasn't worked. I'm not sure just why it hasn't from the discussion. I don't mean to be critical, I'm trying to figure out if you are an Indian in Canada, why you would not want P .L. 280 and I'm not sure I heard why just yet or if I were advising the Department of Indian Affairs what we really ought to do is pass some sort of semblance of P.L. 280 and just give it to the provinces. After all, Alberta wants all the Indian problems including the high costs, social cost but will take over the large reserves, too. How would you advise, to advise the Assistant Deputy Minister tomorrow morning on questions of law enforcement, on questions of P.L. 280, questions of the role of Indians in the federal system, jurisdiction issues, institution issues. Canada's slate is, I think potentially in part fairly clean. By that I mean to say there are several ways to go at this moment, several ways to go in terms of revision of the Indian Act, reform the Constitution. I'm not saying that there are not some historical sets. There are some historical sets. What I'm saying is I think the atmosphere is such that one would look at a number of things and a number of packets. I guess I'm really asking a question in a simple sort of way: "What would you advise me to avoid?" Joe?

DELACRUZ: I would like to respond to that. I really appreciate you being here, Carroll. As a member of the hundred and fifty-six bands of the Salish Nations, B.C. is north of us. And what's happening in Canada and what's happening in the United

States, the whole thing goes down to mutual respect in government relations, both the U.S. and Canada. And we've been able, at least in the NW, to work out some semblance of that with the International Pacific Salmon Commission, where we've got an Indian representative that we requested and appointed on it. You have one in Canada only the Indians didn't have the privilege to pick who the member would be. But it gets down to government to government relations and I don't know if Canada's ready to do that or the United States or the states. The Canadian Indians, unfortunately, alot of the Indian leaders in the United States (and there is a lot of federal people here). We recognize the history and we've analyzed it very well of the various periods that Indian people have been put through from annihilation to our government's back again; assimulation' our government's back in the 1934 Act; termination; self-determination. The Canadian brothers ask us to send what we feel about what's happened to us in the United States just a month ago. And some of us view what's happening to us now, even though we are in a period of self-determination and the testimonies vou've heard some of the tribes have their own capabilities for their own people through their own governments went through a period of at least pulling themself together. We feel we're now in a period of strangulation as far as funds go. It all is federal policy of the different administrations and we warned the Canadian brothers of that. You know what the history is down here and your history has followed five years, ten years after what's happened in the United States, by the Canadian government. We feel we're in a period of strangulation now, especially where you've got strong tribes who had been able to set up their systems and start getting economic strength, and unfortunately, I guess that became a threat to someone, so now let's pull the funds out. Let's start crunching these budgets down. And I bring this up because of the federal people that are here and the state people. During the period of termination where 280 came about, the federal government was attempting to shirk its responsibility and push those burdens onto the states. The counties and states couldn't afford those that never put it in their budgets. So, in most areas when you mention 280, there was total vacuums as far as law and order went. Total deterioration of the people, almost cultural genesides. And even in 280 states, tribes had to sue to start taking care of their own, funds or no funds. When the gal said that some of the tribes, people had a club outside somebody's door, that was the authority there. And if the funding, which is a problem, at least for Indian tribes in the United States and I think it is a federal responsibility in Canada. Then the federal government should live up to that responsibility and quit putting us through these different circles. The paper work has increased three-fold in this administration. And I don't know how the tribes on the funding process are even surviving today. I'm sure that the states at least with their differences and different laws are capable, even prepared to accept the responsibilities which the federal government disseminates which there was an attempt to do, as reorganization, of channeling funds through states. If you analyze the appropriations that go into Indian affairs, very little of it

gets down to the Indian people. I'm told that is not quite as true in Canada but very few of those funds get down to that grassroot Indian living on that reserve. I really feel that it's the government to government process. I know that NIB and some of their former leaders were speaking government to government relations. And the external infiltrations just like in the United States, those people are no longer there but they're still there to advocate those things. But it really gets down to government to government and people working together and I believe that the Indian people in Canada and the Indian people in the United States are willing to do that. Even though all the things we've been through, and I think that there's examples and that's why I was so interested in serving on this Commission of people working government to government and working things out to provide services to people. And I think that this Commission is finding there are examples that can be used everywhere, in other places as time goes on, we'll find out. And I note that I see JoJo Hunt here from the Senate Select Committee on Indian Affairs and I see Hans Walker back there from the Solicitor's Office and Dale Wing from LEAA, I don't know Jim Flute from the Office of Indian Affairs and Department of Justice and Roger Adams from the Criminal Division with the Department of Justice and Paul Alexander. Paul here is from the U.S. Civil Rights Commission and I see another note that a couple of people from the Federal Bureau of Investigation are here. It's unfortunate you weren't here, all of you weren't here during the various witnesses' testimony because I feel the majority of the witness were pointing the problem at the various federal agencies and are disseminated. Some of these jurisdictional problems are up to the realm of the various federal departments and I don't think that Indian people really know where their funding situation is right now. As far as LEAA goes, as far as Interior goes, there's no funding that I am aware of in some of these other agencies. I do know that as an Indian person that grew up through the latter part of the 1934 Act when Indians were suppose to be governing themselves and the BIA was taking care of everything and through the termination period, into the self-determination era, that tribes have come a long way. And I have also attended many hearings of this type with horror stories and things that this Commission has heard are part of records of hearings that go back through time. The same things with hearings of Senate Select Committee, they're the same type of thing, the Civil Rights Commission hearings that were held all over the country and hearing after hearing and I don't know what the answer is to get at this problem but I really feel government to government relations and federal government to live up to its responsibility and probably pull some of these things back centrally to one administration. Right now, Indian affairs is disseminated out into so many agencies that they've got people running around chasing their tails trying to figure out where to get some funding to survive. Don't do that up in Canada. I really feel that. I don't know if there's any questions from the federal people. I know that I have a few questions as far as fundings in different agencies that would be disseminated out into various areas. Dale, I've known you for a long time, Dale's the LEAA desk. It was pointed out

this morning that through the various comprehensive plans of the tribes that at least to the Indian desk, have requested $18 million and 1979 appropriation, you have $3 million, and for 1980, we are looking at $1.2 million. It's half of that. That's the problem with that. And Sam suggested if all the federal agency people would come up maybe we can have a discussion of some of the problems that came out. And the testimonies of the witnesses, but most of them have now departed.

MANNING: Thank you, gentlemen, most of you weren't here for the presentations that's been going on here for two days, I don't even know if you are aware of our Commission and what we do. Please feel free to ask if you feel that that will help you in answering some of the questions. Running through the testimony, this is basically a Commission hearing that discussed the problems of law enforcement between the states and the tribes and the federal government. We have periods in which they describe the activities between the states and the tribes and that the problems and running through that and running through all of the testimonies we've heard from the various jurisdictions.....(end of tape)....

MANNING: In the opinion of all these law enforcement people, they felt that the Justice Department and the FBI and the BIA, they all came into their own share of the responsibility, were not functioning adequately at all with respect to the prosecution of these heavy crimes. I know that I can speak for the entire commission and assure you that that is what we heard time and time again, and examples were given to us specifically. There is still one, at least one, witness who will be happy to verify any specific instances that you may wish to hear. He's still here. But would anyone, or however you would like to do it. Would you like to respond? Is it a lack of money on Justice's part that they can't staff things adequately? Is it a backlog of the cases to the point where you can't handle them? Is it the geographical distances between the reservations and the place of prosecution? These are the things that we've been hearing and I wonder if some of you would respond.

ADAMS: I'd like to respond. Thank you. My name is Roger Adams and I'm an attorney with the Criminal Division of the Department. And among my other responsibilities, I deal alot with the statutes and with the crimes on Indian reservations, such as the Major Crimes. I did hear the entire testimony of the sheriff from Montana and the examples he gave the figures are not surprising. That is a familiar complaint that the Justice Department has received. The reasons for that, there are a number of reasons. I think we have to consider first of all that you are talking about a problem on Indian reservations in Indian country. You can't talk about one single problem and one single factor applying all over the country. There are many Indian reservations and each Indian reservation has its own unique set of problems. A law enforcement system that works well on one reservation may well not work at all on another. The specific problem of the fact that the United States Attorney's Office has declined too many Indian cases or too many cases under 1153 remains at point. It's unfortunate that we did not have, that the Commission did not have one or more United States Attorneys here. In fact, it would have been good to have had the United States Attorney from Montana, because it's the United States Attorney who makes the ultimate decision about whether a particular criminal case will or will not be prosecuted. At least that's true with respect to cases in Indian country. With certain federal statutes, they do not have that ultimate responsibility over it but with respect to cases under 1152 and 1153, it's up to the United States Attorney. It's difficult to say why only 20 of 150 cases that the sheriff mentioned the FBI should have entered, why only 20 of them ended up being prosecuted. Without having the facts on all those cases, it's difficult to say. It may be that the U.S. Attorney's office has particular guidelines about monetary amounts, for example, among the Major Crimes, the crimes of larceny and burglary, a possible explanation, speaking theoretically because I don't know, but a possible explanation is that the U.S. Attorney may have said, "Well, with respect to larcenies and burglaries where the amount of property taken is less than, let's say, $500 or $1,000, we should routinely decline in favor of tribal prosecution." That might explain to some

extent why we heard testimony this morning that the FBI was told that a Major Crime had been committed, and he said, "Well, forget it, we're declining." The Justice Department is declining in favor of tribal prosecution.

There may well be problems with the evidence in a particular case. The U.S. Attorney's office may feel that a particular chain of customing of wrong with a chain of custody of the evidence, that cannot prove the violation of a serious crime. Now, the point about the U.S. Attorney's offices not cooperating enough with tribal police, and the U.S. Attorney's offices insisting on FBI investigation for use in prosecution. Some U.S. Attorney's offices do that. Others don't. It's been the Justice Department policy for several years, which the U.S. Attorneys have been aware of, to ask and encourage the U.S. Attorneys to accept cases for prosecution directly from tribal and from Bureau of Indian Affairs police if, in the U.S. Attorney's judgment, that the particular agency that they are dealing with is capable of conducting a sufficiently good investigation to support federal prosecution. There were some, I know, districts where certain tribal certain BIA police officers are held in such high regard, that their reports are routinely considered for prosecution. And the FBI has not been asked to investigate at all. There are others though, where it is felt by the U.S. Attorney and his assistants, that with a particular tribal force or particular parts of the Bureau of Indian Affairs police, that the investigations that they conduct are not sufficient quality. Therefore, they do insist on FBI investigation. Which brings me to the point about the people from the FBI here who could maybe address this a little more specifically, the problem of the facts that the FBI is too far away from the reservations and the response time is slow, that criticism may well be valid, with respect to distances to certain reservations, are a long way. You have to realize though that law enforcement generally in rural America is not as swift, as fast, as speedy, as it is in Seattle or Washington, D.C. or New York City. It does take time for the FBI to get there. Because they are generally stationed long ways away. The reason that they're stationed a long ways, a way is that they have other crimes to investigate, other than crimes in Indian reservations, and most of those crimes are committed in a bigger, bigger area. That, I think, is a general response to the Sheriff's testimony this morning; it's a general criticism. I know it's been leveled at the Justice Department for a number of years.

MANNING: The thing that impresses me is that these are people who are all law enforcement people themselves; people who, I think, have been trained at least to the extent that they know when they have a case, and when they don't have a case. They seem not to have the problem at the state level that they're having at the federal level with the same type of activity and the same offenses, and this is what disturbs me, is that, you know, it was so uniform, it came from all of them. And I just want to say that in fairness because you weren't here yesterday to hear the others. There was some talk that maybe putting magistrates on the reservations might be helpful.

Would you respond to that?

ADAMS: Yeah. That's a common suggestion. Of course, the placing of magistrates is up to the federal district judges, not up to the Justice Department where to place them. I think the trend in federal magistrates, although it might be valid to make an exception to that trend for Indian country; the trend is more towards full-time magistrates as opposed to part-time magistrates. If you have full-time magistrates, you're much more likely to have them in major metropolitan areas. I heard this morning that there was a part-time magistrate placed on the Fort Peck Reservation; that's probably not a bad idea.

HUNT: May I respond to that?

DELACRUZ: Speaker Manning, I want to respond to his responses, the things that were said. The things that I heard here, I don't know, I think you were at the Federal Bar Association a year or so ago in Phoenix, was essentially the same thing from federal officers and everything else except for the one region that you mentioned, that's Phoenix, where the FBI and the Indian police had a pretty good relationship, almost a personal relationship, it was because of some very close personal relationships that you didn't have this problem. That, in other hearings I've attended as a witness, this same problem that the tribes are complaining about, about responses and stuff, and I know, I'm very aware from the area where I live. We have the Olympia National Forest and the Olympic National Park. And the park rangers and the tribe jointly have tried this and the park rangers had to give up on arrests in the forests and stuff because they can't get them prosecuted. Together, we tried to get a magistrate court down close to that area. So it's not only a common Indian problem, as far as getting responses, to getting this here type of things into courts. The forest service and park service also have the same problem.

ADAMS: It might well work, if you could place the magistrate on a national park, that might help placing.....

DELACRUZ: No, what I've said is the area where the magistrate is, it is inconvenient for both. I mean there's millions and millions of dollars of theft going on in the forest and park. And generally the tribal, we almost give up on even arresting anybody because you don't get prosecuted. As far as FBI response, I agree with you, it depends on the nature of the crime but even on those, it doesn't take that long in todays's age, to travel 90 miles if it's something serious, and sometimes, it takes three or four days and people's workloads. The same type of thing you heard here came up at the federal bar meeting, whenever you reach the United States for their Indian population.

ADAMS: Well, I think the complaints that I heard this morning or you heard yesterday when I wasn't here, the nature of the complaints weren't surprising. It's the framing of the response to that which I think the way you go about responding

to that is, first of all, to recognize that we're not talking about one national problem, subject to one set of guidelines. Your point is probably well taken about a government to government response. I think it takes coordination between the U.S. Attorney and the FBI Special Agent in charge and the tribal contact - tribal chairman...tribal judge....

MANNING: Yes, for the record, would you state your name?

HUNT: Jojo Hunt, Senate Select Committee on Indian Affairs. Roger, is it? You mentioned the Federal Magistrates Act and that indeed the District Court judges appoint magistrates, to place them in various places where the caseload is high enough for them to place them there. And talking with some people from the U.S. Court Administration, they, of course, look at cases brought, be it on or near a reservation or anywhere else and obviously, we get right back to the prosecution problem. It seems to be a vicious circle. If cases aren't prosecuted, they are not there to be counted, and not there for a judge to appoint a magistrate. And one of the other problems that we see with the Magistrates Act is also the consent problem. The defendant has to consent to appear before a magistrate. Otherwise, he goes before the district court judge. It seems that one of the reasons that we don't have those federal magistrates available is because there's not the caseload on Indian reservations because there's no prosecution or with few prosecutions being brought by U.S. Attorneys.

So how do we try to deal with some of these problems? Not only is it the 14 Major Crimes, but it's Indian versus non-Indian and non-Indian versus Indian cases as well, and particularly with the Supreme Court decision in Oliphant, there's a serious jurisdiction gap that possibly could be closed, if you know, in an effective and efficient way, by the appointment of magistrates to handle some of these things, and bounce them up to the District Court level if the defendant doesn't consent to be prosecuted there. But still, we've got to have prosecutions. You know, maybe you're shorthanded, but bring that to light.

ADAMS: Well, first of all, I'm not so sure I can agree with your statement that there's a jurisdiction void in light of Oliphant....

HUNT: There's a de facto jurisdiction gap it seems to me like, even though there's a law there to cover it, there is a gap of people not being prosecuted, by whatever entity.

ADAMS: It's difficult to respond generally to a criticism like that when I have no idea what district you're talking about, the reason why a particular U.S. Attorney isn't prosecuting. Now, I think that, as we heard this morning, cases where, if it's an Indian defendant, cases where the U.S. Attorney decides he's not going to prosecute under the Major Crimes Act, it's inevitable it will be in tribal court jurisdiction. So, what the U.S. Attorney is doing is he's not saying, "I'm ignoring the case." He's saying, "I'm declining in favor of the tribal

court jurisdiction."

MANNING: Which can only go six months and $500.

HUNT: Well, how about the other cases? What can we do with them? Where there is federal jurisdiction, non-Indian versus Indian and Indian versus non-Indian that occur on a federal Indian reservation?

ADAMS: If it's non-Indian against Indian? It's interesting. For years, I think everyone that was concerned at all with Indian law assumed that if you had a case where a white defendant was suspected, then it was exclusive federal jurisdiction. So, therefore, the U.S. Attorney had to prosecute or if he didn't, the defendant was going to get off scott-free. The Justice Department recently has done some more research, and we've come to the conclusion that the states have jurisdiction also. If, for some reason, the state doesn't act or acts in a meaningless manner, there's no reason why the federal government can't also prosecute. I think we've tried to make, and I think I can say that most U.S. Attorneys ARE aware that they have a big responsibility, whereas the non-Indian can get away, they don't do anything. Nothing is going to get done. Now, why a specific case may or may not have been prosecuted is very difficult to say without having the facts of the specific case.

HUNT: I guess it's just that the general issue I wanted to bring up, I don't have a specific case either, but it seems to happen across the country.

MANNING: Yes, sir.

ALEXANDER: My name is Paul Alexander. I'm from the Civil Rights Commission. Just a few observations from some of the work we've been doing in this area. In terms of the 80% decline rate talked about, it's been pointed out to us a number of times for various sorts of things that is across the board, an 80% federal decline rate. So, therefore, it's an institutional problem, not just a problem with respect to the Major Crimes Act.

ADAMS: It really depends on what point of view.

ALEXANDER: It's an institutional issue to the extent, for example, that the FBI with this administration, its focus has been narrowed to cover certain issues. That's a reflection of the same type of concern. Even if you cured some of the problems, you're still going to have some.... We have spoken with the U.S. Attorney from Montana. He does not have guidelines with respect to declination of prosecution. And I was curious about something you said that I was not aware of. The policy of the U.S. Attorney for accepting referrals from tribal police and the Bureau of Indian Affairs, is that in the U.S. Attorneys Manual? Is that an official policy directive of the Department?

ADAMS: I think it is in the U.S. Attorneys' Manual. If not, I have said that to all of them on a number of occasions, the most recent being orally in Phoenix last March and written....it should be, if not.

ALEXANDER: Another issue that comes up for us when we try to look at what recommendations we would institutionally make, which is our goal, is that it appears that the whole federal justice system is extremely personalized. That each U.S. Attorney has a great deal of discretion. That's inherent in the process. I have the impression that if Mr. adams goes on vacation for a month, there's almost a void in the Department of Justice. He's the only one who knows any thing about Indian Law. Yet, with each successive administration, the same issues get recycled almost to apoint every few years or four perhaps, where they focus towards a solution perhaps and then we go into a new administration and we recycled again. Your division and the criminal division differ institutionally as to what the solutions are and they just sort of never reach a resolution point and get recycled again. It would seem to me at this point that if you people are to have an impact that you need to focus on some sort of institutional mechanism that brings it beyond asking questions every four years as to why we have a need for...as to how within the Department do we get an institutionalized information system and a problem solving system. Because I know when I went to ask about a problem last year at the FBI in the space of six months I spoke to three different officials who successively occupied the same position. I'd like to see someone twice back there on the Hill. And everyone will tell you that the current director is very, very cooperative, but there's nothing institutional. I think we have to focus or at least start thinking about, if not the specific problems, but, institutionally, how we move from redefinition....

ADAMS: What would you suggest?

ALEXANDER: I don't know. That's why I....

ADAMS: Do you mean a division of the department or something like that? That's a common suggestion.

ALEXANDER: You have a planning unit in your department? I believe that the Attorney General, Mr. Civiletti, and the head director of the FBI both indicated an interest in how these things could be solved. How the FBI could have, in various Indian reservations, defer to tribal police as a matter fact, when there are certain standards that have been met by each tribal police department. Somebody needs to sit down - you have the expertise - and define it. You have an Institute for Criminal Justice.

ADAMS: The Civil Rights Commission has been involved in the area for some time. Did you come up with anything?

ALEXANDER: We're not at a point of making recommendations. The reason I raised it here is I'm still very interested in what you all think. I know you studied it, you've both been on task

forces. That's what Sam has... six years now?

DELACRUZ: Sam forgets that far back.

DELORIA: I never look back.

CLUTE: Yeah. I just wanted to make some comments to support Paul's observation. My name is Jim Clute. I'm with the Civil Rights Division of Justice. We haven't very much to do with prosecuting crime on Indian reservations at all, but we do deal with the U.S. Attorney's Office of Civil Rights Commission. And Paul made an observation and Roger did, too, the U.S. Attorneys in this country are very much independent in a regard. They get directives from Washington, but on these day to day decisions on which cases to prosecute and what their standard will be for declining and so on. those matters are left up to the U.S. Attorneys. And the extent to which Indian people, I think, have a good responsive U.S. Attorney and probably, it sort of follows to a large degree, an FBI officer, depends in a large part on who is selected for that position. I think that South Dakota, for example, in the period of the last three years, they had three different U.S. Attorneys over a period of time, all of them with very different backgrounds. The Indian community there, I believe, has been involved at least in terms of the test to select the most recent replacement in trying to get someone with some Indian background in that position. We now have a U.S. Attorney there who was with the tribal council for the Pine Ridge Indian Reservation, who is familiar with Indian law, has represented a number of Indian clients as defense attorney, and is now, I think, in a position to do alot of good in terms of improving relationships in South Dakota between the tribes and the FBI and his own office in terms of how he's performing. I just wanted to offer this suggestion that... this is Terry, Terry Pechota.

DELORIA: U.S. Attorney. I sent him to law school. (laughter)

?? : What happened?

DELORIA: He took a wrong turn.

CLUTE: Maybe he's beholden to you for something. But, this is an important position from the point of view of the Indian community as you've all stressed here in the hearings. And I think that, to a large extent, it's one of those appointments that usually doesn't get very much publicity or very much involvement from the community because it's a political type of appointment, and I think that if the Indian community in states with large Indian population focused more on who prospective candidates were and made their voices known to Congress, the people within the state, and get involved in that process, I don't know how it works on the state level, but that would be energy well spent in terms of just starting to improve their situation.

ADAMS: I would just like to point out, too, that most U.S. Attorneys in Arizona and South Dakota, where the large percentage of

their criminal cases, they would dearly love to get several Indian assistant U.S. Attorneys. The problem is to get a qualified candidate; there's such a demand for Indian attorneys, they can make a great deal more money doing something else.

DELACRUZ: I wanted to comment on it, also, even institutionally, the top guys are all political appointees and there could be somewhere in the structure, that there is an assistant U.S. Attorney that is, not at somebody's political whims, that we know who we go to. You know that helps resolve alot of things. We've been able to develop in some U.S. Attorney's offices those type of relationships, that normally the guy, depending on who he's dealing with, gets too friendly with somebody and he's gone after a fashion of time and, institutionally, that would help. I don't know, I see the problem not only as an Indian problem from the perspective where I sit, but when the Quinault Tribe drove all the cedar thievies off the Quinault Reservation in 1969 and 1970, in adjacent lands, the cedar thefts jumped up to $1,800,000, and there's no prosecution, and I don't know what the thefts are today on federal lands that can't get prosecuted. There's enough money there to take care of all of our problems, so....

MANNING: Another thing we heard running through all of this, of course, and I'm not saying this to be unfair, but I just thought I want to give the FBI an opportunity to respond to charges which they didn't hear. And that is that the FBI's attitude towards those who serve on or near the reservations, that's like where all the bad guys go, that's like punishment when you put them out there.

ADAMS: The Butte division is a disciplinary transfer and that sort of thing.

MANNING: That they have no real rapport with the Indians, thay they don't have an interest in them and, therefore, they are slow to respond to the calls that are made. And that, somewhere in this hierarchy, and I wish they'd explain, where the BIA and the FBI jurisdictionally fit in the process in the genesis of the crime. And I know there are several questions there, but, if anyone would like to respond, please.

GAWE: My name is Doug Gawe, and I'm Section Chief of the Personal Property Crime Section of the Bureau, and as such, my section, we handle the CPR matters, crime on Indian reservations and so forth. I previously served ASAC of our Phoenix office where we have 27 reservations out there in Arizona, so I did have some contact with Indians out in Arizona and so forth. As far as, let me see if I can back up here a little bit, let me just address the portion of it about assignment of agents. It might have been true years ago that people for disciplinary reasons were sent to some of our more remote offices whether those had Indian reservations or not. Today, and I'm speaking, that is not true. I can speak from personal contact with...../...(end of tape).....

Almost 15 years in the FBI and I had never run across more dedicated individuals to a job than these men that serve the entire northern part of Arizona. They were guys, agents, that, truthfully speaking, before they were there, did not have any contact with reservations, with Indians. They do get what training we do give them at the academy, you know, to prepare them for this and that would be the violations, some cultural type training which we went over in your hearing, Paul, before. But, as far as service, these individuals, and again, I guess I'm tooting a horn here, but they are the type of men that I know personally would work 24 hours day, seven days a week. They did it at an expense to themselves and to their families and they worked in very remote regions and they had excellent relationships with the tribal police and the FBI in those areas. And, this I know from personal experience. We did still have complaints against us. And the complaints were that, perhaps we weren't, in Arizona, as I recall from the Pima Reservation, down in Chief Joseph, down there, didn't feel that we were giving him good enough service in regard to the homicides. But, we had one man that was working this area. And again, due to our resources and so forth, this individual was literally killing himself trying to work these particular cases. And again, we have priorities, you know, within our system, within the many areas of jurisdiction that we do have and trying to balance these out, we do give service to the reservation. For instance, if there is a case, there was a case up, I lost it, I'm trying to think of the town up in the northeast part of Arizona there where, it was a fraud type matter, where the people on the reservation were exchanging their jewelry and so forth to this guy who was giving them so much money. And we went in there.....

DELORIA: Flagstaff?

GAWE: It was out of Flagstaff. We had a Reco type case on him and it's since adjudicated as far as I know. The point I'm trying to make there is that the case was big enough that we augmented our Flagstaff resident agents with an additional 10 agents from an entire squad in the Phoenix office and they worked in that area for X number of days, you know, until the case was to the point where we could withdraw. So, we do, what we term "special arises" on a reservation. We'll put the manpower that's needed on there. Now I forgot the rest of the question.

DELACRUZ: That's what I pointed out. That Phoenix area seemed to be the only area, at hearings that I've ever attended or even at the Federal Bar meeting where we've had that type of relationship out of all the areas where you got U.S. Attorneys and FBI situations where they got investigated....

GAWE: Phoenix is the only area I can speak personally of; I have been there, I have talked to people there. We're taking, for instance, right now, out of our Minneapolis division, the new SAC up there, has made a very pointed attempt to improve relations and to see how he can more effectively serve the reservation. In fact, in his latest submission to us,

he ranked crimes on the reservation as his number one priority along with another priority of the office. They are co-equal, you know. The two top priorities of the office.

ANDERSON: I thought they're not going to have the FBI agent...

GAWE: Up where?

ANDERSON: In Minnesota.

GAWE: Where in Minnesota?

ANDERSON: Out in...servicing the Red Lake Area.

GAWE: I haven't heard anything about that. That is something that has not come to my attention.

DELACRUZ: I wanted to ask, you know, in Phoenix or what you're attempting to do up in Minnesota, when you first started that out was that your people were dealing first approach to the tribal governments, government-to-government, or were you dealing with the BIA police and the tribal police? When you were first started up the relationship, I know it must have taken a period of time, and....

GAWE: Right. You're going back a period of time that I really don't have any knowledge of but from what I saw of the manner in which we worked there, we dealt, you know, co-equally with both the BIA and the tribal police depending on the matter at hand, and we had several conferences where we would bring everybody in together; you know, BIA, tribal police would come in sit down with the U.S. Attorney and discuss the guidelines there in Arizona which everybody had a hand in. And, you know, it was a sit down, and really a no-holds-barred type thing where everybody aired their differences, so to speak. And, as far as I know, they were satisfied with it, knowing that nothing was perfect, from time to time, there would be things that come up. I've been gone a year now, so I assume everything is still fine.

DELACRUZ: The FBI...I couldn't testify since I'm up here, but I've always had a good relationship with them since I was sixteen years old. (Laughter)

MANNING: I guess the other part of my question is, do you have any special training other than familiarizing themselves with the fourteen felonies and what they basically learn at school? Is there any special training given to those areas which service reservations?

FBI: I think I can speak to that. One of the areas that we have gotten into, perhaps more so than the last few years, is that within our given divisions that we have put emphasis with our SAC's and individuals assigned to reservations will talk to some of the more experienced agents who have been there for some time, hoping to get something back from them prior to them reporting on reservations for any investigative responsibility. We hope, back here, that that includes discussing

problems, cultural problems, what have you from both the BIA, tribal law enforcement and other police as well. As far as on a national level is concerned, we, as recently as two months ago, had various agents in from various field divisions which cover Indian country. And we had several agents who are American Indians discuss various problems that they, themselves, had come up with working on reservations and also, secondly, who are of assistance to the other agents who are not Indians who work with reservations. It was also a good session for us where we were able to take the agents who were working say on the Navajo Reservation and give them some of his experiences as compared to one working on a reservation, say Red Lake in Minnesota. And with the agents going back and forth exchanging this information, I think it was as helpful to us as the agents.

MANNING: One of the other things that seem to be running through the testimony is that the feeling among the law enforcement people that you people, because of the system, have gotten confined to doing an awful lot of paperwork that really should be resolved in some fashion, that will let you out to do your best thing. Do you have any suggestions as to how you can better relate with the U.S. Attorney's office in getting cases prepared where 95% of your time, as we heard, is tied down to doing paperwork and only 5% of your time is out in the field?

FBI: I don't know of a single agent that wouldn't like to see....

MANNING: In general,.... manpower is one, I'm sure.

FBI: Oh, yeah. Absolutely. But the other thing is in working through the U.S. Attorney's office or the Department of Justice, we are required to do so much paperwork and so much before that, for a particular matter, that is going to be reviewed if he's going to prosecute the case. And, unfortunately, more paperwork than any given agent would like to see, but it's part of the animal.

GAWE: I'm not so sure it's the, that the ratio that you say there. I think that's an overexaggeration, 95-5%. Investigate, 95% times paper. It's a time that fluctuates; you investigate a case and there comes a time when you've got to sit down and devote a considerable amount of time to reducing that to writing. We have guidelines administrative rules and regulations that must be adhered to, that cover the reduction of this to writing. So, you have to, within a certain amount of time, get that done. Evidence be submitted to the laboratory, certain communications, this type of thing. So it may appear overwhelming at any one given point along the way but that's not necessarily to say it totally takes up the sum total of time. And if it's a case of large magnitude, there could be more than one agent working, so one man may be doing most of the paperwork and the other people can be doing the legwork.

GOULD: I'd like to ask the gentleman from the Department of Justice, going back to the acceptance of evidence that is presented either by a local law enforcement agency or by tribal law enforcement on the part of the U.S. Attorney, is there a way

of either increasing the awareness of the Department of the ability of local law enforcement people tribal, and state or county, or else providing training that would be acceptable to the Department of Justice so you don't have the cases of overlapping or duplication of effort by three levels of law enforcement?

ADAMS: Most U.S. Attorneys serve on what they call federal-state law enforcement commissions. In the areas where, there alot of Indian tribes frequently tribes also participate. Hopefully, through those and the rough formal contacts also made when they become, federal people become aware of the capabilities and can honor the tribes. As far as a training program, the FBI provides some of the formal basics; the Bureau does provide training to the state and local police, in other words, in a more formal training program. There's a great deal of federal funding through LEAA.

GOULD: But that's dropping off.

ADAMS: I can only speak for the Bureau. I don't know anything about what LEAA does.

GOULD: I guess what I'm trying to find is a way to get around this problem of duplication and it seems to be that the fact that you have flexibility at the district level is part of the problem and yet, I'm not one that likes to encourage further regulation at any level, cooperative effort.

ADAMS: I think that the effect, particularly in Indian country, I think, it's better to try to work out on the local level individually rather than have to dictate a national.

MANNING: The other part of my question, I suppose, was we heard testimony yesterday where if a crime, this was in New Mexico, the young lady who was here this morning. If a crime is committed on a reservation and it's originally discovered by the tribal police, they in turn contact the BIA. They make an investigation. The BIA, in turn, contacts the FBI and they make an investigation. And then, somewhere in the subsequent days, the U.S. Attorney will make a determination or not whether he wants jurisdiction and by that time, the evidence in some instances is gone. My own confusion is why does the BIA get in there and do they necessarily have to get in there?

DELORIA: Hans?

WALKER: The Bureau of Indian Affairs gets into the law enforcement business on the reservation because they have charge of Indian affairs.

MANNING: But, is that a necessary step?

WALKER: Alright, the Bureau of Indian Affairs has agents on each of, on many of the reservations. They usually have one special officer on a reservation. Now, the police on that reservation may be tribal or may be the Bureau of Indian Affairs. In either case, the law enforcement, misdemeanor law enforcement

and the referral of federal felonies is coordinated through the special officer. And, ordinarily, the special officer is the one who makes the contact if a felony occurs with the Department of Justice.

MANNING: Can the particular tribal officer make contact with the Department of Justice?

WALKER: Certainly can. Sure, the tribes have that authority if they wish to exercise it.

ADAMS: The reason for the, because of the delay, the time involved for the FBI to get there, somebody close to the scene, the tribal police and the BIA police have to secure the crime scene, to gather whatever they can while they wait for the FBI to get there.

MANNING: First of all, someone asked if you'd identify yourself.

WALKER: Oh, my name's Hans Walker. I'm the Acting Associate Solicitor for Indian Affairs, Department of Interior.

MANNING: Thank you, and Joe wanted to follow-up on that question and then, I did, too.

DELACRUZ: Hans, in analyzing the special officer's responsibilities in their job description, it doesn't really seem, by their job description, they really have the authority to do anything but be kind of liaison go-between. At least, the last job description I've seen for special officers.

WALKER: Well, I'm really not that familiar with the details of their job description. You should really have Gene Suarez, who's the head of the Criminal Law Enforcement Section here to testify to that question.

MANNING: Does this constitute a great problem in enforcing the law on reservations the fact that it may take a day or two or more to get to an investigation?

CHEGLER: My name's John Chegler. I'm with the FBI. also. You have raised several areas of concern here which a tribe has talked about, and that is, specifically, response time. The concern of your associate that he's heard the same problems at every commission he's attended since he was sixteen may will continue after today, because response time is going to be more and more of a problem for us. The funding level of the Bureau, in terms of dedicated agent work years, decreases each year. The number of agents available designated to investigate crimes decreases. There'a a figure that's bandied around the Bureau, now that 44% of our resources, investigative resources are concentrated in ten field offices. Those would be the ten major metropolitan areas. That would be out of a total of 59 field offices. That trend will undoubtedly continue in that direction. There is a, there is no question that the gentleman commenting on Red Lake does not ring any particular bell in that situation. It exists but it is a fact of life that what we call resident agencies

which are usually the agencies and the agents who man those positions that you're most concerned about, because they're the one that respond to the reservations. The numbers of those agencies are on the decrease, resident agencies. They're both consolidated and eliminated. I've just spent six months on the inspection staff. The inspection staff works very hard at manning all resident agencies and constantly looking for the possibilities to consolidate resident agencies and, of course, that increases territorial coverage aside from the result of consolidation which can only mean one thing to you and to anyone else in those areas that has a crime problem that they feel requires a federal response, that is the response time will increase. As an organization, we have national mandates, in terms of priorities, which you've all heard and those were not set by us, but we probably had input into them, and we are required to respond according to the priorities. You should know that the crimes on government reservations and the crime on Indian reservations grouped under a program heading called: "General Government Crimes" is, in fact, a national number two priority. It is one of the lowest funded programs in the Bureau. Funded by dedicated agent workers. The Indian problems for us are fairly narrowly confined to a representative, a select number of field office: Phoenix and Minneapolis. In those offices, the SAC has the prerogative to rank those types of cases that are in that program as he sees fit within his divisions and those divisions there might well not be a major organized crime to fight crime problems and, therefore, he could, in fact, put the general government crimes programs which are the crimes that you are most concerned with, as a number one priority in his office. As we did in the SAC in Minneapolis.

I liked Roger's responses to some of these areas of concern. I don't think he should bear all of the responsibility. I think it's fair for you to know that the FBI has entered in and encouraged as a matter of investigative survival into agreements with the U.S. Attorney as to what the guidelines for cases which we should investigate because they would be willing to prosecute; we have been a party to those guidelines. Many U.S. Attorneys, if they do change regularly, and with them change their attitudes about guidelines. Some want to hear on a case-by-case basis and make a decision. They may well, in essence, make declination decisions based on what becomes very obvious as a guidelines policy, but it's not in writing. Others flat-out put it in writing, and if it's in writing, we don't investigate. Most of those guidelines have caveats which say if it's a continuing problem; that is, instead of one case of eggs, it's a case of eggs every day, that they will consider. In other words, there are ways around the guidelines and there are aggravating circumstances or continuous crime problems which in its daily summation, makes it a major crime. So, in that respect, we are a part of the U.S. Attorney's decision process. And, in many areas, in regards to what we're questioning, I would say this again - to put your problems in perspective. I have sat behind a similar table at the American Trucking Association conferences and the Air Transportation Association

conferences, and each one of them are likewise concerned because it effects interstate shipment areas. In the country today, there are prosecution policies which say we won't look at this case unless the losses are greater than $5,000, as an example. So that eliminates thousands and thousands of thefts of interstate shipments from company terminals, railroads, airports. Likewise, the air transport association is concerned with bomb threats, gun threats at the airport screening stations. Many of the U.S. Attorneys have guidelines that they won't consider those cases at all if it is, in fact, a cash or hopeless type incident. Transportation people are very concerned about that. So, you have company in your concerns over declination policies.

MANNING: You have, one of the suggested solutions, where the particular reservation has the capability within their own tribal system to really enforce the law and have a good court system, to permit them to deal with the felonies. Would that be in your opinion a partial solution to the thing where reservations have shown capabilities of doing that?

CHEGLER: I think there are reservations where that situation exists now as Roger indicated where they do investigations. I would say that's within the purview of the U.S. Attorney.

ADAMS: Well, the reservation, the tribal courts now are limited to giving punishments to Indians of $500 or six months. But, the type of crimes that they handle, they can bring practically anything, assault. There is nothing wrong as I see it for the tribes having a chance to handle all the problems, the fourteen Major Crimes that the U.S. Attorney's office decides he doesn't want to prosecute a particular case. The reason there is nothing wrong with the tribal prosecution of the defendant is the U.S. Attorney has declined to prosecute the case.

MANNING: I guess what I'm saying is amending that Civil Rights Act to give them stronger penalty powers.

ADAMS: I would require changes by statute.

MANNING: Do you have any impressions on that, Mr. Alexander?

ALEXANDER: We've been in favor of extending it for sometime. I think that the comment made before about the Judiciary Committee's draft is the place to know about; that's up for comment. I believe Senator Kennedy was quoted recently believing that he was going to get floor action on it this year. The omnibus statutes going on, I think it's been a draft for four years.

MANNING: Thank you.

DELACRUZ: No, that's what I said. One that he mentioned consolidation. Under consolidation, would you be moving resident FBI agents out of their cities or towns into a central city now? In the consolidation? I raised that because Olympia, Washington always used to have one or two resident FBI agents living in

Olympia. Would they move to Seattle?

GAWE: Well, again, that's based on the priorities of that individual field office, and if it's the judgment of the SAC there, if he believed that it's necessary, now he has to fill his priorities, of what they are, are necessary, to handle his responsibilities to leave one man there, it doesn't matter, and for instance, in Minneapolis, where he has crimes on Indian reservations as a high priority as he has. So, he is not going to be closing, you know, arbitrarily pulling them into headquarters because he needs men out there. There may be some way that he feels he could utilize them in a more efficient manner or....

CHEGLER: I gave that more as an example to show not that the territory wouldn't be covered at all necessarily, but it might well increase the response time.

DELACRUZ: Well, I raised that because I've always known who the resident was there, they came and investigated me when I was 16. So, I've watched one of them retire, and Peter Sheps is a pretty good guy, I like him.

FBI: Yeah, he's a personal friend of mine.

ANDERSON: The comments came as a result of the whole discussion about that incident that occurred on the upper Red Lake Reservation. And they said that the uprising would never have occurred if the FBI agent had been on duty. Now the FBI agent had retired and there had not been another one reappointed. And they said if that agent had been there, this incident would never have occurred. Then, to counter that, is the cooperation that we've been hearing here, by this Commission with local authorities and in addition to this incident, which occurred with the FBI, the BIA and local authorities, they had a cooperative agreement with county officials, and when the Crime Center Building was taken over by the dissidents, the local authorities surrounded it. They had the dissidents all concentrated right in there. But, a fellow by the name of Suarez or something like that, issued an order that the local authorities should get out. As a result, the whole thing blew up. ....(end of tape)...

DELORIA: The purpose of this Commission is to look at ways that Tribal and State governments can work together rather than be antagonistic on every issue. For this hearing, we've started on the assumption that there is a criminal justice system serving Indian reservations on which every reservation includes Indians and non-Indians. That criminal justice system is composed of parts, three to five parts: federal, state, tribal, and in some instances, county and municipal. A lot of the testimony we've got, before I say that, one of the things, the good things that's come out of this Commission is rather than seeing each other as antagonists, we have tribal and state politicians sitting down talking as politicians and sharing their problems in confronting problems of government. One of the things that's come up in the testimony that we've had in the last two days is the fact that

while there are instances of excellent cooperation, in some circumstances, the federal agencies that have significant responsibilities in this law enforcement system, are not part of a cooperative process of law enforcement in that Indian reservation community. And I don't think that it's accurate to compare the declination rate nationally with the declination rate on reservations because only on reservations do you fulfill a kind of local law enforcement responsibility that deals with what are minor crimes essentially and we've got enough testimony in the last two days that suggest that in some communities, the relationships between Indians and non-Indians are being exacerbated, bad relationships are being exacerbated because of an uncontrolled and unknown federal process. So what I would like to know is, do you feel, can you suggest some steps to this Commission or do you feel there is a responsibility on the part of the Department of Justice when they cannot effectively fulfill the jurisdictional responsibilities that they have in enough cases to serve that community adequately? Do you feel that they have a responsibility to sit down with the other governments and make sure, do what they can do make sure that the areas are covered so there's good law enforcement services? Do you have a responsibility, for example, to inform the other governments of what your policies are, if there's a declination policy someplace? If there's something you don't want to investigate so that there's no long process of trying to figure out what the feds are going to do.

ADAMS: The answer to your question is yes, I think we do feel a responsibility to inform the other governments. Now, as far as informing the tribal officials about declinations, I may be wrong, but, I think the FBI has a policy whereby when the U.S. Attorney declines an Indian criminal case, the FBI confirms that declination in writing; they send a letter back to the U.S. Attorney's office and say, "Okay, we're not going to handle this case." Then, what they do is the same time, they send a letter to the Chief Law Enforcement Officer on the reservation and they they call on the same day also and follow that up in writing and the letter has to go out in half the time, 15 days is half the time, that they're required to confirm other declinations. We try to be responsive to that problem of making the tribal law enforcement officials aware that a particular case has been declined so you better think hard about prosecuting yourself.

DELORIA: I'm not so much talking about a case by case basis, but I think you have to recognize, as I'm sure you do, you're dealing with economically deprives communities with a lot of social problems and crimes that to the FBI and the Criminal Division of the Department of Justice seem like junk crimes, minor crimes, can be very upsetting to a community like that. Assaults, burglaries, people shooting into somebody's house. Now, obviously, you don't have the resources to go out there every time and investigate that and provide the kind of cop on the beat service that may be is what's needed to do that. My point is, can you sit down with state and tribal governments and say, "Look, we're just not going to be able to do this. Now, let's figure out a way the three of us to be

sure that there's adequate services in these communities," because we've got a Chief of Police here who says that's not being done and he's got practically chaos where he's working. And he's identified the FBI and the Department of Justice as people who are not apparently concerned about the safety of that community. Now, that may be unfair but if it's unfair, this is an honest perception of a guy of a cop that's trying to do his job and if that's an incorrect perception, then don't you have a responsibility to straighten out the perception?

ADAMS: I definitely think it's the responsibility to get together with the U.S. Attorney and the appropriate FBI officials to meet with tribal officials. I'm hopeful that they do. I have reason to believe that they do.

DELORIA: Well, what's your advice when they don't? What would you advise a Chief of Police or County Sheriff or Tribal Police Chief, how would they start?

ADAMS: I would recommend they contact the U.S. Attorney's office, the FBI, the nearest FBI resident agency and ask for, could they sit down and have a meeting?

GAWE: Let me again go back to Arizona. I don't know if you talked, you talk about your testimony, I'm not familiar with who's testified, what and so forth, if you talked to the U.S. Attorney Office in Phoenix. Sometime ago, to show you the concern that he had for the Indian peoples out there and the Bureau, there came a time when, based again on our resources and national priority, so forth, there was due to be a shift in manpower. We fought that. We faced that and we fought it on the premise that we said that the effective, without the FBI presence on the reservation there that the Indians were losing an effective, the fact is they were losing law enforcement in a lot of respects and we were needed and we proved that we were and fine, there was no reduction and anything like that. The Bureau has tried in areas, now, I'm not familiar with this Chief that you just mentioned where that is.

DELORIA: He is sitting right behind you.

GAWE: What area?

DELORIA: Montana.

GAWE: That's something that I will look into. Generally, let me just give you an analogy in bank robberies, where we have had to, again because of budgetary resources and cutbacks and the prioritizing of other areas, husbanding of resources is what we are talking about. We sat down with Chiefs of Police and said, "We have X number of men, we can't do everything we did in the past, same as in transportation crimes. We've got to withdraw to emphasis here but we were not abandoning you here in that if you can take up this amount of slack, fine, we're with you. We'll help you train, whatever. We'll provide support," this type of thing. And this is,

things that I can't say, hopefully, have been done in this area, too, if there has been, but again, we're talking about a smaller area. There's only really about 15 of our offices that are heavily into Indian country that we refer to.

DELACRUZ: Seems to me what Sam says, is there any type of way to get at least some type of policy? I understand how the system works very well and it gets down almost to a personal relationship when you're getting U.S. Attorney changes, sometimes the policy changes and you get to know the residents, like people know you very well down in Phoenix so you get to know the resident FBI and he knows you, a lot of times, he'll say, "Well, it's not that big a deal. Let these guys handle it themselves and he'll be an advocate." Or the local law administrator for U.S. Attorney to go and let it be processed at the local level. You don't have that case in many of the regions, I mean that type of situation.

GAWE: I guess what I'm trying to say is that where these problems exist, there has to be dialogue by all parties to get something resolved based on if the law will allow or what guidelines can be set up or, you know, to handle it. There can't be a parting of the ways because if there's no dialogue, then nobody knows what problem exists.

CLUTE: Let me just site one example, probably is all too typical of an effort to sort out a problem in South Dakota. That's one state where, I assume you heard in your first day anyway, as I understand there's alot of resistance to the idea of cross-deputization. And the U.S. Attorney's office and the Interior Department, State Attorney General's office and the county people, Roberts County and probably other areas of the state as well, talked for four years about how to solve this problem, how to get around the impasse, draft agreements. They were almost signed and then, at the last minute, someone from the state government told them to pull it out; that would be the end of it.

And so, after four years of efforts to resolve this informally the civil rights division took a look at the problem and decided that there was a viable theory for filing a law suit against Roberts County for failure to cross-deputize, failure to deputize, and filed this law suit about three or four months ago. It's not very far along in litigation yet. I don't know if we'll win it or lose it. Obviously, we wouldn't have filed it if we thought we were going to lose it. But it's not the best way to work out these problems and one of the reasons we were inclined to do it in that case is that there had been this lengthy, drawn-out process of negotiations where it seemed that the parties were almost in agreement and then backed off without any explanations for why they couldn't reach an agreement that was very satisfactory to our way of thinking. And so, that will be the first case in the country to test the question of whether or not under the federal revenue sharing statute, the statute under which this lawsuit is based, counties have an obligation to deputize tribal police. I'm not free to do more than just tell you the suit has been filed with the District Court

in Pierre, South Dakota. And presumably, a decision will be reached sometime, now I don't know how these things proceed, but sometime in 1980. So this is an effort to follow up on a failure to communicate by the Justice Department and fill a void, because there is a serious one out there, and one that, at least in that area, has very strong racial overtones.

ANDERSON: The problem I have in that regard is that I don't see where that's any more serious an offense than for the U.S. Attorney not to prosecute.

CLUTE: I think they're both serious problems. My only response to it, from where I sit, is that I'm not a U.S. Attorney. And that's not a satisfactory response to you. It sounds bureaucratic, but our approach always has to be, is our office, is what are we entitled, what are we able to do. I mean we can attend conferences, we can talk to U.S. Attorneys, we can talk to Terry Pechota about this problem and he's aware of it, we can try to use our influence to, if we hear a complaint from tribal people, we'll forward it to him and so on. But this is our office, which is not high up in the bureaucracy where we have any oversight authority over U.S. Attorneys. Just to consider whether or not it's a civil rights problem. That's why we responded in the fashion we did.

ANDERSON: How would you know if they played a game? That is, go ahead and cross-deputize but they don't do anything, that's fine and dandy.

CLUTE: How do you mean, they don't do anything? If the U.S. Attorney doesn't prosecute, he's not doing anything. And if they only cross-deputize the tribal, they're not doing anything either. They're playing a game. We'll see how, we'll see if they can get away with playing the game under these circumstances. The area of declining prosecutions and whether to prosecute or enforce the law, to file a law suit on that theory which is something in the next stage possibly is presently being tried in Philadelphia by the Civil Rights Commission, thus far with little success. The case is still alive, but that's a very difficult area.

DELACRUZ: Hans Walker, what's the Bureau's, the Bureau's policy seems to be on reservations, especially since Oliphant, speaking now, specifically, of these BIA officers and dealing with tribes that are 1165 Title 18 and those. Where you got on some reservations 95% of tribes or other things besides those, where does that leave that community if they're strictly with BIA law enforcement? Has anyone taken a look to investigate this problem?

WALKER: One of the biggest problems that derived from the Oliphant decision was the question of enforcing the law with respect to crimes by non-Indians, particularly victimless crimes. And these kinds of crimes involve all kinds of things, people riding without their helmets on, or wreckless driving, or drunken driving. All kinds of crimes that are termed victimless crimes. That is an area that's been addressed by the

Department of Justice. There has been a controversy on that question. The initial position of the Department of Justice was that the defense had no jurisdiction over any victimless crimes.....

MANNING: Gentlemen, I just wanted to excuse myself. We both have planes to catch. Joe will finish up chairing the meeting. I just want to thank you very much for coming. I certainly appreciate.....

DELACRUZ: Well, I understand the position they've taken on the non-Indians, but I'm speaking of Indians, where you got BIA Police Departments, and BIA Police on Title XXV and CFR stuff. That's all being enforced. What I'm saying is on some reservations, 95% of the crimes are in other areas that are possibly under tribal codes or state codes or county codes and so you got manpower and BIA police there that won't, they have to look the other way on all these others. Is that a directive down from the department or what?

WALKER: No, I don't think there's a directive to ignore any other type of crimes, but I think the problem is that once those crimes are identified, you run into the same thing we're talking about here. The other thing is the ability to prosecute; they don't prosecute. Under the Assimilated Crimes Act, those kinds of crimes are probably not even going to be investigated, and for sure, they're not going to be prosecuted.

DELACRUZ: You have, you have. Again, that gets down to a funding problem. We had a witness in here from Pine Ridge this morning testifying it took them several years to program three facilities there. Now, they got facilities and there's no budget to even staff them and we've had that problem on my reservation for 10 years. We got a facility, of course, it, like most state and county facilities, and could be condemned today on existing law, but we've never been able to get the budgets from the Bureau to staff that facility the way it should be if we've to incarcerate anybody over a long length of time.

??: I just wanted to ask, would the Department of Justice have any problems with it, if it was agreed that the states and Indian tribes were to agree on jurisdiction?

ADAMS: Only to the extent that we have federal statutes saying federal government jurisdiction at this particular time. I won't say anything else. Cross-deputization means we strongly encourage cooperation, and we hope we actively encourage the U.S. Attorney's office to participate.

HUNT: Roger, would you have a memorandum available to the effect that there is some state jurisdiction when a non-Indian, is this what you told me before, when a non-Indian commits a crime against an Indian on a reservation?

ADAMS: I have copies of that memorandum right here, if you'll accept just one copy.....

HUNT: Maybe they would like a copy for their record, too.

DELACRUZ: Does anyone else have any questions? Well, if not, I want to thank all you gentlemen for being here this afternoon and for taking time to ask some of the questions, to share with us some of your problems. I'm sorry the rest of the Commissioners had to get to the airport. I'm sure they would like to talk to you and ask some questions, individually, they would like to ask.

??: I have a question, Joe. When is your next meeting?

HANNA: February 21, in Phoenix. We'll be talking about Tax Collection Agreements.

DELACRUZ: Thank you.

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TELEPHONE 224-7667
AREA CODE 612

March 12, 1981

TO: The Subcommittee on Civil and Constitutional Rights
A407 House Office Building
Washington, D.C. 20515

RE: Relationship of the Federal Bureau of Investigation to Indian Reservations

STATEMENT OF KENNETH E. TILSEN

My name is Kenneth E. Tilsen. I am a practicing attorney maintaining my offices in the Minnesota Building in St. Paul, Minnesota for over 30 years. For much of that time, I have represented indigent defendants in the State and Federal courts in Minnesota and many of the midwest states.

From 1973 until 1978 I served as legal coordinator for the Wounded Knee Legal Defense/Offense Committee, a group of volunteer lawyers and legal workers who joined together to afford a defense for persons charged with offenses connected with the events on the Pine Ridge Indian Reservation in 1973. As a result of that experience, I have had and continue to have substantial involvement and contact with the Federal Bureau of Investigation and its activities on Indian reservations.

I include for your examination a copy of an article I wrote on that subject, which article appeared in the Iowa Journal of Social Work. I believe it is fair to say that the article documents the political harassment of the F.B.I. in the period covered.

I would be pleased to accept an invitation of your committee to testify in greater detail concerning any of the matters covered in the article or to present to the committee or its staff documentation on the abuses of power set forth therein.

I would like to add to that record several additional matters not available at the time the article was written.

In general, it has been the position of the F.B.I. that, since the end of its formal Cointelpro program, it has limited its activities to specific criminal conduct. Several documents in my possession suggest otherwise.

I enclose a document entitled "Predication for Investigation of Members and Supporters of A.I.M." It is an F.B.I. document furnished to me in connection with litigation.

Second, I enclose a number of heavily excised partial documents from F.B.I. files relating to the American Indian Movement.

While the document is partial and undated, other documents in my possession place the date of this document in June 1976. The first page of the enclosure is page 50 of a much larger document. I have only a few pages more than I have enclosed and have never seen the entire document.

The following excerpts reveal to this writer a mindset completely at odds with proper constitutional limitations and ultimately suggest the development of a national police force. The effort to justify the political nature of this national police force is ominous:

> . . . Many Americans tend to overlook the fact that the United States has constitutionally guaranteed rights which are just as inviolate as those of the individual. To accept at face value, an AIM argument, that it is being set upon by the Central Intelligence Agency (CIA), FBI and Bureau of Indian Affairs (BIA), as part of a government conspiracy to destroy the movement, and as a result, back off, would result in the eventual abdication of this governmental responsibility.
>
> The government's right to investigate such groups should be recognized and maintained.

> The outcome of future AIM agitation is unclear, particularly in light of the possibility of two of its main leaders being temporarily removed from society and sent to prison in the near future. Although a number of AIM lieutenants are "waiting in the wings," they appear to lack charisma and backing the original leaders enjoy.
>
> * * * * *
>
> The government's right to continue full investigation of AIM and certain affiliated organizations may create relevant danger to a few citizen's privacy and free expression, but this danger must be weighed against society's right to protect itself against current domestic threats.
>
> * * * * *
>
> Any full investigation involves a degree of privacy invasion and that of a person's right to free expression. Informant coverage is the least intrusive investigation technique capable of producing the desired results. Thus, because of specific factors surrounding this case, it is recommended that a full investigation be conducted.

From my perspective, the above quotations, as well as the full context from which they are taken, is frightening but hardly more so than the section in the report on investigative techniques, which reads in part as follows:

> Investigative Techniques
>
> The key to the successful investigation of AIM is substantial, live, quality informant coverage of its leaders and activities. In the past, this technique proved to be highly effective. . . . [blacked out] . . . As a result of

certain disclosures regarding informants, AIM leaders have dispersed, have become extremely security conscious and literally suspect everyone. This paranoia works both for and against the movement and recent events support this observation.

When necessary, coverage is supplemented by certain techniques which would be sanctioned in preliminary and limited investigations.

Physical surveillance is another useful technique and should be utilized when deemed appropriate.

No mail covers or electronic surveillance have been used to investigate AIM and none is anticipated at this time.

The reference to "certain techniques which would be sanctioned in preliminary and limited investigations" is the clearest, most precise recognition of ongoing illegal breakins and official disruptions. Your committee alone has the authority and capacity to pursue this question. I urge you to do so.

Finally, I would like to direct your attention very briefly to one additional matter to which I have devoted much of my professional time over the last several years and to which I intend to continue to devote my time for as long as it takes to discover the truth.

The evidence is overwhelming that F.B.I. Agents David Price and William Wood knowingly and deliberately created false testimony by the use of a young Indian woman, Myrtle Poor Bear. This testimony in the form of exemplified affidavits, was used to extradite Leonard Peltier from Canada. While taking false affidavits for Peltier, the agents produced Myrtle Poor Bear to South Dakota State authorities for use as a last-minute, surprise witness against Richard Marshall. As a result of this testimony, Richard Marshall is now serving a life sentence in

the South Dakota penal system for a murder he did not commit. Several courts in this country and Canada have condemned the behavior of the F.B.I. in this regard.

The F.B.I. and the Department of Justice have actively intervened to frustrate any effort to obtain the true facts relating to the behavior of the agents relative to Myrtle Poor Bear. The Attorney General has directed that documents ordered to be produced by the court not be produced and has directly forbidden witnesses to testify at court proceedings.

Efforts to obtain relief through the Department of Justice Office of Professional Responsibility have resulted in the response that the matter is in litigation. At the same time, the Attorney General has taken active steps to avoid disclosure in litigation. Once again it is apparent that only your committee has the power to deal with this situation.

I would be pleased to amply document all of the sordid facts concerning the framing of Richard Marshall by Agents Price and Wood and the obstruction of the Justice Department.

It is not just that Richard Marshall is an Oglala Lakota or the Chairman of the Council of Indian Tribes or an innocent man who had never before been charged with an offense. If the Justice Department can continue to protect agents whose conduct is so reprehensible that conservative jurists see fit to comment, then all persons are in danger of being singled out for similar treatment.

This is not a propitious time for those who stand against the tide. Yet there is no question in my mind that your Chairman and many members of the committee understand the immense power for good or evil that lies in the hands of a committee of United States House of Representatives. I know you will not use that power for evil.

I do hope that, from the many concerns that rise for your attention you will find that the cause of unjust F.B.I. intrusion into the Indian community is a priority. You have

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the capacity to "set our people free". I know the burden weighs heavily on your shoulders.

Respectfully submitted,

Kenneth E. Tilsen

Kenneth E. Tilsen

/kfj

Enclosures

U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

June 18, 1981

Honorable Don Edwards
Chairman, Subcommittee on
Civil and Constitutional Rights
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In response to the Subcommittee's letter of May 19, 1981, I am enclosing answers to the questions submitted by your staff to complete the record of the hearing on April 2, 1981, dealing with the FBI's jurisdiction on Indian reservations.

I trust these responses will assist the Subcommittee. If any further questions arise during the 1982 Department of Justice Authorization process, my staff will be available to assist in resolving them.

Sincerely yours,

William H. Webster

William H. Webster
Director

Enclosure

Question 1

What problems exist in the opinion of the FBI regarding law enforcement activities on Indian reservations?

Answer:

a. Cultural Differences

FBI Agents and tribal reservation Indians are raised in vastly different cultural backgrounds. One of the more frequent complaints originating from the tribes pertaining to the FBI presence on the reservations stems from the Indian perception that the Agents do not understand Indians or their ways. The FBI Academy is attempting to alleviate this problem through training. All new FBI Agents are provided instruction in human relations with an emphasis on acquiring an understanding of various racial and ethnic groups, their background, and how to better communicate with these groups. Sociological considerations of minority groups such as the American Indian are also discussed. Each new Agent receives training on investigative procedures and techniques in handling Crime on Indian Reservation violations. For experienced Agents, the FBI Academy offers an in-depth course on Crime on Indian Reservation violations.

Additionally, in this regard the FBI Training Academy, in conjunction with a noted cultural anthropologist, recently conducted a cross cultural training seminar for FBI Agents tasked with Crime on Indian Reservation responsibilities in the States of Minnesota, North Dakota, and South Dakota. This seminar was received favorably by the Agents attending. Additional seminars of this type, pending budget considerations, are being planned for other FBI Divisions in the future.

In conducting investigations on Indian Reservations, language is often a significant problem. Each of the tribes has its own language; therefore, the Agent working the reservation must often arrange to work with a Bureau of Indian Affairs (BIA) or Tribal Police officer who can act as an interpreter for him. While most Indians speak English, not all Indians do. Also, many who speak English do so as a second language and their grasp of it is so slight that an interpreter is necessary so they fully understand their rights and the questions they are being asked.

b. Remote Locations

A major problem facing Agents working Indian reservations is that of distances. Agents are subjected to extreme travel distances between their office and the reservation. Travel times of three to four hours are not uncommon in many areas. This travel time can be and often is even more during the winter when roads are covered with snow and washed out by flooding. Compounding this problem is the fact that there are few population centers near Indian reservations, the inhabitants living much like they always have, out on the land. Most of the roads on reservations are located miles apart and are of unusually poor quality. This greatly increases the time needed to cover leads and investigative cases on the reservations.

c. Indian Perception of Justice

Most United States Attorneys require presentation of criminal cases before a grand jury prior to issuance of arrest warrants for subjects. This frequently results in a lengthy period of time between the commission of a crime and the subsequent arrest of the parties involved. Under traditional Indian law, subjects were arrested almost immediately and tried quickly. The Indians view the Federal Government's approach as nonresponsive and creating the undesirable situation of having a subject they know to have committed a serious crime continuing to reside in their midst.

d. Dual Jurisdiction and the Inability of the Tribal Police to Arrest Non-Indian Subjects

Because of the requirement by most United States Attorneys that BIA investigations be reconducted by the FBI, a feeling of dissatisfaction naturally exists by investigators of both the BIA and the Tribal Police. Further, most Tribal Police officers are not authorized to arrest non-Indian subjects. A few states, however, have succeeded in cross deputization of BIA and Tribal Police, thus enabling those officers to arrest non-Indians committing crimes on reservation land. States which participate in some degree of cross deputization are: Alaska, Mississippi, Wisconsin, North Dakota, New Mexico, Arizona, Oregon, Utah, Washington, and North Carolina.

Question 2

Would increased law enforcement funding and/or training of BIA and tribal police, particularly in investigative techniques, be appropriate?

Answer:

During 1979 and 1980, an in-depth study of the situations that currently exist on Indian reservations was conducted by the FBI's Office of Planning the Evaluation. This study determined that before training of BIA and Tribal Police officers could have a measurable impact, several other problem areas must first be solved. For example, it was recently noted that a BIA bus driver and a school janitor received higher pay than a BIA uniformed policeman. Tribal Police are even lower paid than BIA officers and they do not enjoy any of the benefits, such as insurance, retirement, promotion or overtime that are provided BIA personnel. These reasons coupled with a lack of job security, lack of standards for employment, poor or nonexistent equipment, and shortage of quality leadership causes extreme turnover rates. Studies have determined that the annual turnover rate of Tribal Police approaches 75 percent. Additionally, approximately 75 percent of the Tribal Police officers do not have a high school education.

With this high turnover rate, lack of educational requirements, and low salaries, it is logical to conclude that before improved training can be effective, these other problems must be improved. Until such time as Tribal Police can provide adequate standards for employment, adequate salary structure, better equipment and working conditions, improved supervision and management, and reduce the turnover rate to an acceptable level, expanded training assistance will not be of much value to those departments or cost effective to the Federal Government.

The BIA has in operation a centralized police training facility in Utah. The FBI actively participates in providing training. The BIA contracts with various tribes to attend these programs. The BIA has advised that in the past, attendance at the Indian police academy has been poor due to "culture shock" suffered by attendees. When removed from their tribal environment, attendees have trouble adjusting to a different environment. It is not uncommon to have attendees leave the academy on the first or second day to return to their reservation.

The FBI is willing to provide whatever training assistance is requested within proper limitations and resource availability. It is necessary, however, that the other critical problems must be addressed before training can be effective.

Question 3

What, in your opinion, can the House Judiciary Committee do to improve any existing difficulties encountered by the FBI in seeking to fulfill its responsibilities on Indian reservations?

Answer:

This offer of assistance by the committee is certainly appreciated. However, as far as the FBI is concerned, barring any major budgetary changes, we are currently handling the criminal case load on the reservations. Improvement in the cultural training of our Agents continues to be of prime importance in improving services within the Indian community.

Improved education of Indian people will ultimately result in better living conditions and a lessening of law enforcement problems. Time has proven, however, that significant advancement in this regard is slow in coming.

A significant problem of Federal prosecution is that in many districts administered by Offices of the United States Attorney dealing with a large volume of crimes committed on Indian reservations, the prosecution of these matters is considered by attorneys within those offices as being undesirable work. As a result, many of the Offices of the United States Attorneys do not have any attorneys designated who would become proficient in the prosecution of Indian crimes. This results in misunderstandings by all members concerned (Prosecutors, FBI Agents, BIA investigators, and, of course, the Indians themselves).

It is the opinion of the FBI that United States Attorneys should have prosecutors assigned on a full-time basis to handle prosecution of Indian crimes in divisions which have a high concentration of these matters.

If the training and education of BIA and Tribal Police could be significantly upgraded, arrangements could be made to require United States Attorneys (like those in Arizona and New Mexico) to accept reports from the BIA without requiring a second or simultaneous investigation by the FBI. Training sessions could be arranged to enable the United States Attorneys to explain to the BIA what they look for in the investigative report and the criteria needed in deciding whether or not to prosecute.

Question 4

Would it be possible to achieve a gradual transfer of law enforcement responsibility to local tribal police and/or BIA police? This would assume that the FBI would retain jurisdiction if the matter involved a complex investigation or the local jurisdiction requested assistance.

Answer:

If the problems enumerated in Question 2 were resolved, a gradual transfer of law enforcement responsibilities from the FBI to the local Indian enforcement unit would be possible.

The FBI has no objection to withdrawing from its primary role of the investigation of major crimes occurring in Indian country if the BIA and other law enforcement agencies within the reservations have the necessary level of competence to fully protect the rights of the Indian residents on those reservations. Until Tribal Police can provide adequate standards for employment, adequate salary structure, better equipment and working conditions, improved supervision and a reduction in the turnover rate, this gradual transition to localized enforcement will not be possible. At the present time, a majority of Indian reservations do not have law enforcement agencies suitably trained and staffed to the level necessary to assume this role.

Question 5

What efforts are currently being made to train BIA and/or tribal police?

Answer:

Since 1973, the FBI has participated in the training of BIA investigators and Tribal Police, both on the reservations and at the FBI National Academy. Currently, one position is available in each National Academy class at the FBI Academy to be filled by a representative of the BIA. To date, the FBI has trained 25 BIA officers in the National Academy. During Fiscal Year 1980, the FBI conducted 19 training schools for 464 attendees on Indian reservations throughout the country. Twelve of those schools were for personnel of the BIA, one was for the Indian Tribal Council Government, three were for the Navajo Police Department, two were for the Oglala Sioux Police Department, and one for the Akwesasne Police Department. The FBI is willing to provide whatever training assistance is requested within proper limitations and manpower availability.

Question 6

What efforts have been made by the Bureau to provide agents assigned to Indian reservations with specialized training in Indian law and culture?

Answer:

The FBI Academy provides training to all new FBI Agents on investigative procedures and techniques in handling Crime on Indian Reservation violations. Additionally, for experienced Agents, the FBI Academy offers in-depth training in homicides and other violent crime investigations which occur on Indian reservations. Recently, in 1980, the FBI Academy initiated a cross cultural training seminar for FBI Agents assigned to Crime on Indian Reservation violation responsibilities in the states of Minnesota, North Dakota, and South Dakota. This seminar is designed to educate FBI Agents of the cultural differences between Indians and non-Indians. This cross cultural training seminar was determined to be extremely beneficial to all those who attended and the FBI plans to continue this program with other Indian country divisions.

U.S. Department of Justice

Drug Enforcement Administration

MAY 1 1 1981

Washington, D.C. 20537
MAY 08 1981

The Honorable
Don Edwards, Chairman
Subcommittee on Civil and
Constitutional Rights
U. S. House of Representatives
Washington, D. C. 20515

Dear Chairman Edwards:

This is in response to your letter concerning the training programs offered by the Drug Enforcement Administration (DEA) for Tribal Police and other American Indian Law Enforcement Officers. The following lists the schools presented by DEA since January 1979 for American Indian Tribal Police Investigators.

1979

Washoe Indian Tribal Police
Washoe Indian Reservation
Reno, Nevada

Navajo Indian Tribal Police
Navajo Indian Reservation
Window Rock, Arizona

Ogalala Sioux Tribal Police
Ogalala Sioux Reservation
Pine Ridge, South Dakota
Kyle, South Dakota

Seminole Indian Tribal Police
Seminole Indian Reservation
Dade County, Florida

1980

Ogalala Sioux Tribal Police
Ogalala Sioux Reservation
Pine Ridge, South Dakota

Flathead Blackfoot Tribal Police
Flathead Blackfoot Indian
Reservation
Ronan, Montana

Navajo Indian Tribal Police
Navajo Indian Reservation
Window Rock, Arizona

I would also like to add that Tribal Policemen from other American Indian Tribes not listed above, on an individual basis, have been for several years attending the DEA Two-Week Basic Drug Investigation schools and other DEA training programs presented throughout the United States.

Thank you for your interest in one of DEA's important programs. If I may be of further assistance, please don't hesitate to contact me.

Sincerely,

Peter B. Bensinger
Administrator

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

April 28, 1981

Honorable Don Edwards
Chairman, Subcommittee on Civil and
Constitutional Rights
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

In addition to the corrections submitted to you concerning my testimony and that of Special Agent James C. Frier, Criminal Investigative Division, Federal Bureau of Investigation, who appeared before your Subcommittee on Civil and Constitutional Rights on April 2, 1981, the following information is submitted:

On page 60, beginning with Mr. Frier's testimony on line 1472, Mr. Frier stated that the Bureau did not conduct an investigation as to why the doctor who did the original autopsy misread the cause of death on Anna Mae Aquash.

A review of this matter determined that the initial autopsy was requested by the Bureau of Indian Affairs (BIA) and conducted by Dr. W. O. Brown, Scottsbluff, Nebraska, the person who normally performs autopsies of deaths on Pine Ridge Reservation. The autopsy was performed on February 25, 1976, which included an examination of the skull, brain, and entire body except for x-rays. No Special Agents of the FBI were present during this autopsy.

Dr. Brown stated that all of the findings set forth in his autopsy report furnished to the FBI remain accurate in his opinion. He stated that he "examined a partially decomposed body, including removal of the brain from the body and failed to locate any evidence that a bullet entered the brain." Brown said that as far as he was concerned, death was caused

by exposure and not by a bullet entering the brain.

Should your Subcommittee need any additional information regarding this testimony, please feel free to contact me.

Sincerely yours,

Charles P. Monroe

Charles P. Monroe
Assistant Director
Criminal Investigative Division

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April 2, 1981

HAND DELIVERY

Honorable Don Edwards
Chairman, Civil and Constitutional
Rights Subcommittee
House Judiciary Committee
2307 Rayburn House Office Building
Washington, D.C. 20515

Honorable Henry J. Hyde
1203 Longworth House Office Building
Washington, D.C. 20515

RE: FBI Activities in Relation to the
American Indian Movement (AIM)

Dear Mr. Edwards and Mr. Hyde:

We wish to commend you and the subcommittee for beginning an inquiry into the role and practices of the FBI in regard to law enforcement on Indian reservations.

Our interest in this issue arises out of our representation of Leonard Peltier, a native American convicted of the killing of two FBI agents on the Pine Ridge Indian Reservation in 1975. We believe that substantial improprieties and law violations occurred in the investigation and prosecution of Peltier. Moreover, we believe that these abuses arose in an context of long-continuing and vindictive responses by the FBI to the American Indian Movement and persons believed to be associated with it, in some ways similar to the FBI's campaign against Dr. Martin Luther King in an earlier unfortunate period.

Many of these abuses have been recognized and documented by courts of law and government agencies, yet it appears that the FBI's response has been to deny any wrong-doing, and to refuse to take disciplinary action or any other action that would deter improper conduct by its agents.

These issues, we submit, are highly relevant to the subcommittee's oversight responsibilities, as well as to the consideration of the proposed FBI charter. So that the subcommittee can have a full picture of the activities, we would hope that the witnesses in regard to the FBI's practices on Indian reservations include a wider perspective than solely FBI and governmental representatives.

Below is a summary of some of the well-documented instances of FBI misconduct in regard to AIM. This is by no means an exclusive list, only some matters of which we are aware. We would be pleased to provide further particulars and to assist subcommittee staff in making contact with persons who have first-hand knowledge.

The 1973 Wounded Knee Occupation and its Aftermath. On February 27, 1973, supporters of the Oglala Sioux Civil Rights Organization and the American Indian Movement began a 71-day occupation of the village of Wounded Knee on the Pine Ridge Indian Reservation in South Dakota. What had begun as a dispute over grievances in regard to the Pine Ridge tribal government drew massive federal response. Hundreds of FBI agents and United States Marshalls laid siege to the occupied village. On May 8, 1973, the occupation ended with a negotiated settlement, although numerous criminal charges resulted from the incident. The events at Wounded Knee gave rise to approximately 562 arrests. Federal grand juries indicted 185 persons and there were a total of 15 convictions, a very low rate considering the usual rate of conviction in federal courts and a great input of federal resources into these cases.

While these cases were being prosecuted, an antagonism intensified between FBI agents assigned to the cases and the supporters and legal counsel of the defendants. These matters are described in an opinion by then Judge Webster in the Eighth Circuit Court of Appeals. Wounded Knee Legal Defense/Offense Committee v. Federal Bureau of Investigation, 507 F.2d 1281 (1974).

The so-called "leadership" cases arising out of the Wounded Knee occupation were tried before Judge Nichol

in Minneapolis. Following an eight-month trial, Judge Nichol dismissed the charges on the grounds of massive governmental misconduct, including "FBI negligence or dilatoriness" in complying with the court's discovery orders and subornation of perjury or the grossly negligent presentation of a lying witness, Louis Moves Camp. In dismissing the prosecution, Judge Nichol stated:

> Although it hurts me deeply, I am forced to the conclusion that the prosecution in this trial had something other than attaining justice foremost in its mind. In deciding this motion I have taken into consideration the prosecution's conduct throughout the entire trial. The fact that incidents of misconduct formed a pattern throughout the course of the trial leads me to the belief that this case was not prosecuted in good faith or in the spirit of justice. The waters of justice have been polluted, and dismissal, I believe, is the appropriate cure for the pollution in this case.

United States v. Banks and Means, 383 F. Supp. 398, 397 (D. S.Dak. 1974).

It appears that FBI Special Agents David Price and William Wood were involved in the development of the testimony of Louis Moves Camp. Price and Wood had earlier been involved in the acrimonious exchanges between the AIM supporters and legal activists and the FBI.

1975 Events on the Pine Ridge Reservation. In 1975 there was a massive increase in violence and murders at Pine Ridge. In most cases the victims of the violence were AIM members and supporters, who were in political opposition to the then tribal government.

On the morning of June 26, 1975, FBI Agents Ray Williams and Jack Coler came to the Jumping Bull Compound

near Oglala on Pine Ridge. A gun battle broke out, in which the two agents and an Indian man, Joe Stuntz, were killed. Following the incident hundreds of FBI agents combed the reservation looking for suspects. Eventually, Leonard Peltier, Rob Robideau, Dino Butler and Jimmy Eagle, all AIM activists, were indicted for the murders of Coler and Williams.

Mr. Butler and Mr. Robideau were tried in Cedar Rapids, Iowa, and were found not guilty by a jury. At their trial they presented evidence of the tremendous state of fear of the FBI on the Pine Ridge Reservation, as bearing on their contention that the tragic events of June 26th involved legitimate and reasonable fears under the circumstances, a legitimate claim of self-defense, and no intent to murder the agents in the course of the massive shoot-out. The charges against Jimmy Eagle were dropped.

Mr. Peltier had not been apprehended at the time of the Butler/Robideau trial and so was not tried with them. The FBI continued to search for Peltier.

The Rosebud Reservation Raid. As part of the search for suspects in the killings of the two agents, on February 5, 1976 in the early morning, nearly 100 FBI agents descended by helicopter and military vehicles upon the property of Al Running and Leonard Crow Dog on the Rosebud Reservation in South Dakota. The ostensible occasion for the raid, accompanied by this massive show of force, were search and arrest warrants arising from a fist-fight between four young people. The FBI, however, was also still looking for evidence in connection with the June 26, 1975 incident at Oglala regarding the deaths of the agents.

Anna Mae Aquash, a Micmac Indian from Canada and an AIM leader and activist, was arrested with others at Al Running's encampment and charged with various crimes as a result of guns allegedly found there. Special Agent David Price spoke with Ms. Aquash and took a statement from her at the time of her arrest.

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The Investigation of the Death of Anna Mae Aquash. On February 24, 1976, the body of an Indian woman was found by a rancher on the Pine Ridge Indian Reservation. BIA Police and the FBI were summoned in regard to the death.

That day, Special Agents David Price and William Wood viewed the body of the woman at the Indian Health Service Hospital at Pine Ridge. Price or Wood or both of them photographed the body of the woman, who was wearing distinctive silver jewelry.

An autopsy was performed on the body of the unidentified woman on the following day, and the cause of death was listed as exposure. Her hands were cut off and sent to the FBI laboratory in Washington for fingerprint identification. Seven or eight days later the body was buried as an unidentified person.

Subsequently, the FBI laboratory notified the FBI in South Dakota that fingerprint examination had determined that the dead woman was Anna Mae Aquash. Ms. Aquash's family in Canada were notified of her death and authorized an exnumation and second autopsy. On March 11, 1976, a second autopsy was performed by Dr. Gary Peterson of St. Paul, Minnesota. Dr. Peterson's autopsy showed that Anna Mae Aquash had not died of exposure as determined at the first autopsy, but that she had been killed by a bullet from a gun held at the back of her neck. The bullet was still in her head and inexplicably had been missed in the course of the first autopsy.

It remains unexplained why Ms. Aquash was not identified at the time of the first autopsy, or why the FBI allowed her to be buried as an unidentified person. The FBI asserts that the body was so decomposed as to not permit identification.

However, the attorney for Ms. Aquash's family asserts that pictures at the time of the second autopsy establish that, at the time of the discovery of her body, Ms. Aquash would clearly have been recognized by someone

who knew her. She had a distinctive surgical scar, a partial dental plate, and was wearing unusual silver and turquoise jewelry, all of which could have been used to establish her identity.

Ms. Aquash was a fugitive at the time of her death. She had been hunted by the FBI for three months, her description had been widely circulated and she was well-known personally to Special Agent David Price. No satisfactory explanation exists for the failure to identify her at the time of the first autopsy, the irregularities in the first autopsy, and the decision to allow her burial prior to identification.

The Extradition of Leonard Peltier: The Development of Myrtle Poor Bear As a Witness and Affiant. Leonard Peltier was eventually located and arrested in Canada, where he sought political asylum. The United States initiated extradition proceedings and offered two affidavits of a young woman resident of the Pine Ridge Indian Reservation, Myrtle Poor Bear. Special Agents Wood and Price again figure in this matter, as instrumental in developing the affidavits from Poor Bear. As will be discussed within, Ms. Poor Bear has since repudiated these affidavits as false and obtained under duress.

In the first affidavit, obtained on February 19, 1976, Poor Bear stated that she was Leonard Peltier's girlfriend, that she went to the area near Oglala in May, 1975 with Leonard Peltier, but that she was not present at the shooting of the agents. She stated that Peltier later told her that he shot the two agents.

On February 23, 1976, Poor Bear allegedly executed a second affidavit. It is remarkable that the second affidavit is a verbatim copy of the first affidavit, except that one sentence is changed, eliminating the words "I left Jumping Bull Hall at this point and did not return," and substitutes in place of these words the following: "I was present the day the special agents of the Federal Bureau of Investigation were killed. I saw Leonard shoot the FBI agents."

On March 31, 1976, Poor Bear allegedly executed a third affidavit, which recounts in lurid detail her purported eye-witness account of Peltier shooting the agents.

Only the second and third affidavits were submitted by the United States to Canada in connection with Peltier's extradition proceedings. Based on the Poor Bear affidavits, the government of Canada ordered Peltier's extradition.

The Trial of Leonard Peltier and Its Aftermath.

Leonard Peltier was tried in Fargo, North Dakota, it having been determined that selection of an impartial jury would be impossible in South Dakota. The government had initially listed Myrtle Poor Bear as a government witness, but elected not to call her.

There were no eyewitnesses to the killings. Only three government witnesses placed Peltier and others in the vicinity of the agents' car: Wish Draper, Michael Anderson and Norman Brown. Peltier T. 788, 1037-38, 1445-46. All three witnesses were young American Indians. They also said they had been threatened, intimidated, or physically abused by FBI agents during the investigation, including the government's principal witness Agent Adams. Peltier T. 841-44, 1097-100, 4802-06. Draper testified that he had been handcuffed and tied to a chair for three hours during an FBI interview. Peltier T. 1084. Defense witness Gene Day testified that the FBI agents threatened to take her children from her if she did not speak to them, and Norman Brown (recalled by the defense) stated that FBI threats had led him to testify falsely before the grand jury in this case. Peltier T. 3554, 4812.

During the government's case a shadow of doubt was cast over the Poor Bear affidavits by the testimony of four government witnesses that she had never been seen or heard of in the Jumping Bull Compound on the reservation where the three deaths took place, Peltier T. 849, 1118, 1597, 2701-03, and by the testimony of Dean Hughes, the chief investigator on the case, that he had no knowledge of when or how she became an informant. Peltier T. 2915-19.

The government elected not to call her. The defense then sought to call Myrtle Poor Bear in Peltier's defense to demonstrate that the government had resorted to fabrication of evidence, obstruction of justice, subornation of perjury and intimidation, all classic indicia of consciousness of a weak cause, and to lay bare the bias and hostility of two government witnesses, Agents Woods and Price. The trial court entered a material witness order unopposed by the government.

Poor Bear was called by the defense, but the jury never heard a word of her testimony. It was preserved for review in an offer of proof.

She recanted virtually every allegation in the affidavits, swearing that FBI agents Woods and Price threatened to kill her if she would not inculpate Peltier. She swore that she had been taken by the agents to the Jumping Bull Compound to survey the area, previously unknown to her, prior to signing the affidavits. Peltier T. 4584-650.

Evidence was not presented at the Peltier trial, as it had been at the Bulter/Robideau trial, of the climate of fear at Pine Ridge at the time of the shoot-out. Peltier was convicted by the jury of the murders of the agents. He appealed his conviction to the Eighth Circuit Court of Appeals.

During oral argument before the Eighth Circuit, Assistant United States Attorney Hultman, in a colloquy with Judge Ross, acknowledged that the Poor Bear affidavits submitted to Canada in connection with Peltier's extradition were false, that "anyone who talked to her . . . for even a few minutes would immediately know that she was an unbelievable witness," and that there was "not one scintilla of evidence" that Poor Bear was present at the scene of the events she had earlier claimed to have witnessed. Judge Ross' remarks to Assistant United States Attorney Hultman are instructive, and we submit, relevant to this subcommittee's oversight responsibilities.

JUDGE ROSS: But can't you see, Mr. Hultman, what happened happened in such a way that it gives some credence to the claim of the -

MR. HULTMAN: I understand, yes, Your Honor.

JUDGE ROSS: - the Indian people that the United States is willing to resort to any tactic in order to bring somebody back to the United States from Canada.

MR. HULTMAN: Judge -

JUDGE ROSS: And if they are willing to do that, they must be willing to fabricate other evidence. And it's no wonder that they are unhappy and disbelieve the things that happened in our courts when things like this happen.

MR. HULTMAN: Judge Ross, I in no way do anything but agree with you totally.

JUDGE ROSS: And you try to explain how they got there is not legally relevant to the case, and they don't understand that.

MR. HULTMAN: I understand, your Honor.

JUDGE ROSS: We have an obligation to them, not only to treat them fairly, but not give the appearance of manufacturing evidence by interrogating incompetent witnesses.

The Eighth Circuit affirmed Peltier's conviction, ruling that the irregularities in the extradition proceeding did not affect the conviction, and declining to disturb the trial judge's evidentiary rulings excluding the Poor

Bear recantation testimony, although the Eighth Circuit acknowledged that it would have been the better course for the trial court to permit the testimony. 585 F.2d 314 (8th Cir. 1978). The Supreme Court denied certiorari.

The South Dakota State Prosecution of Richard Marshall. Another incident that raises serious questions about the FBI's vindictiveness toward the American Indian Movement arises out of the FBI's interjection into the prosecution of Richard Marshall.

Marshall is an activist and leader of AIM, and had no previous criminal record. He was charged with the murder of a man in the men's room of a bar near the Pine Ridge Indian Reservation.

The essential testimony upon which Marshall was convicted was that of Myrtle Poor Bear. Poor Bear testified on trial that she was not present at the bar at the time of the shooting but that she had been Marshall's girlfriend and Marshall on two occasions had confessed the crime to her. (The pattern of her testimony was remarkably similar to that of her first affidavit in regard to Leonard Peltier.) Poor Bear has since repudiated her testimony.

It seems that at the time she testified in the Marshall state prosecution, Poor Bear was residing in a motel under the auspicies of the FBI as a material witness in the Peltier matter. Agents Wood and Price made arrangements for her to become involved in the Marshall state prosecution. The only logical explanation for the FBI's connection to this state prosecution appears to be that Marshal is a well-known AIM leader.

(We have supplied to subcommittee staff copies of the three Poor Bear affidavits in regard to Peltier, Poor Bear's affidavit repudiating her earlier affidavits, and a copy of the U.S. Attorney's remarks at the oral argument on Peltier's appeal.)

The FBI's Response. The United States Commission on Civil Rights inquired of the FBI as to certain of these

matters, and the FBI's response has been to deny any misconduct or wrongdoing.

As to Judge Nichols' allegations of FBI misconduct in his dismissal of the Banks/Means prosecution, Director Webster informed the Commission that the FBI's review resulted in a finding that there was "no misconduct, intentional falsification of records, or any dishonesty." The Civil Rights Commission, in its testimony before this subcommittee, has criticized the inadequacy of the FBI's review of Judge Nichols' finding of misconduct.

In regard to the matter of the obtaining of affidavits from Myrtle Poor Bear, which were submitted to Canada for the Peltier extradition, Director Webster informed the Commission that there was no FBI internal inquiry. Director Webster further stated to the Commission:

> All affidavits were voluntarily furnished by Myrtle Poor Bear and taken in good faith. The inconsistency between the first affidavit and the subsequent two affidavits is believed to be the result of Myrtle Poor Bear's initial reluctance to fully cooperate because of her legitimate fear for her own personal safety.

Letter of FBI Director William Webster to Arthur Flemming, Chairman, U.S. Commission on Civil Rights, August 7, 1979.

Director Webster's explanation is simply inconsistent with the admission of Assistant United States Attorney Hultman at oral argument that there was "not a scintilla of evidence" that Poor Bear was present at the events she claimed to have observed. It is disturbing that there was no FBI internal review of the very serious allegations of threats and abuse made by Myrtle Poor Bear in her recantation of earlier testimony and affidavits. It is also distressing that the FBI's internal review procedures do not appear to have taken into account the fact that

Agents Price and Wood figure again and again in these allegations of misconduct.

We would strongly urge that the Subcommittee's inquiry include testimony from advocates and Indian people knowledgeable about these issues. As to the legal history and procedure in these cases, we can think of no one more knowledgeable than attorney Kenneth Tilsen in Minneapolis, who has submitted a brief written statement to the Subcommittee. Mr. Tilsen provided legal services in connection with the Wounded Knee occupation in 1973, and later was trial attorney in the criminal cases arising out of the occupation, which resulted in the court's dismissal on the grounds of FBI and governmental misconduct. He represented the family of Anna Mae Aquash in regard to the second autopsy. He has been involved since then in numerous cases involving AIM members where allegations of FBI misconduct have become critical issues.

We would be happy to provide oral or written testimony in regard to the particulars of the Peltier investigation and the allegations of FBI abuse.

Most important, we recommend that the Subcommittee's inquiry include testimony from Indian people with first-hand knowledge about these matters and that the hearings not be confined solely to FBI and governmental witnesses. We would be happy to be of assistance to the Subcommittee in making contacts with persons who could provide first-hand testimony.

One of the distressing relevations of recent history has been that the FBI singled out Dr. Martin Luther King as someone the Bureau found unacceptable as a leader of black people. There is substantial reason to fear that the same syndrome has taken place in respect to the FBI's response to the American Indian Movement.

These issues, we submit, are highly relevant to the subcommittee's oversight responsibilities, as well as to the consideration of the proposed FBI Charter.

So that the Subcommittee can have a full picture of the situation, we would hope that the witnesses include a wider perspective than solely FBI representatives.

Again, let us express our respect for your interest and efforts in exploring issues surrounding the FBI's role on Indian reservations, as well as the many other important matters addressed by the Subcommittee.

Respectfully,

Michael E. Tigar
Linda Huber
John J. Privitera

cc: Subcommittee Members

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April 3, 1981

HAND DELIVERY

Honorable Don Edwards
Chairman, Civil and Constitutional
Rights Subcommittee
House Judiciary Committee
2307 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Edwards:

We sent a letter to you yesterday outlining our concerns regarding the FBI's activities in relation to the American Indian Movement (AIM). I attended your hearing yesterday, and I believe that your and counsels' questions to the FBI representatives elicited responses that were in some respects inaccurate or incomplete.

1. The FBI's Involvement in the First Autopsy of Anna Mae Aquash. Mr. Monroe and Mr. Fryer, to my recollection, stated that the FBI played no role in the first autopsy of Ms. Aquash which resulted in a finding of cause of death as exposure.

However, information provided by Director Webster to the Civil Rights Commission indicates the contrary. In a letter from Director Webster to Arthur Flemming dated August 7, 1979, it is stated that Special Agents William Wood, David Price and Robert Munis were present at the Pine Ridge Indian Health Services Hospital contemporaneously with the first autopsy. FBI personnel made the decision to have the physician sever the hands of Aquash for fingerprint identification purposes. It is thus apparent that FBI agents were in communication with the doctor in the ongoing course of the performance of the first autopsy.

Director Webster disclosed to the Civil Rights Commission transmittal documents of the hands of Anna Mae Aquash for fingerprint identification. An airtel dated February 26, 1976 from the special agent of the Minneapolis office to FBI headquarters indicates that the matter involved "possible manslaughter" and that the autopsy failed to determine the cause of death. This is contrary to the doctor's own report, which listed the cause of death as exposure.

The Aquash matter raises an abundance of troublesome questions, but the representations yesterday to your committee that the FBI had no role in the first autopsy were certainly inaccurate.

2. Myrtle Poor Bear's Repudiation of her Earlier Testimony. Mr. Monroe and Mr. Fryer, in response to counsels' questions yesterday, indicated that the reason that Myrtle Poor Bear was not called as a witness at Peltier's trial was that the United States Attorney had determined that she was too emotional to withstand cross-examination. The FBI representatives further indicated that Myrtle Poor Bear's repudiation of her earlier affidavits inculpating Peltier was perhaps due to intimidation by unknown persons. The FBI representatives indicated no doubt as to the accuracy of the Poor Bear affidavits stating that she had obeserved Peltier shoot the two FBI agents.

The representations of the FBI representatives to you yesterday contradict the statements of the United States Attorney to the Eighth Circuit Court of Appeals in regard to this matter. Assistant United States Attorney Hultman, who was also trial counsel for the government at the Peltier trial, stated his reasons for not calling Myrtle Poor Bear as the government's witness:

> It was clear to me her story didn't later check out with anything in the record by any other witness in any other way. So I concluded then, in addition to her incompetence, first, that secondly, there was no relevance of any kind. Absolutely not one scentilla of any evidence of any kind that had anything to do with this case.

> And it was then that I personally made the decision that this witness was no witness. First of all, because she was incompetent in the utter, utter, utter ultimate sence of incompetency as recognized by defense counsel on more than one occasion. And there was some more indicia here in the record where they likewise further did. But, secondly, as Judge Ross, you are indicating, and I take no issue at that, Your Honor, but when I then tested those statements once they came to me, and that was after they had gone to Canada, and I had a chance to look at them and tested them with all of the record, all of the witnesses, there was not one scentilla that showed Myrtle Poor Bear was there, knew anything, did anything, et cetera. (Emphasis added)

Enclosed for your information is an excerpt of the transcript from the oral argument before the Eighth Circuit in the Peltier case and a copy of the letter from Director Webster to the Civil Rights Commission, together with attachments, of April 7, 1979.

It seems that what is going on is, at the very least, a studied attempt on the part of officials at FBI headquarters to avoid knowing what occurred in the field.

We appreciate greatly your inquiry into these matters, as do many other people who have taken an interest in these issues. We are grateful also for the courtesy and interest shown to us by both Majority and Minority staff counsel. We remain available to provide any further information that might be of use to you.

Yours sincerely,

Linda Huber

Linda Huber

LH:ll
Enclosures
cc: Mr. Mike Tucevich
Mr. Tom Boyde

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

APR 10 1978

Memorandum

To: Assistant Secretary--Indian Affairs

From: Solicitor

Subject: Jurisdiction Over Offenses Committed by Non-Indians Against Indians in Indian Country

In view of the United States Supreme Court's ruling that Indian tribes do not possess inherent criminal jurisdiction over non-Indians Oliphant v. Suquamish Indian Tribe, 46 U.S.L.W. 4210 (1978), you have asked whether the states generally possess authority to try and to punish non-Indians who commit offenses against Indians in Indian country or whether the jurisdiction of the United States under 18 U.S.C. § 1152 is exclusive. 18 U.S.C. § 1152, reads in pertinent part as follows:

> "Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country."

While the language of this provision can be construed broadly enough to cover all offenses committed by non-Indians in Indian country, the United States Supreme Court has construed that statute in light of the public policy underlying the Act--i.e., to give Federal protection to Indians and Indian property--and, accordingly, ruled that crimes by non-Indians against other non-Indians are within the exclusive jurisdiction of the state. New York ex rel. Ray v. Martin, 326 U.S. 496 (1946); Draper v. United States, 164 U.S. 240 (1896); United States v. McBratney, 104 U.S. 621 (1881).

The McBratney rule, consistently, does not apply when Indian interests are involved:

> "Upon full consideration we are satisfied that offenses committed by or against Indians are not within the principle of the McBratney and Draper cases. This was in effect held, as to crimes committed by the Indians, in the Kagama case, 118 U.S. 375, 383, where the constitutionality of the second branch of § 9 of the Act of March 3, 1885, 23 Stat. 385, was sustained upon the ground that the Indian tribes are the wards of the nation. This same reason applies--perhaps a fortiori--with respect to crimes committed by white men against the persons or property of the Indian tribes while occupying reservations set apart for the very purpose of segregating them from the whites and others not of Indian blood." Donnelly v. United States, 228 U.S. 243 (1912) at 271-272.

The Supreme Court has reiterated the conclusion that the United States has jurisdiction over crimes committed by non-Indians against the person or property of Indians on several occasions. Oliphant at 4213; United States v. Chavez, 290 U.S. 354 (1933); United States v. Ramsey, 271 U.S. 467 (1926); United States v. Pelican, 232 U.S. 442 (1914).

In 1946, the Supreme Court squarely addressed this question and stated explicitly that federal jurisdiction over non-Indians who commit crimes against Indians is exclusive:

> "While the laws and courts of the State of Arizona may have jurisdiction over offenses committed on this reservation between persons who are not Indians, the laws and courts of the United States, rather than those of Arizona, have jurisdiction over offenses committed there, as in this case, by one who is not an Indian against one who is an Indian." Williams v. United States, 327 U.S. 711, 714 (1946). [Footnotes omitted; Emphasis added.]

Recently the Federal Courts of Appeals for the Eighth Circuit and the Ninth Circuit held that offenses committed by non-Indians against Indians may not be prosecuted under state law. United States v. Big Crow, 523 F.2d 955 (8th Cir. 1975), cert. denied 424 U.S. 920 (1976); United States v. Cleveland, 503 F.2d 1067 (9th Cir. 1974).

Congress has recently modified the Major Crimes Act, 18 U.S.C. § 1153, on the assumption that non-Indians who commit crimes against Indians in Indian country are not subject to state jurisdiction. Until passage of the Indian Crimes Act of 1976, P.L. 94-627, when an Indian committed assault with a dangerous weapon or assault resulting in serious bodily injury in Indian country, the Major Crimes Act applied state law for purposes of defining the crime and determining the punishment. In 1976, Congress amended the Major Crimes Act so that federal enclave law would apply to those crimes when committed by an Indian. The stated purpose of the change was to ensure equal treatment for Indian and non-Indian offenders who committed those crimes. The legislative history of that Act explicitly states that the change was based on the assumption that non-Indians committing the same crimes against Indians would be subject to federal law. H.R. Rep. No. 94-1038, 94th Cong., 2d Sess., reprinted in 1976 U.S. Code Cong. & Ad. News 1125.

While the Oliphant decision held that tribes do not have inherent criminal jurisdiction over non-Indians, it did not alter in any way existing federal and state jurisdiction over non-Indians. The United States continues to have jurisdiction over Indians and non-Indians alike who violate federal laws that apply throughout the nation (e.g., counterfeiting or forgery of federal or foreign government documents, 18 U.S.C. §§ 471-509) or who violate substantive criminal laws applicable to Indian country (e.g., the Indian liquor laws, 18 U.S.C. §§ 1154, 1156, and 1161, and the ban on hunting and fishing on Indian lands without permission, 18 U.S.C. § 1165). Unless a state has acquired valid jurisdiction over the Indian country within its borders under P.L. 83-280 or a similar federal statute, the federal government also continues to have exclusive jurisdiction over non-Indians who violate federal enclave law by committing a crime against an Indian or Indian property. Federal enclave law includes not only specific offenses described in federal statutes (e.g., arson, 18 U.S.C. § 81), but, under the Assimilative Crimes Act, 18 U.S.C. § 13, also includes offenses which, although not made punishable by an enactment of Congress are punishable according to the law of the state in which the enclave is located.

Except where states have acquired jurisdiction pursuant to an Act of Congress, Bureau of Indian Affairs police and tribal police who are commissioned by the federal government to enforce federal law may arrest non-Indians for offenses committed against Indians or Indian property in Indian country for violations of federal law (including as federal law, state law which has been adopted under the Assimilative Crimes Act). Since prosecution for these crimes must be by the Department of Justice before a federal district court judge or a federal magistrate, an arrangement should be worked out with that Department

establishing procedure which will ensure cooperation by Justice. I understand that one of the purposes of your request for a conference with the Assistant Attorney General, Criminal Division, is to work out such an arrangement. Finally, police who carry state commissions may also arrest non-Indians for violations of state law where no Indians or Indian property is involved; non-Indians arrested for those crimes may be tried only in state court.

There remains the question of whether either the United States or a state possesses exclusive jurisdiction, or whether jurisdiction is concurrent, over the so-called "victimless" crimes — such crimes, for example, as reckless driving, public drunkenness, and disorderly conduct. This question arises because the General Crimes Act, 18 U.S.C. § 1152, despite its broad language, does not apply to crimes committed by non-Indians against non-Indians, which are subject to state jurisdiction. United States v. Wheeler, 46 U.S.L.W. 4243, 4246 fn. 21, citing United States v. McBratney, 104 U.S. 621. That question, in my view, must be addressed in light of the policy which the Congress intended to carry out in enacting the General Crimes Act. That policy, clearly, was to give protection of the United States for which Indian tribes gave up their sovereignty. See Oliphant, supra, passim. Viewed in context of that policy, it is my opinion that the United States possesses exclusive jurisdiction in circumstances where any of the crimes directly affect the Indian community. For example, should the drunkenness occur in a tribal public building or during a tribal function the United States would possess exclusive jurisdiction. Likewise, should the reckless driving occur near an Indian school or within what is clearly an Indian community the United States would possess jurisdiction. That construction of the statute looks to whether the effects of the proscribed activity are harmful to the Indian community owed protection by the United States. Cf. Application of prohibition of sale of liquor under the Indian liquor laws throughout Indian country but not within non-Indian communities in Indian country.

It is not possible to anticipate all the situations in which a question might arise. Even if it were, it is likely that there would be some situations where no clear answer could be given. Even so, the proper approach to this question, in my view, is to determine initially whether the policy of giving protection to an Indian community is being carried out by applying and enforcing Federal laws.

Leo M. Krulitz

83-073 O - 82 - 17

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March 2, 1981

TO : Subcommittee on Civil and Constitutional Rights
House Judiciary Committee
Attention: Michael Tucevich

FROM : American Law Division

SUBJECT : Criminal Jurisdiction in Indian Country

This is in response to your request for materials to use for preparing for FBI oversight hearings with regard to law enforcement on Indian reservations.

Jurisdiction for criminal law prosecutions of offenses committed on Indian reservations is not a simple matter. The federal government, the tribal government, and the states all have some interest in prosecuting such crimes. Over the years Congress and the courts have attempted to divide the jurisdiction on the reservations into a workable pattern protecting the interests of all concerned.

Not all reservations will be covered by this discussion because the issue of jurisdiction on some of them has been settled by Congress by special legislation or by Public Law 280, Act of August 15, 1953, 62 Stat. 588, 18 U.S.C. §1162. An example of special legislation is 25 U.S.C. §232, enacted in 1948, which directed New York State to exercise jurisdiction over crimes committed in Indian country to the same extent its laws, except with regard to hunting and fishing rights, applied elsewhere within its borders. Public Law 280, which postdates the state-by-state approach typified by the New York type of legislation, permitted some states to accept jurisdiction to whatever extent they

designated. This law has since been amended to require tribal consent for further cessions and to permit retrocession. Today one must refer to an ever changing table to be sure of how to resolve jurisdictional questions in states having P.L. 280 reservations.

In the areas where federal jurisdiction still exists the reservations are often located in rural areas, far from the district or regional offices of the Federal Bureau of Investigation (FBI) or the various United States Attorneys. On most reservations there is another factor complicating the jurisdictional problems: not all or even most of the land within the reservations is held or lived on by tribal members. Non-members cannot participate in the tribal government and, thus far, are not subject to the criminal law jurisdiction of the tribes.

The form of tribal government today is considerably different from the traditional Indian arrangement. Many of the tribes have constitutions modeled on one drafted by the Bureau of Indian Affairs in the 1930's. Many have a three branch government with a tribal court modeled on the Anglo American system. On many reservations the Bureau of Indian Affairs employs law enforcement personnel to keep order on the reservations; on other reservations law enforcement is contracted by the tribes pursuant to 25 U.S.C. §450, et seq., the Indian Self-Determination Act, and paid for by the federal government. The sentencing authority of the tribal courts is limited to imposition of prison sentences of up to six months and fines of $500 under the Indian Civil Rights Act, 25 U.S.C. §§1301, et seq. For this reason as well as because of the more abstract jurisdictional issues, federal law enforcement agents, primarily the agents of the FBI, must play a role in enforcing law and order on reservations.

The major problem of the federal government in enforcing criminal law on Indian reservations seems to be one of resources. The Justice Department has acknowledged and made part of the record of Congressional hearings its view of the inadequacy of current efforts at law enforcement on Indian reservations. In 1975, in a report on Indian matters, "Jurisdiction on Indian Reservations," Hearings before the Select Committee on Indian Affairs, United States Senate, 96th Cong., 2d Sess. 243-244 (1980) (footnote omitted), a United States Department of Justice task force conceded that efforts to control crime on Indian reservations were not succeding:

> Law enforcement on most Indian reservations is in serious trouble. Reservation crime statistics are an indication of the severity of the problem. The major crimes rate is 50% higher on Indian reservations than it is in rural America as a whole. The violent crime rate on Indian reservations is eight times the rural rate although the property crime rate is about half of the rural rate. The murder rate among Indians is three times that in rural areas while the assault rate is nine times as high. The number of cases brought under the Major Crimes Act has risen nearly 30% in the past year. The percentage of unreported crime is higher on reservations than elsewhere suggesting that the actual situation is worse than the statistics portray.
>
> Citizen lack of confidence in the reservation law enforcement system is widespread. Residents of several reservations believe there has been a complete breakdown of law and order. They are cynical about the willingness and ability of the government to protect persons and property. In many cases, no effort is made to report crime because of the feeling that nothing would be done. Self-help is common among both Indians and non-Indians. Indian self-help receives support from Indian traditions. Relatives of crime victims often take retributive action which merely precipitates further violence.

> The reservation law enforcement issue has suffered inattention and neglect. The problem is one of major proportion crossing many bureaucratic and jurisdictional boundaries. It is particularly embarrassing that the present problem exists in an area of primarily federal responsibility. This is not a situation where the federal government serves as a model for other law enforcement efforts.
>
> Two factors are fundamental to understanding the difficulties involved in meeting the problem of crime on reservations. First is the isolation of the reservation areas in which Indians live, and the great distances involved. Second is the prevalence of alcoholism on reservations and the central role it plays in the incidence of violent crime.
>
> Indian reservations encompass enormous geographic areas where the population is sparse and scattered rather than conveniently gathered in cities or towns. The Navajo reservation, for instance, spreads into four states containing roughly 16 million acres in total area and 136,000 people. More common, however, are reservations of 1-2 million acres supporting a population of 500 - 2,000 people. It is not uncommon for several hours to elapse between the time a crime is committed and the time a law enforcement officer arrives at the scene by car. Providing effective law enforcement services under these circumtances is very difficult.

Part of the problem of inadequate or inconsistent law enforcement on Indian reservations stems from the uncertainty of jurisdiction on the reservations. Federal, state, and tribal governments all have legitimate jurisdictional interests in the legal problems arising on Indian reservations. The Constitution accords to the Congress plenary authority over relations between the tribes and the states. Where Congress has not acted, however, the federal courts have been called upon to define the extent of state authority over non-tribal members on tribal lands. The case-by-case delineation of the boundaries between tribal

and state authority has resulted in uncertainty as to which authority has jurisdiction to prosecute the crimes occurring on the reservation and, thus, may be seen as fostering abnegation of responsibility by the various authorities.

The question of which governmental authority has responsibility over which crimes on any Indian reservation is very complicated. A chart is attached giving the broad outlines of determining jurisdictional responsibility on those reservations where Congress has not ceded authority outright to the states that have accepted and over tribes that have given consent.

Congress has looked into the problem of Indian criminal jurisdiction in the past decade from three perspectivies: (1) Task Force Four: Federal, State, and Tribal Jurisdiction, of the American Indian Policy Review Commission, which submitted its Final Report, Report on Federal, State, and Tribal Jurisdiction, 95th Cong., 2d Sess. (1976), (2) the Tribal State Compact idea, and (3) authorizing special United States Magistrates to accept complaints from state and tribal law enforcement authorities as well as from the U.S. attorneys.

The American Indian Policy Review Commission had the following criticism of the federal prosecutors:

> . . . lack of consistency stems from many attributes of federal prosecution by U.S. attorneys. Most offices do not usually have a specific attorney who consistently handles Indian cases; there is therefore a consequent lack of familiarity and technical expertise. Major Crimes prosecution often involves street crimes types of cases which are equally unfamiliar. Likewise, they sometimes involve what is effectively a misdemeanor offense which is difficult to take very seriously at the Federal level. Prosecution is more difficult, as these cases often involve alcohol and/or family situations or ties which make witnesses unpredictable. In fact, the whole Federal criminal justice system is so foreign to reservation life and the very nature of the situation may intim-

> idate or affect witness dependability. All of these factors tend to produce a reduced success rate in prosecutions, none typical of Federal prosecutions generally, and, as a result, Indian cases are shied away from.
>
> American Indian Policy Reveiw Commission, Report on Federal, State, and Tribal Jurisdiction, at 37.

The American Policy Review Commission viewed the role of the FBI as contributing to the ineffectiveness of the federal prosecutors:

> Investigations by FBI agents is the primary basis for U.S. attorney prosecutions. Highly trained officers can make the work of a prosecutor much easier, and consistent association develops identifiable working patterns. But FBI agents are not usually close to Indian communities, either physically or culturally, and cannot easily grasp the equities of a situation which so often have much to do with the decision to prosecute or decline. Since local BIA [Bureau of Indian Affairs, of the Department of Interior] special officers, police or tribal police are much closer, FBI agents are not often the first officers on the scene of a crime. Thus, the scene often has to be preserved until an agent can arrive, in which case they usually end up redoing work already done by a more closely situated BIA or tribal officer. The quality of investigation may ultimately turn on the work done by local officers in any event, pointing up the desireability of having well-trained local officers for this, as well as all the other more obvious reasons.
>
> American Indian Policy Review Commission, Report on Federal, State, and Tribal Jurisdiction, at 38.

The American Indian Policy Review Commission made the following findings and Recommendations:

> FINDINGS
>
> . . .
>
> (a) The adoption of the Major Crimes Act of 1885 and subsequent amendments places the primary responsibility for the prosecution of these enumerated crimes with the various U.S. attorneys' offices, but it is not clear that such jurisdiction is exclusive of tribal judiction.
>
> (b) U.S. attorneys' offices which have major crimes responsibility generally have no well-defined standards, of which reservation Indian tribes under that jurisdiction are aware, for defining which cases brought before them will be prosecuted and which will be declined.
>
> (c) Many U.S. attorneys' offices do not have regularly assigned staff specifically responsible for Indian matters and major crimes prosecution on a long-term basis.

(*d*) Tribal courts exercise jurisdiction over serious crimes but are limited to penalties of no more than $500 or 6 months, or both, by the 1968 Indian Civil Rights Act, which may be inadequate for even serious offenses of a misdemeanor nature.

(*e*) The exclusion of Federal and tribal jurisdiction over offenses between non-Indians within reservation boundaries is inconsistent with the security and tranquility of Indian communities.

(*f*) The application of the Assimilative Crimes Act to Indian country, as defined in 18 U.S.C. 1151, is an unwarranted application of States' morals laws on Indian reservations which may conflict with local tribal governmental scheme of laws and undercut significant tribal enterprise. There is no clear indication that the Assimilative Crimes Act was intended to apply to Indian country.

RECOMMENDATIONS

(*a*) Congress should clarify major crimes jurisdiction as being concurrent with tribal governments with primary enforcement being with the Federal Government, unless and until a tribe demonstrates an ability and a desire to undertake such jurisdiction exclusively. Where U.S. attorneys decline prosecution, they should be immediately referred to the affected tribe for a determination of that tribe as to whether it will prosecute under tribal laws.

(*b*) The various offices of the U.S. attorneys should be required to coordinate with affected reservation tribes to develop standards for the decisions on which cases brought before the U.S. attorney will be prosecuted and which declined. There should be provision for meaningful tribal input and participation and all cases specifically requested by the tribe to be prosecuted should be given priority consideration.

(*c*) All U.S. attorneys' offices which have major crimes jurisdiction should have one or two of their staff specifically designated with responsibility for Indian matters and major crimes prosecution on a long-term basis to assure expertise and familiarity. Appropriations from Congress should designate funds for that purpose.

Criminal penalties available to tribal courts should be expanded to $1,000 or 1 year for misdemeanor offenses and $5,000 or 5 years for serious offenses. For tribes which show a desire and ability to exercise major crimes jurisdiction, provision should be made for their assumption of such jurisdiction with appropriate financial and technical assistance.

(*e*) Federal and tribal jurisdiction over offenses between non-Indians should be at least concurrent. At a minimum; the General Crimes Act should be amended to include offenses between non-Indians.

(*f*) The General Crimes Act should be amended to exclude Indian country, as defined in 18 U.S.C. 1151, from the application of the Assimilative Crimes Act.

American Indian Policy Review Commission,
Report on Federal, State, and Tribal Jurisdiction,
at 42-43.

The basic approach of the Tribal-State Compact idea is to provide a framework in which the states and tribes can work out mutually satifactory solutions to jurisdictional problems. This idea was proposed, made the subject of hearings, and debated in both the 95th (S. 2502) and the 96th (S. 1181) Congresses without being enacted. The bills that were considered did not attempt to solve all the jurisdictional problems between the tribes and the states nor to change federal jurisdiction, but to provide legal authority for tribal and state or local governments to negotiate voluntarily and enter into agreements on jurisdictional conflicts. They also provided a mechanism for funding. (A funding mechanism is important particularly where the state is called upon to increase the services it provides Indians on Indian reservations because the general scheme is to exempt Indian land, reservation land, and Indian income derived from reservation activities from state taxation, effectively withdrawing large masses of land from local tax base in areas having large reservations.)

In the 96th Congress, S. 2832 was introduced to establish a special magistrate with jurisdiction over federal offenses within Indian country and to authorize tribal and local police officers to enforce federal laws within their respective jurisdictions. Hearings were held: "Jurisdiction on Indian Reservations—Part 2, "Hearing before the Select Committee on Indian Affairs, United States Senate, 96th Cong., 2d Sess. (1980). At those hearings there was a general agreement that law enforcement on Indian reservations needs some serious attention. Objections to the proposal came (1) from some of the tribes who suggested that the tribal police should be permitted to arrest and the tribal courts to prosecute non-Indian offenders on the reservations, just as the states can prosecute Indians for offenses off the reservations; (2) from the states who did not want to be undertaking more services on the reservations without adequate reimbursement; (3) from the federal judiciary who saw problems

in administering a separate system of magistrates for the reservations; and (4) from federal prosecutors who saw the problem not as one of inadequacy in the present system of tribal, state and federal courts but rather as a problem of inadequate resources and lack of cooperation. The hearing record contains considerable development of the problems encountered in developing a solution to the law enforcement problem on Indian reservations. It also contains a chart from the United States Attorneys' Manual and a chart developed by the U.S. Attorney for Montana that is used to determine jurisdictional authority and definition of crimes for Montana reservations. The former does not treat the issue of state jurisdiction; the latter is an elaboration of the chart we are providing you and is included that you might study the contrast between the theory and practice. You may particularly wish to note that the chart of the U. S. Attorney for Montana indicates that the Montana has concurrent jurisdiction over all crimes committed by non-Indians against Indians and Indian property and that because state law is used under the Assimilated Crimes Act for [1/]

1/ The chart we enclose indicates that the United States has exclusive jurisdiction over these offenses unless Congress has specifically authorized state jurisdiction. (We have not conducted a thorough search to discover the statutory basis upon which the U.S. Attorney for Montana depends for his conclusion that the state has concurrent jurisdiction with the United States for all criminal offenses committed by non-Indians against Indians on Montana reservations.) The federal courts have held that Congress must consent to the exercize of state jurisdiction over Indian lands where Indian property, persons, or interests are involved. In an extensive law review article, Clinton, R., "Criminal Jurisdiction over Indian Lands: A Journey through a jurisdictional Maze," 18 Arizona Law Review 503, n. 327, 564, (1976) discusses this point, and cites the following cases: Antoine v. Washington, 420 U.S. 194 (1975); Seymour v. Superintendent of Washington State Penitentiary, 368 U.S. (1962); United States v. McGowan, 302 U.S. 535 (1938); Perrin v. United States, 232 U.S. 438 (1914); Whyte v. District Court, 140 Colo. 334, 346 P.2d 1012 (1959), cert. denied, 363 U.S. 829 (1960); Boyer v. Shoshone-Bannock Indian Tribes, 92 Idaho 257, 441 P.2d 167 (1968). Although there is considerable dicta in these cases and in Oliphant v. Suquamish Indian Tribe, 435 U.S. 191

crimes not defined by federal law, some of the crimes prosecuted by the federal government are defined by Montana law.

Attached also is a list of references of law review articles, congressional documents, and other materials that might be helpful to you in exploring the problem of criminal jurisdiction on Indian reservations. Four items from that list have been copied and are enclosed.

(continued) (1978), there seems to be no clear line of cases involving the issue of whether 18 U.S.C. §1152, the General Crimes Act, actually preempts state jurisdiction over offenses by non-Indians on Indian reservations committed against Indians or Indian property. Williams v. United States, 327 U.S. 711 (1946), is cited by an April 10, 1978, memorandum from Leo M. Krulitz, Solicitor of the United States Department of the Interior to the Assistant Secretary for Indian Affairs, 2, as resolving this issue. The holding of that case does not, however, address this precise issue. The issue before the court was not whether a state conviction could be sustained for a statutory rape of an Indian by a non-Indian in Indian country but whether a federal conviction for such an offense could be upheld when the facts were not within the perimeters of the federal definition of statutory rape and the theory of prosecution was based on the Assimilative Crimes Act. The other cases cited by Mr. Krulitz are also distinguishable: they, too, deal with federal prosecutions of Indians, not state prosecutions of non-Indians for crimes against Indians in Indian country. The other authority cited by Mr. Kurlitz is not as authoritative as a case squarely on point would be. It is a statement in the legislative history of an act of Congress almost 100 years after the passage of the statute at issue: H.R. Report No. 94-1038, 94th Cong., 2d Sess. (1976).

Although there is considerable dicta in earlier cases and in Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978), there seems to be no line of cases on the issue of whether 18 U.S.C. §1152, the General Crimes Act, actually preempts state jurisdiction over offenses involving non-Indians on Indian reservations and involving either Indians or Indian property. The statute on its face seems to preempt state jurisdiction. The Supreme Court has, however, engrafted one exemption to the clear language of the statute.

In United States v. McBratney, 104 U.S. 621 (1881), the Supreme Court ruled that the State of Colorado had criminal jurisdiction over its citizens and upheld a state criminal conviction of one non-Indian for the murder of another non-Indian that occurred on an Indian reservation. In Draper v. United States,

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Legislative Attorney
American Law Division
March 6, 1981

(continued) 164 U.S. 240, 242 (1896), the Court reaffirmed McBratney, and clarified the jurisdictional ruling, saying: " In . . . McBratney . . . this court held that where a State was admitted into the Union, and the enabling act contained no exclusion of jurisdiction as to crimes committed on an Indian reservation by others than Indians or against Indians, the state courts were vested with jurisdiction to try and punish such crimes."

CRIMINAL JURISDICTION ON INDIAN RESERVATIONS:
REFERENCES

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"Criminal Jurisdiction in Indian Country," Hearings before the Subcommittee on Criminal Justice of the Committee on the Judiciary, House of Representatives, 94th Cong., 2d Sess. (1976).

"Jurisdiction on Indian Reservations," Hearings before the Select Committee on Indian Affairs, United States Senate, 96th Cong. 2d Sess. (1980).

"Jurisdiction on Indian Reservations—Part 2," Hearings before the Select Committee on Indian Affairs, United States Senate, 96th Cong., 2d Sess. (1980).

"Tribal-State Compact Act of 1978," Hearings before the United States Senate Select Committee on Indian Affairs, 95th Cong., 2d Sess. (1978).

"Reform of the Federal Criminal Law," Hearings before the Subcommittee on Criminal Law and Procedures of the Committee on the Judiciary, United States Senate, 93d Cong., 2d Sess., part 10, 7430-7465 (1974).

Law Review Articles:

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Other Materials

"Jurisdiction over Offenses Committed by Non-Indians against Indians in Indian Country," Memorandum, from Leo M. Krulitz, Solicitor, United States Department of the Interior, to Assistant Secretary Indian Affairs," April 10, 1978.

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Taylor, P., "Criminal Jurisdiction," Manual of Indian Law, prepared by the American Indian lawyer Training Program, Inc. D-1 (c. 1978).

INDIAN TRIBAL COURT JURISDICTION OVER NON-INDIAN OFFENSES: =OLIPHANT= v. =SUQUAMISH INDIAN TRIBE=

ISSUE BRIEF NUMBER IB78219

AUTHOR:

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American Law Division

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The issue presented in Oliphant v. Suquamish Indian Tribe, No. 76-7529 (Supreme Court, Mar. 6, 1978) is whether an Indian tribe has the sovereign power to try and punish non-Indians for offenses committed on its reservation where the power has not been expressly extinguished by treaty or statute. The Supreme Court ruled 6-2 that the exercise of criminal jurisdiction over non-Indians is not an aspect of residual tribal sovereignty and that such jurisdiction can only be exercised pursuant to specific congressional authorization.

BACKGROUND AND POLICY ANALYSIS

Indian tribes have always occupied a special status in the United States, which derives from their presence on the American continent prior to European discovery. In accordance with the principles of international law that prevailed at the time of European discovery, conquest diminished but did not extinguish tribal sovereignty. Indian tribes were placed under the protection of the country making discovery. However, they maintained many powers of self-government respecting their internal affairs. When the United States was formed, the Federal Government continued to treat the tribes as quasi-sovereign nations. Hence, from the beginning the relationship between the Federal Government and the Indian tribes has been paradoxical. On the one hand, the Government recognizes Indian tribes as possessing many of the attributes of sovereignty. On the other hand, Indian tribes are wards of the Nation, subject to the control of Congress.

Jurisdiction over offenses committed on Indian land is particularly confusing because of the conflicting claims of three sovereigns to law enforcement authority. Indian tribes claim authority over their lands by virtue of their aboriginal sovereignty. The Federal Government's claim to jurisdiction arises from constitutional treatymaking and commerce powers as well as its trusteeship responsibilities. State claims are based on assertions of sovereignty or Federal statutory grant.

The States, the Federal Government and tribes share jurisdiction over offenses committed in Indian country. Generally, States have exclusive jurisdiction over crimes by and against non-Indians. Tribes have exclusive jurisdiction over lesser intra-Indian offenses and prior to the decision in Oliphant, they exercised concurrent jurisdiction with the Federal Government over interracial crimes. The Federal Government exercises jurisdiction over serious intra-Indian offenses and interracial offenses. In a few States this jurisdictional pattern has been changed by P.L. 83-280. In these States, complete and exclusive jurisdiction over offenses committed on Indian lands is exercised by the State.

Tribal justice systems are evolving institutions. Prior to the late 19th century, formal court proceedings were unknown to all but a few tribes. Instead tribes utilized community pressure to resolve disputes and maintain order. In 1883 the Commissioner of Indian Affairs issued, without statutory authorization, a series of regulations that established Courts of Indian Offenses, staffed by Indian judges, and created a criminal and civil code for the affected reservations. This judicial system was in part designed to break down traditional tribal government structures and to force tribes to

abandon traditional, "uncivilized" practices. Today there are 127 courts currently operating on Indian reservations. They largely fall into three categories. First, traditional tribal courts enforcing unwritten tribal customs still exist among 16 New Mexico pueblos. These courts use the tribal governing body to serve as a dispute-resolution forum with the governor of the tribe presiding. Second, there are 30 "CFR Courts" operating under the Code of Federal Regulations, 25 C.F.R. 11. The CFR Courts are the successors to the Court of Indian Offenses. The jurisdiction of the CFR Courts is restricted by regulation to offenses committed by Indians within the reservation. The third type of courts, and the type involved in Oliphant, are tribal courts. These courts are established under the tribes' self-governing powers. They enforce law and order codes adopted by the tribe and approved by the Secretary of Interior. Most Indian courts are tribal courts. All three types of courts are limited in their powers by the provisions of the Indian Civil Rights Act, 25 U.S.C. 1301-1303. The Act guarantees a criminal defendant safeguards similar but not identical to those found in the Bill of Rights. It also limits the punishment a tribal court can impose upon conviction to six months imprisonment and/or a $500.00 fine.

By and large the practice of bringing prosecutions against non-Indians offenders in tribal courts is a new development. The recent surge of non-Indian criminal prosecutions is attributable to many factors. First, until the 20th Century any type of tribal, formal court proceeding was rare. Second, tribes have only recently developed capable law enforcement systems as a result of the self-determination policy first implemented in the 1960s. Third, despite the fact that on many reservations the non-Indian population far exceeds the Indian population, Federal and State law enforcement efforts are negligible. The need to preserve order on the reservation has therefore prompted Indian prosecutions of non-Indian offenders.

Analysis:

The facts of Oliphant squarely placed before the Supreme Court the competing interests raised by the assertion of tribal court jurisdiction over non-Indian offenders. The Port Madison Reservation where the crime occurred consists of approximately 7,275 acres. It is a checkerboard of tribal community land, allotted Indian land and property owned by non-Indians. Approximately one-third of the reservation is in Indian ownership. Only 50 members of the Suquamish Tribe live on the reservation compared to an estimated non-Indian population of 3,000 persons. Oliphant was arrested by tribal authorities on tribal property during the Suquamish's annual Chief Seattle Days celebration and charged with assaulting a tribal officer and resisting arrest. When the Tribe planned its celebration, it expected thousands of people to attend. Requests were made of Federal, State, and county law enforcement officials for law enforcement assistance, but the Tribe was told that it would have to provide its own enforcement out of tribal funds with tribal personnel.

Against these facts the Supreme Court held that the Suquamish Tribal Court had no power to prosecute a non-Indian offender for a crime occurring within its reservation without a specific delegation of jurisdiction by Congress. This holding was reached over the Tribe's claim that it retained all those inherent powers of Government including the power to exercise criminal jurisdiction over non-Indian offenders not expressly extinguished by treaty or statute. Furthermore, the Tribe's claim was not to exclusive, but to concurrent, jurisdiction -- shared prosecutorial power with the Federal Government.

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The Court's decision is grounded in the nature of United States sovereignty. It found that the Suquamish Tribe "by submitting to the overriding sovereignty of the United States" by the Treaty of Point Elliott, 12 Stat. 927, relinquished its power to try non-Indian citizens of the United States except in a manner acceptable to Congress. Central to the Court's holding is the idea that the power of the Federal Government to protect the personal liberty of its citizens is a power that cannot be restricted by the will of a lesser sovereignty. In reaching its holding the Supreme Court relied on several early decisions holding that the incorporation of Indian territory into the United States acts as a limitation on tribal sovereignty. These cases held that incorporation extinguishes a tribe's power to alienate its land at will and to engage in relations with foreign nations. Oliphant, therefore, adds the power to try and punish non-Indians to the list of sovereign powers that are terminated by incorporation into a superior sovereign.

The Oliphant decision is buttressed by reference to congressional and executive expressions of policy indicating lack of jurisdiction, as well as by an 1878 circuit court decision ruling against tribal court jurisdiction over non-Indian offenders. The Court first turned to expressions of congressional policy embodied in treaties with the Indians. It characterized early treaty provisions authorizing tribal jurisdiction over non-Indian offenders as a mechanism for discouraging non-Indian settlement in Indian territory. It attributed the silence of later treaties, including the Treaty of Point Elliot with the Suquamish, to a congressional assumption that tribes lacked any such jurisdiction. The Court then examined Federal statutes regulating criminal jurisdiction in Indian country and found that they evidenced a congressional presumption that Indians could not criminally prosecute non-Indians. The Court also found from three advisory opinions that the executive branch entertained a similar presumption. Two of these opinions were written by the Attorney General in the 1800s. The other was written by the Solicitor of the Department of Interior in 1970, but was later withdrawn. All three opinions concluded that tribes do not have the inherent authority to assert criminal jurisdiction over non-Indians.

Dissent:

Mr. Justice Marshall wrote a simple dissent in which he was joined by the Chief Justice. His dissent affirmed the Suquamish Tribe's position that the attributes of tribal sovereignty particularly in so vital a matter as the power to preserve order on the reservation can only be extinguished by affirmative action in treaty or statute.

Implications:

It is too soon to draw conclusions about the impact of the Oliphant decision on questions affecting other aspects of tribal sovereignty. The decision does, however, appear to be part of a Supreme Court trend narrowing the rights and powers of Indian tribes. The trend can be discerned in three separate lines of cases. The first line retreats from the position that tribal sovereignty acts as an independent bar to State regulation of Indian affairs. Under a newly developing rule, tribal sovereignty no longer bars State regulation of Indian matters in the absence of a showing that the Federal Government has intended tribal regulation of the subject matter. The second line of cases carves out an exception to the doctrine that Indian

rights can only be terminated by the express will of Congress. These cases hold that congressional intent need not be expressed if it is clear from the surrounding circumstances. The Oliphant decision rests on yet a third limitation on tribal sovereignty — one that has been long dormant. It revives the doctrine that incorporation into the United States diminishes tribal sovereignty. The extent to which the Supreme Court will invoke this doctrine in future cases to restrict tribal power cannot now be ascertained. It is worthy of note, however, that the Court, in quoting an early incorporation case, emphasized that incorporation extinguished all tribal power except the power to govern tribal members. The Court thereby signified its approval of Indian sovereignty in its personal aspect, but by its silence raised the possibility that it might not look with similar favor on Indian sovereignty in its territorial aspect.

Congressional Action:

The Supreme Court noted that there is a high incidence of non-Indian crime on reservations and that the lack of effective Federal or State law enforcement had prompted tribal jurisdiction over non-Indian offenders. The Court stated, however, that Congress must determine whether Indian jurisdiction is the proper remedy for reducing the indidence of non-Indian crime on reservations. There is legislation pending in the 95th Congress which would provide another remedy. H.R. 9950 enlarges State jurisdiction over crimes committed by or against non-Indians on reservations. State jurisdiction is exclusive unless the crime is one of certain enumerated major offenses committed by an Indian, in which case Federal jurisdiction is exclusive. The bill provides that a tribe shall have no criminal jurisdiction over non-members. Also pending before Congress is S. 1437 and its companion, H.R. 6869, the Criminal Code Reform Act of 1978. S. 1437 preserves the existing jurisdictional pattern respecting crimes in Indian country with one exception. It increases the number of offenses committed by Indians that are subject to Federal jurisdiction.

U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director — Washington, D.C. 20535

January 5, 1982

Honorable Don Edwards
Chairman, Subcommittee on
Civil and Constitutional Rights
Committee on the Judiciary
United States House of Representatives
Washington, D. C. 20515

Dear Congressman Edwards:

My staff has completed a detailed review of our files in an effort to thoroughly examine the facts surrounding allegations of Agent misconduct in connection with investigations that occurred on or near the Pine Ridge Indian Reservation between 1973 and 1977. Enclosed is a copy of a memorandum setting forth the results of our review.

I hope the attached memorandum sufficiently addresses your current concerns regarding the FBI's role at the Pine Ridge Indian Reservation during this difficult period. You can be assured that the FBI will continue to undertake serious efforts to improve our relations with the various Indian people that we serve as a professional law enforcement agency.

Sincerely yours,

William H. Webster

William H. Webster
Director

Enclosure

FBI/DOJ

U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director — Washington, D.C. 20535

January 5, 1982

INQUIRY CONCERNING INDIAN MATTERS

On June 8, 1981, Mr. Robert.Redford and several attorneys from the law firm of Tigar, Buffone and Doyle met with FBI Director William H. Webster to discuss their concerns about the conduct of the FBI in its investigations of Indian matters occurring on or near Pine Ridge Indian Reservation between 1973 and 1977. At that meeting it was agreed that the attorneys would submit specific questions relating to the FBI's activities. Letters and memoranda dated June 16 and August 4, 1981, were subsequently received from Ms. Linda Huber of the law firm of Tigar, Buffone and Doyle.

By letter dated June 24, 1981, Senator Patrick Leahy of the Senate Judiciary Committee expressed to Director Webster his interest in the same matters which were discussed in Ms. Huber's letters and memoranda. On September 15, 1981, a similar letter was received from Senator Howard M. Metzenbaum, also of the Senate Judiciary Committee. Discussions between FBI Congressional Affairs representatives and members of Senator Leahy's staff have resulted in an agreement that the FBI will respond to the concerns of all the interested parties through this memorandum.

These responses are based on information contained in files at FBI Headquarters and at the Minneapolis Field Office, which maintains all of the records assembled by the Rapid City South Dakota, Resident Agency. In addition, these responses have been reviewed independently by the Minneapolis Field Office for completeness and accuracy. In approving this memorandum, that office has also drawn from the experience and first-hand knowledge of its Special Agents, many of whom have been involved in these investigations since their inception.

The Investigation of the Death of Anna Mae Aquash:

In addition to the general concerns expressed in the letters and memoranda received by the FBI concerning the discovery of the body of Anna Mae Aquash and the FBI's subsequent investigation of her death, these specific questions were raised by Ms. Huber for our inquiry:

INQUIRY CONCERNING INDIAN MATTERS

1. What persons responded to the scene where the body was found, and what did they observe? What did the investigation of the scene reveal? Were any photographs taken? Was there any evidence of foul play, or did any person at the scene, including Indian police, suspect foul play?

2. What persons, including Indian police, hospital personnel, ambulance drivers, and the like, observed the body prior to the first autopsy, and what were their observations? What persons were present during the autopsy, and what were their observations? Specifically, what were their observations of Dr. Brown's external and internal examination of the head? Did any person present contemporaneous with the first autopsy suspect foul play? Are there any notes or contemporaneous records of the first autopsy? What does the death certificate say? Did Dr. Brown make any oral statements regarding his views on the cause of death, prior to issuing his written report?

3. What were the nature or any oral and written communications among FBI personnel regarding the body of the woman found on February 24, 1976, subsequent to the finding of the body and prior to the first autopsy? What is the Rapid City nitel dated February 24, 1976, referred to in the February 26, 1976, airtel transmitting the hands to the FBI laboratory? Did anyone in the FBI suggest or conjecture that the dead woman might be Anna Mae Aquash?

4. What was the content of and who participated in the discussion of the removal of the decedent's hands for identification purposes? Specifically, who spoke with Agent Greene and what was the content of the discussion? Did any person suggest or conjecture that the decedent might be Anna Mae Aquash? Did any person suggest or conjecture that the matter might be a homicide? Prior to severing the hands, what efforts were made to take fingerprints from the body? Who participated in or observed these efforts?

5. Who participated in the decision to bury the body prior to the receipt of the findings of the FBI laboratory regarding identification? Prior to the burial, was there any contact with the FBI to determine when the laboratory findings would be forthcoming?

6. What were the nature of any oral or written communications between FBI personnel in South Dakota or the Minneapolis Division and the FBI laboratory? Was the suggestion made by any person in any form that the laboratory should compare fingerprints taken from the severed hands with the known fingerprints of Anna Mae Aquash?

INQUIRY CONCERNING INDIAN MATTERS

7. What was the nature of and (sic) actions taken in the FBI's attempt to locate and apprehend Aquash following her becoming a fugitive? Had any informants been in contact with her or provided information about her, or requested to provide any information or take any actions in regard to her? Which agents were most particularly involved in the effort to apprehend Aquash? Were they aware that the woman's body was found on February 24, 1976, prior to fingerprint identification? Who directed Agents Price and Wood to respond to the P.H.S. Hospital in Pine Ridge, and how did this task come to be part of their official duties?

8. What was the nature of any FBI investigation of Aquash in regard to the Williams-Coler killings? Was she believed to have been involved in or have knowledge of the killings? What was the nature of any other contact with Aquash or information about her?

RESPONSE:

We are responding to the above questions by providing a summary of the circumstances surrounding the discovery of the body of Anna Mae Aquash and our efforts to identify that body. This summary is based upon a review of our files at both FBI Headquarters and in the Minneapolis Field Office, and the substance of this response has been confirmed by the Special Agents who are assigned to this investigation. Because the investigation into Ms. Aquash's death is still active and pending, information which would interfere with that investigation has not been disclosed. We believe, however, that the summary below addresses the concerns expressed by Ms. Huber.

On February 24, 1976, the body of an unidentified female was found by a rancher near Wanblee, South Dakota, on the Pine Ridge Indian Reservation. This rancher contacted the Kyle Bureau of Indian Affairs (BIA) substation, which in turn contacted the Pine Ridge BIA Office, where an FBI agent was present on other business. BIA police, accompanied by Special Agent (SA) Donald A. Dealing of the FBI, responded to the call and recovered the body which was subsequently transported to the Public Health Service (PHS) Hospital, Pine Ridge, by BIA ambulance. The body was determined to be that of an Indian female, approximately 20 years of age. The body was decomposed, and no identification could be made at the time of discovery. It should be noted that while the BIA personnel involved were not formally interviewed, as they were criminal investigators conducting their own investigation, the FBI and BIA did and continue to work closely together on this case.

With respect to the crime scene, the woman's body was found approximately 100 feet west of Highway 73 at the bottom of the 30-foot ravine. The body was fully clothed and was not wrapped in any blanket. There were no indications of foul play noted at the crime scene. During the crime-scene search, the earth below where the woman's head had rested was spaded in an effort to obtain physical evidence, but none was located and no earth was removed from the scene.

In accordance with the normal procedures followed when an unidentified body is found on the reservation, an autopsy was requested by the BIA. No agents of the FBI were present when the autopsy was performed, but SA Dealing, SA William B. Wood, and SA David F. Price viewed the body at the PHS Hospital, Pine Ridge, South Dakota, prior to the autopsy, and SA John Robert Munis viewed the body following this autopsy. Three criminal investigators of the BIA were present for various portions of the autopsy; however, none of these individuals viewed the entire autopsy.

The autopsy was performed by Dr. W. O. Brown, Scottsbluff, Nebraska, who stated in his initial report that the probable cause of death was due to exposure and that the body appeared to have been dead for a period of seven to ten days. In view of the fact that no identifying material was found in possession of the unidentified female and because of the body's decomposed state, no identification could be made locally through normal procedures. As is standard in such cases, a decision was made by SA Thomas H. Greene to have Dr. Brown sever the hands of the unidentified body in order to send them to the FBI Identification Division for positive identification purposes. Dr. Brown did then sever the hands in the presence of a BIA criminal investigator, and SA Munis subsequently received the hands of Ms. Aquash from Dr. Brown. SA Munis maintained control of these hands and forwarded them to the FBI Identification Division, Washington, D. C. The hands were subsequently delivered to Dr. Garry Peterson at the Pine Ridge Indian Reservation by SA Wood after they had been returned by the FBI Identification Division.

After the first autopsy was conducted, the body was transferred to Chamberlain's Mortuary for embalming purposes. Chamberlain's Mortuary advised the BIA that due to the decomposed state of the body, it could not be embalmed and the decision was therefore made by the BIA to bury the body on March 2, 1976, prior to identification. On March 3, 1976, the FBI Identification Division, Washington, D. C., identified the body to be that of Anna Mae Aquash. A communication was immediately sent to the FBI's liaison representative in Ottawa, Canada, to alert Canadian authorities to attempt

to notify the next of kin. Prior to receiving any information that Ms. Aquash's relatives desired a second autopsy, on March 4, SA Wood contacted Assistant U. S. Attorney Bruce W. Boyd, Rapid City, South Dakota, in order to institute proceedings to obtain a Federal court order for exhumation and re-examination of the body.

An affidavit requesting exhumation was completed March 8, 1976, and U. S. District Court Judge Andrew W. Bogue, Rapid City, issued the exhumation order on March 9, 1976. However, exhumation was delayed after an attorney for Ms. Aquash's family contacted the Rapid City FBI Office that day and requested a pathologist of the family's choosing be present during the second autopsy. Upon the arrival of such a pathologist, Dr. Garry Peterson, on March 11, 1976, the remains of Ms. Aquash were exhumed. Through X-ray and examination conducted by PHS personnel and Dr. Peterson, it was determined a bullet had entered the skull. FBI SAs Wood and J. Gary Adams were present during the X-ray and subsequent pathological examination of the body. The bullet was recovered from the skull at the time of the second examination by Dr. Peterson.

A review of the communications between the Rapid City FBI Office and FBI Headquarters indicates that no one, including the FBI agents involved, suggested that the body might be that of Ms. Aquash prior to the positive identification made by the Identification Division on March 3, 1976. The first communication from Rapid City, a February 24, 1976, teletype, simply notified FBI Headquarters that an unidentified Indian female was found and that an investigation to identify her and determine the cause of death had been initiated. Because of the substantial distance of the body from the road, the teletype also noted that the death may possibly have been the result of a manslaughter. Leads were then sent out to other offices on February 25th in an attempt to secure assistance in the identification process. These leads resulted from information received from a source indicating that a group of Navajo Indian women was staying near Wanblee, and one of them used the name "Piote." The other offices were asked for any information on a person known by that name. Also, the February 26, 1976, airtel transmitting the hands to FBI Headquarters gives no indication that the unidentified individual might be Ms. Aquash. Finally, FBI Headquarters files indicate that on March 2, 1976, SA Wood advised, in a phone conversation with the Identification Division technician performing the fingerprint examination, that he believed that the hands which had been forwarded to Headquarters might be those of another Indian woman and provided FBI Headquarters with several possible aliases for that woman, none of which were aliases used by Ms. Aquash. As it turns out, SA Wood's opinion was incorrect, but this tends

to confirm that, until the identification was made at Headquarters, no one believed the unidentified body to be that of Ms. Aquash. In fact, if the agents involved had had a desire to delay identification of the body, they would not have sent the hands to FBI Headquarters for processing since they knew that FBI Headquarters would likely be able to identify the hands quickly because Ms. Aquash's fingerprints were on file as a fugitive.

With respect to the question of whether the agents themselves should have identified the body as that of Ms. Aquash, a review of our records indicates the following:

SA Dealing had never had any personal contact with Ms. Aquash and had never seen a photograph of her. SAs Wood and Adams had never had any direct personal contact with Ms. Aquash, although they had seen photographs of her. In addition, SA Wood had briefly observed her in 1975, but neither SA Wood nor SA Adams were able to identify the remains. Further, Minneapolis has advised that neither SAs Price nor Wood were previously aware of Ms. Aquash's surgical scars or jewelry, and there is no indication in their records that any of the other Special Agents assigned to the Rapid City Office had any greater familiarity with Ms. Aquash's physical characteristics. Moreover, the FBI records to which they would have referred do not mention such scars or jewelry.

SA Price had had personal contact with Ms. Aquash in the past and assisted in photographing her body at the PHS morgue on February 25, 1976. He was unable to recognize the body as that of Anna Mae Aquash due to its decomposition. It is pointed out that the photographs which we have previously provided to the U. S. Commission on Civil Rights readily reveal the decomposed state of Ms. Aquash's facial features. SA Price's previous contacts with Ms. Aquash occurred when he interviewed her in connection with an FBI investigation in the early spring of 1975 and again in September, 1975. This latter contact came on September 5, 1975, in connection with a search conducted at the residence of Al Running, in the Grass Mountain area, Rosebud Indian Reservation, South Dakota. During the execution of this search warrant, Ms. Aquash was found to be on the premises and, because of evidence and information obtained in this search, she was charged with violation of the Federal law in the District of South Dakota. She was arrested at that time by agents of the FBI, one of whom was SA Price. She subsequently was indicted for a firearms violation, but she failed to appear on November 25, 1975, on this violation and remained in a fugitive status until identified on March 3, 1976.

While we note that we believe it inappropriate for the FBI to comment upon the autopsies performed in this case and that such questions are better addressed by the doctors who performed the actual autopsies, Dr. Brown was telephonically contacted on May 24, 1976, at his residence regarding the autopsy performed by him on the body of Anna Mae Aquash at Pine Ridge, South Dakota, on February 25, 1976. Dr. Brown stated that all of his findings were set forth in his autopsy report furnished to the FBI and that they remained accurate in his opinion. He said he examined a partially decomposed body, which included the removal of the brain from the body, and failed to locate any evidence that a bullet had entered the brain. Dr. Brown said that as far as he was concerned, death was caused by exposure and not by a bullet entering the brain. Dr. Brown said it was possible for a bullet to enter the brain case and lodge itself in the brain casing without entering the brain and that in his opinion the bullet which entered the skull of Ms. Aquash was nonlethal. He said this bullet could have caused unconsciousness, but he did not believe that it caused death.

Dr. Brown confirmed that there were no FBI agents in attendance during the autopsy he performed and that his only contact with FBI personnel was after the autopsy was completed when he, in the presence of the BIA, turned over the hands from the body to BIA and FBI agents. Dr. Brown stated that he did not recall who requested that the hands be severed from the body, but related he did not think this was an unusual procedure since he had done it many times in the past in order to facilitate the identification of badly decomposed bodies.

It should be noted that much, if not all, of the above information has been previously released by the FBI to a variety of different individuals and entities, including the Department of Justice, the U. S. Commission on Civil Rights, and Members of Congress. In fact, in 1976 in response to an inquiry from the U. S. Commission on Civil Rights, the FBI provided detailed information to the Department of Justice on this case, and the Department advised the Commission by letter dated July 12, 1976, that it found no evidence of any attempt to conceal the cause of death and no evidence of misconduct by the FBI.

The Dismissal of the Banks and Means Prosecution:

Question:

Ms. Huber's memoranda expressed concern over several aspects of the government's prosecution of Dennis Banks and Russell Means and the dismissal of that prosecution by United States

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District Court Judge Nichol in 1974. In particular, her memoranda expressed concern about (1) the trial testimony of the former Special Agent in Charge (SAC) of the Minneapolis Field Office, Joseph Trimbach, relating to the existence and use of electronic surveillance during the Wounded Knee incident; (2) the use and development of Louis Moves Camp as a government witness; and (3) the withholding from the defense of a contradictory statement made by Alexander Richards, a witness at the trial.

Response:

As was stated in the August 7, 1979, letter from William H. Webster to Arthur S. Flemming, Chairman of the United States Commission on Civil Rights (a copy of which is attached), upon the dismissal of the Banks and Means prosecution, the Attorney General ordered both the FBI and the Criminal Division of the Department of Justice to initiate internal inquiries in order to review and determine the facts pertaining to the various allegations of misconduct. Thus, on September 17, 1974, FBI Headquarters instructed the SAC of the Minneapolis Office to conduct an inquiry into each allegation of misconduct and to provide the results of that inquiry to FBI Headquarters. The Minneapolis Office provided the results of its inquiry to the General Investigative Division (now known as the Criminal Investigative Division) on September 22, 1974. Subsequently, the General Investigative Division concurred with the finding of the Minneapolis Office that there was no misconduct, intentional falsification of records, or other improper activities as set forth in the allegations detailed in the United States District Court's opinion.

On October 9, 1974, the results of the inquiry along with the comments of the General Investigative Division were provided to the Department of Justice. Thereafter, the Department of Justice determined that it would appeal the dismissal of the charges against Messrs. Banks and Means, but the United States Court of Appeals for the Eighth Circuit held that the dismissal by Judge Nichol terminated the trial in the defendants' favor after jeopardy had attached and that the government's appeal was barred under the double jeopardy clause.

With respect to Judge Nichol's concern that former SAC Trimbach had misrepresented certain facts relating to the existence and use of electronic surveillance during the Wounded Knee incident, our review has produced the following information: Mr. Trimbach testified under oath before Judge Nichol that there were no wiretaps at Wounded Knee, legal or otherwise, and that he had neither seen nor signed an affidavit supporting a request for a judicial wiretap authorization. As it turns out, these statements by Mr. Trimbach were incorrect, but the Court in its initial decision rejecting

a defense motion to dismiss the prosecution, accepted Mr. Trimbach's explanation that "events were so much in control of men at Wounded Knee, that he had forgotten both about the phone at roadblock one and about the wiretap authorization affidavit." United States v. Banks, 374 F.Supp. 321, 334(D.S.D. 1974). While Judge Nichol subsequently expressed concern over whether his initial conclusions with respect to Mr. Trimbach's testimony were correct, Mr. Trimbach was called upon at that time to testify under oath in order to provide an explanation for his lapse of memory; and, absent the discovery of any additional facts indicating to the contrary, we accept this explanation that the swiftness of the events surrounding the Wounded Knee incident caused him to forget about the electronic surveillance used and considered during that incident. It should be noted that Mr. Trimbach is now retired from the FBI.

With respect to the concern expressed by Judge Nichol that former SAC Trimbach had refused to allow a polygraph examination of Louis Moves Camp, a witness at the trial and a former American Indian Movement member, it should be noted that Judge Nichol focused on the conduct of the prosecutor in failing to take the necessary steps to verify Mr. Moves Camp's testimony and in failing to offer an explanation or correction of that testimony in the face of what Judge Nichol believed to be overwhelming contradictory evidence. Moreover, as explained below, our research indicates that the FBI and Mr. Trimbach did not advise the United States Attorney's Office that no polygraph examination at all could be given to Mr. Moves Camp. Rather, Mr. Trimbach advised that it would not be wise to give the witness such an examination at the time it was discussed. To subject him to a polygraph examination might adversely affect the rapport between him and the government since Mr. Moves Camp was in the process of signing a series of written statements for the government.

A review of the various affidavits, statements, memoranda, and letters submitted as a part of the 1974 internal inquiry by personnel of both the FBI and the U. S. Attorney's Office provides the following background on the FBI's involvement with Mr. Moves Camp:

Mr. Moves Camp first came to the attention of the Government as a possible witness when he voluntarily contacted the FBI's Rapid City Resident Agency on or about August 5, 1974, and offered to testify as a Government witness against the defendants. SAs David Price and Ronald Williams then contacted former Assistant Special Agent in Charge (ASAC) Philip Enlow with this information on August 7th, who in turn contacted then Assistant U. S. Attorney (AUSA) R. D. Hurd.

It was decided on the morning of August 8th to bring Mr. Moves Camp to Minneapolis where the trial was taking place in order to debrief him and for him to be readily available should Mr. Hurd desire to interview him. Concern was also expressed that, because of the potential for harm and Mr. Moves Camp's expressed concern for his safety, Mr. Moves Camp should be afforded protection. SAs Price and Williams subsequently drove Mr. Moves Camp to Minneapolis. Mr. Enlow also instructed SA Donald Wiley, a veteran agent with experience involving the Pine Ridge Indian Reservation, to coordinate and be responsible for the debriefing of Mr. Moves Camp. The witness was then interviewed over the next several days by various agents and provided several signed statements.

While in Minneapolis, Mr. Moves Camp was afforded protection by SAs Price and Williams since he indicated that he did not want to be placed in the custody of the U. S. Marshals and that he would refuse to provide any information if SAs Price and Williams were not permitted to stay with him. During the next few days, the agents did take Mr. Moves Camp to Wisconsin for a short period because he became restless and indicated a desire to have more freedom to exercise than was possible in the hotel room in the Minneapolis area.

During these interviews, the FBI was concerned that Mr. Moves Camp might be a "plant" placed to embarrass the Government, and, thus, the possibility of giving Mr. Moves Camp a polygraph examination to verify his credibility was discussed within the FBI, and was brought to the attention of Mr. Hurd. In response to the FBI's suggestion of such an examination, Mr. Hurd stated that he concurred with the FBI's suggestion. Subsequently, on August 8th, a teletype, noting the AUSA's concurrence and an appropriate request, was sent to FBI Headquarters seeking authority for such an examination at an appropriate time, and this request was subsequently approved on August 9th.

Thereafter, according to the affidavit of SA Ray Gammon, he discussed the possibility of a polygraph of Mr. Moves Camp with Mr. Trimbach. Mr. Trimbach, who was aware that agents were in the process of securing signed statements from Mr Moves Camp, told SA Gammon that he thought it inappropriate and unwise to give the witness a polygraph examination at that time since it might harm the rapport between the witness and the Government. At the time of this conversation with SA Gammon, Mr. Trimbach did not know, nor was he told by SA Gammon, that Mr. Hurd had been advised of the possibility of such an examination and that Mr. Hurd had concurred with the FBI's recommendation that an examination be given to Mr. Moves Camp. In fact, an affidavit by Mr. Trimbach

indicates that he had no knowledge whatsoever of Mr. Hurd's request for a polygraph examination until September 15, 1974, the day before Judge Nichol issued his oral decision. SA Gammon, who was in the presence of Mr. Hurd at the time of this call, informed Mr. Hurd at the conclusion of the call that Mr. Trimbach did not think a polygraph was a good idea at that time.

Mr. Hurd did not then or later advise SA Gammon that he nevertheless wanted a polygraph examination given to Mr. Moves Camp. In fact, in a September 30, 1974, letter to Mr. Trimbach, Mr. Hurd stated that:

> "With specific reference to the question of a poligraph (sic) examination for Government witness Moves Camp, my recollection in this regard is that prior to the time that I went to Wisconsin to talk with Mr. Moves Camp, I had a conversation with Ray Gammon whereby he recommended that we put Mr. Moves Camp on the box, which I understood to mean that he would be given a lie detector test. I concurred in that recommendation. It was my understanding that the reason for putting Mr. Moves Camp on the box was in order to determine whether or not he was a ringer who would get on the witness stand and embarrass the FBI or the Government by indicating that he had been threatened or promised or by some other improper means had been utilized in order to have him to (sic) get on the stand and commit perjury. It is my understanding that after the signed statements were reviewed by the FBI, in light of the fact that the FBI would have signed statements, Mr. Trimbach concluded that Mr. Moves Camp need not be put on the box. I never at any time, talked to Mr. Trimbach directly relative to a lie detector test for Mr. Moves Camp, and at the time I was informed that Mr. Trimbach had concluded that it would not be necessary to put Mr. Moves Camp on the box, I was not concerned since I had, by that time, convinced myself that Mr. Moves Camp was not a ringer and thus the motivation for giving him a lie detector test was no longer strong in my mind. After Mr. Moves Camp had testified and after the witnesses on behalf of the defendants had testified in an effort to impeach Mr. Moves Camp, the Court indicated to me that he was concerned about the fact that we had not given Mr. Moves Camp a lie detector

> test, and that he had been informed that the reason we had not was because Mr. Trimbach had refused to give him one. I related to the Court substantially what I have previously stated in this regard and in addition, told the Court that had I felt it was necessary to give Mr. Moves Camp a test I could have caused that to be done on my own and would not have had to depend on the FBI, as the court stated from the bench."

This information supports the conclusions that Mr. Trimbach in no way prevented Mr. Hurd from having Mr. Moves Camp submit to a polygraph examination, and that Mr. Hurd could have requested or ordered one if he believed it necessary to do so.

With respect to Judge Nichol's concern that AUSA Hurd was less than candid in discussing Mr. Moves Camp's involvement in a possible rape allegation in Wisconsin or, in the alternative, that the FBI did not tell Mr. Hurd about that possible involvement, Judge Nichol's opinion states that he believed it unlikely that former ASAC Enlow failed to inform Mr. Hurd of the incident. This conclusion by Judge Nichol is confirmed by the materials gathered in the 1974 inquiry.

In a September 19, 1974, signed memorandum to the SAC, Mr. Enlow recounted that on the afternoon of August 16, 1974, SA Price advised him that an allegation had been made by a young woman in River Falls, Wisconsin, that Mr. Moves Camp had raped her. Mr. Enlow instructed SA Price to take no action whatsoever to interfere with or influence the investigation by the local police department or to persuade the local authorities not to prosecute Mr. Moves Camp on the rape charge. As was confirmed by the local authorities in their testimony before Judge Nichol, neither SA Price nor any other Federal Government employee tried to or did exert such influence on them. See, e.g., Testimony of Robert Lindsay, Pierce County, Wisconsin Prosecutor, Transcript of United States v. Banks, supra, at pp. 20, 764 et seq. As it turned out, no charges were, in fact, filed since the prosecutor, after interviewing the complainant, her parents, and the officer involved, determined that there was no evidence that a crime had been committed and the matter was, therefore, not prosecuted.

After instructing SA Price not to attempt to affect the local investigation or possible prosecution, Mr. Enlow spoke with SA Gammon and former AUSA Hurd in a conference call and informed Mr. Hurd of the allegation, that Mr. Moves Camp was not under arrest, and that no charges had been filed. In a September 30, 1974, letter to former SAC Trimbach, Mr. Hurd confirmed that on

August 16th, Mr. Enlow advised him of the rape allegation. In detail, Mr. Hurd stated:

> "On the late afternoon of August 16th, while I was in the apartment across the street from the Federal Building maintained by the FBI, Mr. Gammon received a telephone call from Mr. Phil Enlow who asked to speak to me. Mr. Enlow informed me in substance that Moves Camp had been intoxicated in Wisconsin, that a girl had alleged that she had been raped by Mr. Moves Camp, that Mr. Moves Camp was not in jail and there were no charges pending against him. Mr. Enlow informed me that he had not contacted the local prosecutor. I requested the name of the local prosecutor, which was given to me by Mr. Enlow, although, I do not recall the name he gave me. I told Mr. Enlow that if it was necessary to contact the local prosecutor, I would do so personally. Mr. Enlow asked whether or not Moves Camp could be moved from Wisconsin to Minnesota and I said 'Yes, as long as there was (sic) no charges pending against him." Mr. Enlow told me the local authorities knew how they could get ahold of Mr. Moves Camp if they wanted him for any reason. I met with Mr. Moves Camp on Sunday, August 18, 1974, and went over generally the areas that I would cover with him on direct examination. I again met with him on Monday, August 19, 1974, when I discussed with him some more of his direct testimony and also areas that I anticipated would be gone into on cross. On Wednesday, August 21, 1974, Moves Camp was called as a witness and testified under direct and cross-examination. The cross-examination of Mr. Moves Camp concluded on either Monday, or Tuesday, August 26th or 27th. At the conclusion of his cross-examination, when I indicated I had no re-direct examination, Mark Lane asked to approach the bench. He told the Court that while he did not have a basis to ask the question, he did have information which would justify his making an inquiry of the prosecutor as to whether or not Mr. Moves Camp had ever been arrested on serious charges, perhaps rape in Wisconsin and whether or not the FBI had secured his release from those charges. I responded that Mr. Moves Camp had never been arrested on a serious crime in Wisconsin, however, he may have been arrested, but I was not sure, on charges of public intoxication."

"The Court then inquired relative to his rap sheet and whether or not that would show such an arrest. There was a discussion and it was agreed that we would produce an up-to-date rap sheet on Mr. Moves Camp. There was also discussion as to how intoxication would be material. The Court indicated that it would only be material if he was intoxicated at the time he gave the statements. I assured the Court that there was no evidence of that. There was a recess at this time. The bench conference that I've just related began at approximately 2:05 p.m. During the subsequent recess at approximately 2:45 to 3:00 p.m., we were in chambers when one of the defense attorneys said that they had information that Mr. Moves Camp had been involved in an alleged rape in Wisconsin. I indicated that I thought there may be some truth that he had been accused of rape because I had been informed that an oral complaint of rape had been brought against him, however, I again repeated that he had never been arrested or charged with the crime of rape. Subsequently, I had a conversation with County Prosecutor Robert Lindsay from Pierce County, Wisconsin, who told me that he had never been contacted by any officials of the Federal Government relative to Mr. Moves Camp, that he had made his decision not to prosecute Mr. Moves Camp in consultation with the alleged victim and her parents; that there were four exculpatory statements and no prosecutable rape case, all of which was born (sic) out by the evidence introduced at the Means and Banks trial...."

Thus, it is evident that the FBI, through Mr. Enlow, did, in fact, notify Mr. Hurd of the rape allegation, and the basis for Judge Nichol's concern was, as he himself indicated, the conduct of Mr. Hurd in providing information to the Court on the incident rather than the FBI's failure to inform Mr. Hurd of the incident.

Finally, with respect to the testimony of government witness Alexander Richards, Judge Nichol indicated that he was concerned that information contradictory to Mr. Richards' trial testimony was not made available to the defense until after Mr. Richards' testimony was completed. The Court struck all of Mr. Richards' testimony because of the prosecution's failure to provide this impeaching information, which was contained in an FBI FD-302 interview report, at the appropriate time to the defense. Judge Nichol also indicated that it was his belief that the prosecutor's offering of testimony that was directly contradicted by a document in his possession was improper and possibly a violation of ethical standards.

While this incident does not directly involve the FBI since the FBI had provided the FD-302 report to the prosecutor, we do note that, in a September 16, 1974, affidavit, former AUSA Hurd provided the following explanation of this incident:

> "In their Motion for Judgment of Acquittal, defense counsel also alleged that the Government suppressed an FBI statement exposing the perjury of the prosecution witness Alexander David Richards. This allegation is totally false. What the record shows in this regard is that Mr. Richards testified prior to the time that the Government was receiving signed receipts from defense counsel for 3500 material turned over; that there were three separate items constituting 3500 material in regard to Mr. Richards; that all three items were turned over to Mr. Richards' attorney, Jack Nordby, but only two of the items were turned over to defense counsel. While it is true that the item not turned over to defense counsel would tend to impeach the testimony of Mr. Richards, it does not follow that he committed perjury on the stand. As was explained to the Court at the time, I thought that I had turned all the material over to defense counsel. However, upon the representation of all defense counsel that they had never seen such material, I concluded that I apparently failed to turn over the one item and explained that this was not an intentional failure, but was likely the result of the time pressure under which we were then operating, since I had not even had an opportunity to go over all the 3500 material with the witness. This is substantiated by the fact that I did in fact turn over to the witness's attorney all of the material, which I would hardly have done had I deliberately intended to suppress a portion of the material. The Court accepted that explanation, however, felt that because of the failure to provide defense counsel with the 3500 material until after the completion of all of the cross of the witness, in violation of this Court's order, the witness's testimony should be suppressed."

Thus, it appears that, having initially accepted Mr. Hurd's explanation of the incident, Judge Nichol subsequently decided to comment on Mr. Hurd's conduct as one of the bases for his dismissal of the case.

As the U. S. Court of Appeals for the Eighth Circuit noted in dismissing the Government's appeal of Judge Nichol's action, that court's action did not reach or resolve the issues

discussed above. This result was unfortunate both for the Government, because of its strong belief that the charges of misconduct were unfounded and inappropriate, and for the defendants, because the premature termination of the trial deprived them of what they believed was an opportunity to secure a judgment of acquittal. Nonetheless, we believe that the information as set forth above reflects the facts as they occurred with respect to each of the incidents cited in Ms. Huber's memorandum.

The FBI's Investigation of the Coler/Williams Murders:

Question:

An examination of the FBI's investigation of the Coler/Williams killings, with a view towards ascertaining whether a particular theory of the events was developed and if an attempt was made to find testimony to fit that theory, the treatment accorded information received that may not have been in accord with the theory, and the nature of the interaction of the FBI investigations with persons believed to have knowledge of the events.

In addition to the question set out above, Ms. Huber expressed concern that allegations have been made that the FBI subjected potential witnesses in the Coler/Williams trial to abusive and intimidating investigative techniques.

Response:

Because the FBI's investigative file relating to the killings of SAs Coler and Williams is the subject of a Freedom of Information Act request by Leonard Peltier and litigation on that request is pending in the United States District Court of the District of Columbia, it would be inappropriate for the FBI to comment upon any aspect of that investigation until this and any further litigation between Leonard Peltier and the government is resolved. However, it should be made clear that it is not now, nor has it ever been, the FBI's practice to develop testimony or evidence in any investigation in order to fit a preconceived theory.

Moreover, in 1976 the Department of Justice wrote to Arthur S. Flemming, Chairman of the United States Commission on Civil Rights, in response to Mr. Flemming's letters expressing concern over the FBI's conduct of the investigation into the deaths of SAs Coler and Williams. The Department, noting that various allegations had been received, stated that it had not, to that time, received any specific information or allegations which indicated that the FBI conducted any unlawful searches or conducted the investigation as a reprisal or vendetta.

The FBI's Relationship with Myrtle Poor Bear:

Question:

A detailed examination of the FBI's contacts with Myrtle Poor Bear, how she came to the attention of the FBI, circumstances of her protective custody, and attempts to compare her account with that of other witnesses prior to offering her testimony and affidavits. Knowledge in the possession of the FBI, and when obtained, of Poor Bear's medical history and reputation for veracity.

Response:

Our review provides the following information about the FBI's relationship with Myrtle Poor Bear:

Myrtle Poor Bear first came to the attention of the FBI in 1974 in connection with a shooting incident at the housing development in Allen, South Dakota. At that time, she responded on a non-confidential basis to questions posed to her and her sister by SA David Price. SA Price testified at the trial of Leonard Peltier in 1977 that he was attempting to determine the location from which shots were fired at a policeman, and Ms. Poor Bear and her sister were in the vicinity at the time of the incident. SA Price has testified that he believed that the information she provided was accurate. (See Peltier trial transcript at 4522-24.)

Ms. Poor Bear next came to the attention of the FBI in January, 1976, when a source contacted SA Price and indicated that Ms. Poor Bear had provided the source with information regarding a list of people to be killed on the Pine Ridge Indian Reservation. The source also indicated that Ms. Poor Bear had stated that she wished to be contacted by SA Price. Thereafter, on January 15, 1976, SAs Price and William Wood met Ms. Poor Bear and the source near Allen, South Dakota. As both SAS Price and Wood testified in Richard Marshall's post-conviction review trial hearing, this information provided by Ms. Poor Bear concerned plans by Richard Marshall and others to engage in various violent activities, including the murder of specified individuals, bombings, and arson. This January 15, 1976, interview was the first time that SA Wood met Ms. Poor Bear.

On the basis of the information provided by Ms. Poor Bear, an investigation of the allegations was initiated by the FBI, and information concerning the allegations was disseminated to other law enforcement agencies. Further, the potential victims were notified. SAs Price and Wood then met with Ms. Poor Bear on several occasions over the next few weeks. The information being provided by Ms. Poor Bear at this time did not relate to

the killing of Martin Montileaux, the killing for which Mr. Marshall was convicted.

During this period, because the FBI believed that Ms. Poor Bear may have been in danger due to the type of information she was providing and because on one occasion the agents were with Ms. Poor Bear at a local hospital as the result of a possible beating by unknown assailants, she was afforded protective custody on several two-or-three-day occasions in which she was placed in a motel room in various small towns around Rapid City.

In mid-February, 1976, Ms. Poor Bear also began providing information to the FBI with respect to the killings of SAs Jack Coler and Ron Williams in 1975. This information was recorded by the FBI in the form of affidavits, which were attested to by a deputy clerk of the United States District Court, and interview reports. Information being provided by Ms. Poor Bear at this time indicated that Leonard Peltier was involved in the killings of the two agents.

Thereafter, as SA Price testified in Richard Marshall's post-conviction relief hearing, Deputy Sheriff Donald Phillips of the Pennington County Sheriff's Office asked SA Price whether he had any information which might be of assistance to the State of South Dakota in its prosecution of Mr. Marshall for Mr. Montileaux's killing. SA Price subsequently inquired of Ms. Poor Bear if she had any information on the killing, and Ms. Poor Bear did provide such information. The FBI soon thereafter arranged for Deputy Sheriff Phillips to meet with Ms. Poor Bear in Rapid City, and, after Deputy Sheriff Phillips ascertained that Ms. Poor Bear had information which he believed at that time would be of value to the prosecution, Ms. Poor Bear was turned over to the state authorities for their protective custody up to and during the trial of Mr. Marshall. During this period of time immediately prior to Mr. Marshall's trial, SAs Price and Wood did have some contacts with Ms. Poor Bear, but those contacts were always in the presence of a deputy sheriff of Pennington County.

A review of the records relating to the activities set forth above give no indication that, at the time the information from Ms. Poor Bear was received with respect to the various incidents, she was emotionally unstable or otherwise lacked credibility. As set forth in the previously mentioned August 7, 1979, letter from the Director of the FBI to the Chairman of the U. S. Commission on Civil Rights, the inconsistencies between the affidavits provided by Ms. Poor Bear on the incident involving the killings of the two agents were believed to be the result of Ms. Poor Bear's initial reluctance to cooperate fully because of her legitimate fear for her own personal safety. Ms. Poor Bear has subsequently claimed in various testimony and affidavits that the information she provided

to the FBI during this time was coerced out of her through the use of threats and intimidation. We understand from our conversations with Ms. Huber, Ms. Lippe, and Mr. Tilsen that their concern is more that SAs Price and Wood manipulated Ms. Poor Bear to provide information favorable to both the state and Federal authorities with the knowledge that she was emotionally unstable and could be led to provide false information.

However, Minneapolis has advised that neither SA Price nor SA Wood was aware at that time of Ms. Poor Bear's medical history and our review reveals no information to the contrary. Moreover, our review of the various documents relating to the FBI's contacts with Ms. Poor Bear during this period of time not only does not disclose any information which would support the theory that SAs Price and Wood manipulated Ms. Poor Bear or negligently failed to recognize that Ms. Poor Bear's information was untrue, but it also gives some indication that the manner in which Ms. Poor Bear provided the information was inherently credible. For instance, the source was present at the initial interview of Ms. Poor Bear with respect to the allegations of a hit list. The source's presence, as well as the fact that Ms. Poor Bear initially came to the source with the information that the source believed credible enough to pass on to the FBI, tends to indicate that she presented a credible story. Moreover, the fact that the Special Agents involved disseminated information concerning the allegations to other law enforcement agencies and notified the potential victims supports the conclusion that they thought her story to be credible.

Further, during the process of securing affidavits from Ms. Poor Bear with respect to the killings of the two agents, then-AUSA Robert Sikma personally participated in one of the interviews of Ms. Poor Bear. In a 1979 Department of Justice internal memorandum Mr. Sikma's participation is summarized:

> During the time period that the three Poor Bear affidavits were prepared, Assistant United States Attorney Robert Sikma was the prosecutor most closely involved with the case. Sikma, who presently is in private law practice in Sioux City, Iowa, discussed this matter with us by telephone on April 24, 1979. Sikma personally participated in one of the interviews of Poor Bear. He recalls that Poor Bear admitted that her first affidavit was not entirely truthful. Poor Bear then went on to relate that she was actually present at the crime scene and saw Peltier shoot the agents. Sikma recalls that they showed Poor Bear pictures of the crime scene, and she seemed to have a detailed knowledge of events at the time of the shootout. Sikma expressed the view

that the affidavits were not completely contradictory. In the first affidavit, Poor Bear minimized her knowledge of the crime, but then later pressed for details, she revealed that she had much greater knowledge and involvement. Sikma pointed out that this is rather typical of people who are involved in criminal activity. In fact, it might be considered extraordinary for one in Poor Bear's situation to reveal everything to law enforcement officers in the first interview. At the time these affidavits were prepared, Sikma definitely considered Poor Bear to be a credible witness, and he had every intention of using her at trial.

Mr. Sikma's participation in this process, as an officer of the Court and as an attorney with ethical obligations and responsibilities, lends support to the claim that Ms. Poor Bear appeared credible at that time.

Finally, in the Richard Marshall matter, Ms. Poor Bear was in the company and custody of representatives of the Pennington County Sheriff's Office once the FBI contacted that office about the possibility of her having relevant information, and, as the South Dakota Circuit Court noted in its opinion on Mr. Marshall's petition for post-conviction relief, Deputy Sheriff Unley's constant presence during the sequestration belies the theory that SAs Price and Wood somehow manipulated or coerced Ms. Poor Bear's testimony about Mr. Marshall. Even assuming that these agents had initially planted the idea with Ms. Poor Bear about Mr. Marshall's participation in the killing of Mr. Montileaux, the state authorities had sufficient opportunity between March, 22, the day when Deputy Sheriff Phillips first interviewed Ms. Poor Bear outside the presence of SAs Price and Wood, and April 2, the day Ms. Poor Bear testified at Mr. Marshall's trial, to ascertain that her story was not credible. Moreover, the decision to use Ms. Poor Bear as a witness was made by the state prosecutor who presumptively made his own independent evaluation of Ms. Poor Bear's credibility.

The above information is set forth not in an attempt to vouch for the credibility of Ms. Poor Bear's information. It is being set forth merely to indicate that there is information in the records available to us which would indicate that those involved with the various investigations and prosecutions believed, at that time, that the information being provided by Ms. Poor Bear was credible and truthful. We can find nothing in the records reviewed which would indicate a purposeful intent on anyone's part to cause Ms. Poor Bear to provide untruthful information. This conclusion is in accord with that reached by the South Dakota Circuit Court on Mr. Marshall's post-conviction relief petition.

While noting that the circumstances and the agents' testimony caused it some concern, the court stated that there was "no articulable basis upon which this Court can find that (the agents) participated in any subornation of perjury or coaching of the witness." Richard Marshall v. State of South Dakota, No 75-72 (July 17, 1979), at 3.

The American Indian Movement and COINTELPRO:

Question:

An examination of domestic intelligence and/or COINTELPRO files regarding the American Indian Movement (AIM), for any information that might bear on the matters described herein.

Response:

As a result of various discovery demands in certain civil suits pending against the FBI, it was necessary for the FBI to hand search the twelve separate COINTELPRO files at FBIHQ consisting of 387 sections. As a result of this hand search, the names of individuals and organizations targeted or prepared to be targeted, as well as the name of anyone contacted through such programs, were entered into a separate index and into the General Indices to the FBI's Central Records System at FBIHQ. This program was begun in December 1977 and was completed in the end of December, 1978.

It became apparent in conversations during the meetings with Ms. Huber, Ms. Lippe, and Mr. Tilsen that there has been some speculation that leaders of the AIM, and in particular Leonard Peltier and Richard Marshall, may have been the subjects of COINTELPRO activity by the FBI. A search of the COINTELPRO index and of our general indices for references to the "American Indian Movement", "AIM", Mr. Peltier, and Mr. Marshall disclosed no reference to the above organization or individuals in any of the COINTELPRO files.

A page-by-page search of all FBI files on the American Indian Movement, Leonard Peltier, and Richard Marshall was conducted by Special Agents who are thoroughly familiar with AIM and COINTELPRO. Due to the direct involvement of these agents in the compilation of records for past and current law suits relating to COINTELPRO and due to their familiarity with searches and previous responses to various Senate and House Committees on the COINTELPRO issue, these agents are particularly sensitive to the types of issues that were raised in the letters and memoranda which prompted this inquiry.

INQUIRY CONCERNING INDIAN MATTERS

This search resulted in one instance wherein the Los Angeles Field Office expressed an interest in pursuing counterintelligence measures to disrupt the AIM leadership. Los Angeles teletype dated November 26, 1973, noted a possible split between Banks and Means and concluded with the following proposal: "Los Angeles and Minneapolis consider possible COINTELPRO measures to further disrupt AIM leadership." This proposal was promptly turned down in a teletype from the Director of the FBI dated December 4, 1973, stating as follows:

> Los Angeles suggested that there appears to be a split developing between Means and Banks based on Uri's dismissal from AIM and suggested possible counterintelligence measures be taken to further disrupt AIM leadership.
>
> Your attention is directed to Bureau airtel to All Offices, dated 4/28/71, captioned "Counter-intelligence Programs; IS - RM," setting forth that effective immediately all counterintelligence programs operated by the Bureau were being discontinued.

Finally, our Minneapolis Office has advised that, based on information available to that office, they have not located nor are they aware of any instance of COINTELPRO activity conducted against AIM or its leadership, Mr. Peltier or Mr. Marshall.

Based on this information, including the review of our records conducted to date and based on the personal recollections of the Special Agents who are involved in these investigations, there is no apparent indication that AIM, Mr. Peltier, or Mr. Marshall was the subject of COINTELPRO activities.

[An excerpt from]

"INDIAN TRIBES —

A Continuing Quest for Survival"

A Report of the United States Commission on Civil Rights, June 1981

The effect of Public Law 280, then, was to expose Indians to a far greater extent to State jurisdiction, with particular vulnerability in communities where racial animosities were intense. In response to complaints from tribes that Public Law 280 was inherently defective as an infringement on tribal sovereignty and operationally defective because State jurisdiction did not provide effective or fair law enforcement, Congress made a limited number of corrective amendments in the Indian Civil Rights Act of 1968.[38]

The act provided that from its effective date any further assumptions of State jurisdiction would require the consent of the affected tribe. The Indian consent provision, however, was not made retroactive and thus existing assumptions of State jurisdiction were not affected. In response to the States' perceived financial difficulties with Public Law 280, the act further provided that jurisdiction obtained by State governments could be retroceded or returned to the Federal Government, in whole or in part, upon request from a State and approval by the Secretary of the Interior. No similar mechanism was provided, however, by which an Indian tribe could initiate and force retrocession upon a State that wished to retain jurisdiction.

Thus, in those States that assumed jurisdiction over Indian lands pursuant to Public Law 280 prior to 1968, and in which retrocession has not occurred, persistent legal, political, and economic issues remain today concerning the scope of the powers that Public Law 280 confers on the States in relation to the tribes and the Federal Government, particularly in the area of land use regulation and taxation.[39]

The amendments regarding Public Law 280 jurisdiction in the Indian Civil Rights Act of 1968 signaled in part a recognition of the failures of the termination policy and its rejection by the Federal Government. This was made explicit by another portion of the 1968 legislation. Although not expressly limiting crimes that can be tried in tribal courts, it limited the punishment to no more than 6 months' imprisonment or a $500 fine.[40] Thus only prosecutions in Federal court can result in sanctions of the severity that the serious felony offenses covered by the Major Crimes Act would seem to require.

[38] 25 U.S.C. §§1321–26 (1976).
[39] The current jurisdictional conflicts are discussed below.
[40] 25 U.S.C. §1302(7) (1976). The act also prescribes certain procedural requirements for prosecutions in tribal courts similar to those imposed by the United States Constitution for State and Federal prosecutions.

The Direct Federal Role

The Federal Government has primary responsibility for the investigation and prosecution of serious crimes that occur in Indian country and for the protection of Indian communities from non-Indian offenders. This primary role is the product of a piecemeal historical development that has, on the one hand, expanded Federal court jurisdiction and, on the other, deprived the tribes of critical areas of functioning.

Serious felony offenses committed by Indians in Indian country fall within the scope of the Major Crimes Act,[41] which gives the Federal courts jurisdiction over 14 enumerated crimes. These crimes are murder, manslaughter, rape, carnal knowledge of a minor not a spouse, assault with intent to commit rape, incest, assault with intent to kill, assault with a deadly weapon, assault resulting in serious bodily injury, arson, burglary, robbery, larceny, and kidnapping—the offenses constituting the greatest threat to the public safety of any community.

The Federal Government also has jurisdiction over all offenses committed on an Indian reservation by a non-Indian offender against an Indian victim and an Indian offender against a non-Indian victim. The Federal Enclave Act[42] extends Federal court jurisdiction to all Federal criminal law applicable to Federal enclaves, including the Assimilative Crimes Act, which applies the law of the surrounding State to the Federal enclave located within its borders.

The Federal Government also has jurisdiction over a number of offenses committed on Indian reservations falling under specific Federal statutes. Of major importance are 18 U.S.C. §1156, proscribing violations of tribal hunting and fishing regulations, and 18 U.S.C. §1159, proscribing violations of tribal liquor laws.

Tribal governments have a measure of jurisdiction over criminal offenses committed within Indian country. Tribes have criminal jurisdiction solely over Indians committing offenses on Indian reservations. The U.S. Congress has imposed a limitation on possible sanctions imposed by tribal courts of 6 months' imprisonment or a $500 fine, which serves as a practical matter to confine tribal courts to misdemeanor offenses. By decision of the U.S.

[41] 18 U.S.C. §1153 (1976).
[42] 18. U.S.C. §13 (1976).

Supreme Court, tribal courts are precluded from trying and punishing non-Indian offenders.[43]

The States also have a limited amount of jurisdiction over offenses committed in Indian country.

Participants in the Law Enforcement Role

With the extensive scope of Federal jurisdiction over criminal offenses in Indian country and the stringent limitations placed on tribal jurisdiction, it is evident that an effective Federal law enforcement effort is essential to the well-being and safety of Indian communities. The roles of the various institutional participants in the Federal law enforcement effort are complex and interrelated, but may be delineated in summary.

Tribal Police

Procedures for handling the investigation of serious felony offenses under the Major Crimes Act vary from reservation to reservation, according to the policing structure, but a general pattern exists. Ordinarily, a tribal officer or a BIA patrol officer will be the first on the scene, and if he or she determines that a serious offense is involved will call the BIA special officer. The special officer will conduct an initial investigation of varying scope and then notify the FBI, who will take over investigation of the offense and presentation of the case to the United States attorney for prosecution. The Department of Justice Task Force in its 1975 report described the usual practice:

> The BIA has trained criminal investigators (special officers) on most reservations. These special officers conduct the initial investigation for the majority of serious crimes which occur on Indian reservations. Most U.S. Attorneys, however, will not normally accept the findings of a BIA special officer as a basis for making a decision on whether to prosecute. Instead, most U.S. Attorneys require that the FBI conduct an independent investigation, often duplicative of the BIA investigation, prior to authorizing prosecution.[44]

[43] Oliphant v. Suquamish Tribe, 435 U.S. 191 (1978).
[44] U.S., Department of Justice, *Report of the Task Force on Indian Matters* (1975), p. 34 (hereafter cited as *Department of Justice Task Force Report*).
[45] For example, the Standing Rock Sioux Reservation lies in both North Dakota and South Dakota. For offenses occurring in the North Dakota portion of the reservation, FBI agents must respond from Bismarck, which is 75 miles away. For offenses occurring in the South Dakota portion, agents must respond from Aberdeen, which is 150 miles away. (Henry Gayton, testimony, *Hearing Before the U.S. Commission on Civil Rights, Rapid City, South Dakota*, July 27–28, 1976, pp. 171–72 (hereafter cited as *South Dakota Hearing*).) For offenses occurring on the Pine Ridge Reservation in South Dakota, FBI agents must respond from Rapid City, which is about 125 miles away. (Fred Two Bulls, ibid., p. 173.)
[46] *Department of Justice Task Force Report*, p. 34.

The Federal Bureau of Investigation

The FBI does not function as a local police agency on Indian reservations. Its role is to investigate violations of Federal law, particularly the Major Crimes Act, which covers most serious felony offenses committed on Indian reservations. The FBI does not have agents stationed on Indian reservations, and in some cases the nearest resident agency to an Indian reservation is more than 100 miles away.[45] The Justice Department's Task Force describes this procedure:

> [A]n FBI agent must travel to the reservation, often a considerable distance away, and retrace the investigation which has been conducted by the BIA. FBI agents normally reinterview all persons involved, visit the crime scene, and review and examine all evidence. Until the FBI investigation is completed, the offender typically remains at large.[46]

The role of the FBI in the investigation of Federal offenses on Indian reservations is not required by statute but developed when the BIA lacked staff during the Second World War. The Department of Justice Task Force described the background for the FBI's now primary investigative responsibilities in Indian country:

> At one time BIA special officers did all of the investigations of federal violations occurring in Indian country. . . .
>
> In the 1940's and 1950's, special officer manpower was reduced and the BIA was not able to provide the investigative services it had historically provided. During this period the FBI assisted the BIA in meeting its responsibility. Initially, the FBI participated only in the more serious offenses upon the request of the agency special officer, often after a preliminary investigation. Over the years, the precedent for reporting to the FBI all violations of federal law in Indian country was established. Due to the operating policies and general leadership role in the federal law-enforcement field of the FBI, it assumed the role of the primary investigative agency on offenses accepted for investigation and made prosecutive presentation of the cases to the appropriate U.S. Attorney although BIA

special officers generally provided the bulk of the investigative effort. Accordingly, U.S. Attorneys came to rely solely on FBI investigative reports and prosecutive presentations. The BIA has assumed a *de facto* supportive role in spite of the fact that it is regarded as having primary general responsibility for reservation law enforcement.[47]

The United States Attorneys

Federal prosecution of criminal cases on Indian reservations is handled by the United States attorneys of the Federal districts in which the reservations are found. Thus, in addition to their normal responsibilities for prosecuting Federal offenses under the United States Code, they must function as local prosecutors for Indian reservations. Because of the jurisdictional restrictions on tribal courts, if the U.S. attorney fails to take action against an offender, ordinarily no action will be taken in any system.

The BIA and Tribal Police and Investigators

The day-to-day responsibility for reservation law enforcement generally rests with tribal or Bureau of Indian Affairs police stationed on the reservation. Indian tribes have varying arrangements for preserving law and order. Most tribes have tribal police departments whose officers are paid either with tribal funds or with BIA funds or with BIA funds that have been awarded to the tribe on a contract basis pursuant to the Indian Self-Determination Act.[48] In addition, most reservations also have BIA police and investigators.

In addition, the BIA has stationed on most reservations "agency special officers," who are trained criminal investigators. These special officers ordinarily report to the scene of serious offenses and conduct an initial investigation, prior to the involvement of the FBI.

The Department of the Interior

The Bureau of Indian Affairs of the Department of the Interior maintains within its Washington headquarters a Division of Law Enforcement Services that provides technical assistance and advice to BIA and tribal police forces. The Division Chief, however, has no direct operational control over BIA police. Under the decentralized BIA structure, the BIA police and investigators on a particular reservation will report to the reservation BIA superintendent.

The Department of Justice

Oversight for the Justice Department's criminal prosecutions and investigations, including those in Indian country, is handled by the Deputy Attorney General. Key divisions under his direction include the Executive Office of United States Attorneys, the Criminal Division, the FBI, and the Law Enforcement Assistance Administration (LEAA).

Primary responsibility for criminal prosecutions rests with individual United States attorneys whose districts contain Indian country, and their exercise of discretion is not limited or monitored to any great degree within Department of Justice headquarters. Some support and technical assistance is provided to them by the Executive Office of U.S. Attorneys and the General Crimes Section of the Criminal Division.

The States

Except in States that have acquired jurisdiction pursuant to Public Law 280,[49] the States play a very limited role in law enforcement on Indian reservations. State jurisdiction is ordinarily limited to reservation crimes where both the offender and the victim are non-Indian.[50] Some tribes have formal or informal cross-deputization arrangements with State police for traffic and other offenses, in which Indian offenders are cited into tribal court and non-Indians into State court.

The Performance of Enforcement Responsibilities

Federal law enforcement in Indian country has generated massive dissatisfaction from a number of sources over a period of years. In the 1950s, the view of Congress that Federal law enforcement on Indian reservations was inadequate was the impetus for enactment of Public Law 280, which transferred criminal and civil jurisdiction on a number of reservations from the Federal Government to the States.

In the current period of a Federal policy of Indian self-determination, criticism of Federal law enforcement has continued and intensified. In 1974 the American Indian Court Judges Association conduct-

[47] Ibid., pp. 34–35.
[48] 25 U.S.C. §§450–450N (1976).
[49] For discussion of State jurisdiction under Public Law 280, see *Task Force Four Report.*

[50] The handling of non-Indian offenders on Indian reservations is discussed in a following section of this chapter, "Jurisdiction Over Non-Indians—Federal Inaction."

ed a nationwide study of Federal law enforcement and found confusion and lack of coordination among the Federal agencies involved and profound dissatisfaction among the Indian communities who are the recipients of Federal services.[51]

Following the Wounded Knee uprising on the Pine Ridge Reservation, the Department of Justice convened an Intra-agency Task Force on Indian Matters to examine the execution of its responsibilities toward Indians, particularly law enforcement on Indian reservations. Participating in the Task Force were the Criminal, Civil Rights, Land and Natural Resources, and Tax Divisions; the Federal Bureau of Investigation; U.S. Marshals Service; Community Relations Service; Law Enforcement Assistance Administration; Office of the Solicitor General; Executive Office of United States Attorneys; and Office of Management and Finance. The Task Force was chaired by the Office of Policy and Planning.

The Department of Justice Task Force on Indian Matters issued its report in October 1975 with grave conclusions for the quality of the Federal law enforcement effort. The Task Force noted that examination of law enforcement had long been neglected and that the neglect itself was properly a matter of criticism:

> The reservation law enforcement issue has suffered inattention and neglect. The problem is one of major proportion crossing many bureaucratic and jurisdictional boundaries. It is particularly embarrassing that the present problem exists in an area of primarily federal responsibility. This is not a situation where the federal government serves as a model for other law enforcement efforts.[52]

The American Indian Policy Review Commission of the U.S. Congress evaluated Federal policies and programs in relation to American Indians. In its 1976 report, the Policy Review Commission's Task Force on Federal, State, and Tribal Jurisdiction was highly critical of Federal investigation and prosecution of offenses occurring in Indian country. Its analysis was generally consistent with that of the earlier Department of Justice Task Force.[53]

The inquiry of the United States Commission on Civil Rights into these issues occurred from August 1977 through August 1979. The Commission held hearings in Washington State, South Dakota, and Washington, D.C., and conducted field interviews and investigations in many parts of the country. The data and information collected on Federal law enforcement corroborates, for the most part, the findings and recommendations made by the Department of Justice Task Force 4 years earlier.

Complaints expressed by the various agencies and investigative bodies about Federal law enforcement fall into three categories:

(1) **Statistics:** The statistics kept by the Federal Government regarding law enforcement on Indian reservations do not permit accurate analysis or systematic monitoring of the quality of law enforcement.

(2) **Investigation:** The FBI's role in investigating offenses occurring in Indian country for the most part results in delay and duplication of efforts by BIA and tribal investigators; and, further, the FBI's effectiveness is hampered by a widespread perception within the Indian community that the FBI is engaged in activities to suppress militant political activity on the part of organizations and individuals.

(3) **Prosecution:** It takes the U.S. attorneys too long to respond when a crime under Federal jurisdiction has been committed, and such a high percentage of cases are declined for prosecution that crimes on Indian reservations go virtually unpunished.

Statistics

A long-recognized impediment to analysis of the problems affecting Federal law enforcement on Indian reservations has been the lack of any system for generating factual information that would provide a precise base for identifying and monitoring the status of investigations and prosecutions on an ongoing basis. In 1974 the American Indian Court Judges Association conducted a nationwide study of Federal prosecution of crimes committed on Indian reservations. Its efforts, however, were substantially thwarted by the failure of Federal agencies to keep statistics that would permit analysis and identification of problem areas. In its report, the association made a strong plea for the maintenance of accurate statistics by the Federal Government as a basis for evaluating and ensuring the quality of the Federal law enforcement effort:

[51] American Indian Court Judges Association, *Justice and the American Indian*, vol. 5 (1974), "Federal Prosecution of Crimes Committed on Indian Reservations" (hereafter cited as "Federal Prosecution on Indian Reservations").

[52] *Department of Justice Task Force Report*, p. 24.
[53] *Task Force Four Report.*

> Investigation of the subject [Federal prosecution of crimes committed on Indian reservations] soon revealed, however, what has become a strong secondary theme—the lack of, yet imperative need for, accurate and adequate statistics. . . .[W]ithout adequate statistics, it is too easy for Indian communities to be told that their arguments are based on isolated examples, that nothing can be done if they don't have figures to support their contentions, and that funds cannot be appropriated and changes cannot be made without strong proof (meaning statistical proof) of express need.
>
> Thus, if the inadequacy or unavailability of statistics concerning federal prosecution of crimes committed on Indian reservations seems strongly stressed in this paper, it is only because individuals and agencies responsible for making decisions ask first to see numbers. . . .[A]s an indication of the status of federal prosecution of crimes committed on Indian reservations, as a call for adequate record-keeping, and as an appeal for remedial action, this document is an important work. The National American Indian Court Judges Association stands ready to help in any way it can to improve this area of the Indian criminal justice system.[54]

The "remedial action" sought by the American Indian Court Judges Association in the collection and maintenance of accurate statistics was never forthcoming. The lack of accurate statistics continues to bar effective analysis of the problems of Federal law enforcement, even by the Federal agencies themselves.

Indeed, the Task Force on Indian Matters of the Department of Justice noted in its 1975 report that the Department's system for collecting statistics made analysis of the rate of declinations of prosecution "extremely difficult":

> Statistical analysis on the subject of declinations is extremely difficult and unreliable. The U.S. Attorneys' Reporting and Docketing System maintained by the Justice Department includes figures on the numbers of matters filed by U.S. Attorneys under 18 U.S.C. §§1152 and 1153, and their disposition. However, it does not include the number of matters presented to U.S. Attorneys under these statutes.
>
> The BIA maintains records on crime in Indian country, but they are maintained on a Uniform Crime Report index format. Their records do not reflect the statutory areas under which charges are presented to the U.S. Attorneys. The same is true for the FBI. Its records do not distinguish between crimes on Indian reservations (CIR) and crimes on other government reservations (CGR).[55]

The present Director of the Federal Bureau of Investigation, William H. Webster, noted the impossibility of responding to requests for information from the U.S. Commission on Civil Rights because of lack of statistical information:

> I realize it must be frustrating to you to have the people that you ask not give you the kind of figures that will help you draw meaningful conclusions.
>
> Our major crimes program falls within our general crimes program, and it is the general crimes that we keep figures on. We really weren't trying to figure out the difference between an Indian reservation and some other place.
>
> So the nature of our current statistics doesn't provide us with the ability to ask the computer the kinds of questions you would like to answer.[56]

In response to an inquiry from the Commission, the FBI surveyed its 15 field offices with responsibilities in Indian country about the number and type of referrals for investigation of offenses falling under the Major Crimes Act and their disposition for the period July 1977 to May 1978.[57] These data, however, are not collected or monitored regularly on a national basis. Moreover, the data concern entire field divisions of the FBI and is not divided or distinguished by offenses occurring on individual Indian reservations within a division, thus making them of little use for analysis of such matters as crime rates on individual reservations and the effectiveness of the law enforcement effort.

The American Indian Court Judges Association in its 1974 study pointed out that where precise statistics are unavailable, other sources of information must be employed: "[J]ust because adequate statistics are often lacking, the importance of 'grass

[54] "Federal Prosecution on Indian Reservations," p. v.
[55] *Department of Justice Task Force Report*, p. 46.
[56] William H. Webster, testimony, *Hearing Before the U.S. Commission on Civil Rights, Washington, D.C.*, May 14, 1979, p. 9 (hereafter cited as *Washington, D.C., Hearing*).
[57] William H. Webster, Director, Federal Bureau of Investigation, attachment II to letter to Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, Aug. 7, 1979, in exhibits to Washington, D.C., hearing.

roots' information concerning the operation of the criminal justice system is magnified."[58] In fact, substantial information is available from those persons most directly involved with the administration of justice on Indian reservations—the prosecutors, police, and the Indian people who are the consumers—as well as from Federal officials within the Department of Justice and the Department of Interior.

Investigation

The FBI, as noted previously, has primary investigative responsibility for offenses falling under the Major Crimes Act[59] by virtue of general practice over the past 30 years, despite the fact that it is not required by Federal statute to assume this responsibility. The critical role played by the FBI, and the systemic difficulties caused in practice, was pointed out by the American Indian Policy Review Commission:

> Investigation by FBI agents is the primary basis for U.S. attorney prosecutions. Highly trained officers can make the work of a prosecutor much easier, and consistent association develops identifiable working patterns. But FBI agents are not usually close to Indian communities, either physically or culturally, and cannot easily grasp the equities of a situation which so often have much to do with the decision to prosecute or decline. Since local BIA special officers, police or tribal police are much closer, FBI agents are not often the first officers on the scene of a crime. Thus, the scene often has to be preserved until an agent can arrive, in which case they usually end up redoing work already done by a more closely situated BIA or tribal officer. The quality of investigation may ultimately turn on the work done by local officers in any event, pointing up the desirability of having well-trained locals for this, as well as all the other more obvious reasons.[60]

Delay and Duplication

The Department of Justice Task Force concluded, after its nationwide review of the various participants in Federal law enforcement in Indian country, that the FBI's role in the investigation of most major crimes was at best duplicative of the investigation already performed by a BIA or tribal investigator. In fact, the FBI's involvement, the Task Force found, was often an impediment to effective and speedy law enforcement because "duplication only serves to lengthen the time, often by days, between the occurrence of a criminal act and prosecutive action."[61]

The Task Force noted that the response time of FBI agents to a major crimes complaint may vary from "several hours to several days later, depending upon the seriousness of the crime and the press of business."[62] The less serious felonies, such as aggravated assaults, are not treated as a priority by the FBI and thus may result in a greater delay in response time. The Task Force observed that "often there is a significant difference in the mobilization of criminal justice resources when the victim of a reservation crime is a non-Indian" than when both offender and victim are Indians.[63]

The practice of most United States attorneys of accepting only cases referred by the FBI was condemned by the Task Force as wasteful and counterproductive to effective law enforcement. Although recognizing the severe problems of the BIA in providing adequate police services to Indian reservations, the Task Force found that "its criminal investigative capacity is not inferior to that of other agencies which the Department, through the U.S. attorneys, deals with regularly."[64]

Based on its findings, the Task Force recommended that the FBI assume a supportive rather than primary role in the investigation of major crimes occurring on Indian reservations and that United States attorneys accept referrals for prosecution directly from BIA criminal investigators and, specifically, that the Department of Justice should:

> Direct the FBI to confine its investigative activities to those reservation cases requiring their special expertise or cross-jurisdiction capability or those investigations requested by the BIA or U.S. Attorney; and to assist the BIA special officers in assuming the responsibility of direct presentment of cases to the U.S. Attorney; and
>
> Direct the U.S. Attorneys to begin accepting investigative reports directly from BIA special officers and to work with the BIA as it would any other federal investigative agency both in the field and at the headquarters level.[65]

[58] "Federal Prosecution on Indian Reservations," p. v.
[59] 18 U.S.C. §1153 (1976).
[60] *Task Force Four Report*, p. 38.
[61] *Department of Justice Task Force Report*, p. 36.
[62] Ibid., pp. 42–43.
[63] Ibid., p. 43, n. 45.
[64] Ibid., p. 36.
[65] Ibid., p. 39.

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The recommendations of the Department of Justice Task Force were never implemented, and the Task Force itself ceased to exist when a new administration and a new Attorney General took office in 1976. It appears, however, that the inadequacies identified in 1975 in procedures for investigating major crimes on Indian reservations still exist, and a wide range of individuals close to law enforcement in Indian country find valid today the recommendation that the FBI should be removed from its role as the primary investigative agency for major crimes in Indian country.

Availability of FBI Resources

A highly significant factor affecting the adequacy of the FBI's performance on Indian reservations is the availability and allocation of FBI resources to this classification of assignments. On a national level, the Department of Justice sets priorities for allocation of investigative and prosecutorial resources based on an evaluation of the kinds of criminal activity that have the greatest effect on society. At the present time, investigations of organized crime, white-collar crime, and national security violations are at the top level of priority, and, according to the Director of the FBI, "those being the areas of primary impact, we try to devote an increasing number of our resources to them on an on-going programmatic basis."[66] Investigation of crimes on Indian reservations is set at the lowest priority level.

United States attorneys whose districts include Indian reservations feel the effect of the national priorities in terms of inadequate FBI resources to serve the reservations. The United States attorney for Montana stated:

> The big problem we find with the FBI is the priorities nationally of the FBI don't include priorities for law enforcement on Indian reservations. The priorities set by the administration and the FBI are white-collar, organized crime, racketeering, and national security. And we find a problem with numbers of FBI agents to service the reservations. I don't know what the answer to that is other than an adjustment of FBI and administration priority because we're not able to accomplish that by ourselves.[67]

At the same time that national priorities for investigation of Federal offenses were established, the United States attorney for Arizona wrote to the Director of the FBI requesting that investigations of crimes on Indian reservations receive top priority in those Federal districts containing Indian reservations, since there is no effective alternative to Federal prosecution of major crimes.[68] The Director of the FBI declined the request based on a perception that crimes on Indian reservations do not have sufficient effect on society in general to justify increasing their priority and therefore allocation of resources:

> No, it was not done, and that would have included the whole range of personal crimes. It was not done simply because it was inconsistent with our effort to identify those types of offenses which have the greatest impact on our society.[69]

At the same time, the total amount of FBI resources on a national level is being decreased. The Director of the FBI explained:

> [W]e're trying to operate on an increasingly demanding jurisdictional level with static and in fact diminishing resources. Between 1976 and the end of 1980, we will have lost over 1,000 special agents by budgetary attrition.[70]

On an operational level, the reduction in resources cannot help but cause a reduction in the availability of FBI investigative services on Indian reservations. The special agent in charge of the Minneapolis Area Office of the FBI, which includes Indian reservations in North Dakota, South Dakota, and Minnesota, explained that the reduction in the number of agents will necessarily cause a decrease in the amount of time FBI agents can respond to offenses committed on the Indian reservations within his area:

> There are only so many of us. We cannot, we don't have a response factor of minutes, of half-hours, or 45 minutes. Many times within the

[66] Webster Testimony, *Washington, D.C., Hearing*, vol. II, p. 15.
[67] Robert T. O'Leary, testimony, *Washington, D.C., Hearing*, vol. I, p. 160.
[68] Michael D. Hawkins, United States attorney for the District of Arizona, letter to the U.S. Commission on Civil Rights, Apr. 11, 1979 (Commission files).
[69] Webster Testimony, *Washington, D.C., Hearing*, vol. II, p. 16. Mr. Hawkins' expression of views had some effect, however. The FBI had an emergency need for 100 agents to be used for foreign counterintelligence and proposed to draw six special agents from the Phoenix Division for this assignment. According to Director Webster, "When we got down to Phoenix, the protest there was that they needed these six agents we were going to take from Phoenix to work the Indian reservations and we left them." Nonetheless, the priority system was not changed and no additional investigative resources were allocated for work on Indian reservations. Ibid.
[70] Ibid., p. 8.

> past years, we would say we have men who could respond within 1 hour of where a crime was committed. However, with a reduction of monies and cuts in our budgets. . .we have found that we are going to have slower response time in many areas of work where before we were able to respond immediately.[71]

FBI Credibility in the Indian Community

Particularly from the South Dakota Indian reservations, a number of complaints have arisen regarding the conduct of FBI agents. Many individuals believe the mission of the FBI is to suppress dissent and radical political activity on the part of Indian people, rather than to act as an impartial investigative agency. An example of this attitude toward the FBI was expressed by a resident of the Pine Ridge Reservation, who is active in the American Indian Movement (AIM):

> My personal view of the Federal Bureau of Investigation is, on the reservation, on the part of the reservation where I live in Porcupine, I look at the FBI as snakes. That is my personal view. . . .
>
> As a member of the American Indian Movement, we have had people—members of the American Indian Movement have been murdered, and because they are AIM people, the FBI does little or a show of an investigation towards the people that committed the murder, but there is never any convictions made, or only a few. There are deaths that are unsolved on the reservation because of different people that are known members of the American Indian Movement, but if an AIM member is alleged to have committed a crime against somebody or whatever, the FBI will go out and just break itself trying to convict an Indian person, especially if you have long hair in South Dakota.[72]

The Department of Justice Task Force on Indian Matters in its 1975 report noted the same kind of resentment arising from varying FBI response, apparently depending on the identity of the victim:

> Aggravated assaults are so common on Indian reservations that they do not receive very high priority attention. Indians often complain that if a person sticks a knife into his neighbor in Peoria, Illinois, a major effort would be made to bring criminal justice sanctions to bear on the offender. They contend that a similar crime occurring in Pine Ridge, South Dakota, would go almost unnoticed. Indians feel that some federal prosecutors have the attitude that offenders and victims of reservation crimes are "just a bunch of Indians." This view is reinforced by the fact that often there is a significant difference in the mobilization of criminal justice resources when the victim of a reservation crime is a non-Indian. Perhaps the premier example of this disparity in treatment occurred recently on the Pine Ridge reservation, the scene of widespread violence and several dozen murders in the last year. Federal response to these crimes has been fairly routine. However, when two FBI agents were killed on the reservation, the FBI mobilized more than 175 agents complete with helicopters and armored personnel carriers. Yet when Indians complain about the lack of investigation and prosecution of reservation crimes, they are usually told that the Federal government does not have sufficient resources to handle the work[73]

The lack of accurate statistics inhibits a meaningful assessment of the complaint of disparate treatment by the FBI. The FBI, moreover, does not employ a system of handling complaints about the conduct of its agents that permits public accountability.

If an Indian, or for that matter any person, has a complaint about the conduct of an FBI agent, the allegations are investigated either in the field office of by the Office of Professional Responsibility in FBI headquarters. Within the Office of Professional Responsibility, any personnel action deemed appropriate is put into effect. However, as explained by the special agent in charge of the Minneapolis Area Office of the FBI, the complainant is not notified of the disposition of his or her complaint:

> COUNSEL. Are the results of the complaints made known to the complainants?
>
> MR. BRUMBLE. I do not believe so. I have never notified a complainant of the results of one.
>
> COUNSEL. I want to get that very clear. If someone, let us say, in the tensions of the past 5 to 10 years out here, made a complaint about a specific FBI officer, misconduct or alleged misconduct or whatever, that officer could have been perhaps fired, transferred, demoted? Is that accurate? And that individual who made the complaint and the rest of the community

[71] David Brumble, testimony, *South Dakota Hearing*, p. 208.
[72] Lorelei Means, testimony, ibid., pp. 109–10.
[73] *Department of Justice Task Force Report*, pp. 42–43, n. 45.

would never know whether any action was taken one way or the other?

MR. BRUMBLE. That is right.[74]

Thus, by its policies for handling complaints, the FBI does nothing to dispel any false impressions within the Indian community of FBI misconduct or to assure the community that appropriate corrective action has, in fact, been taken when misconduct is found.

Cultural Barriers and FBI Impartiality

Several United States attorneys have expressed the opinion that the impartiality of the FBI compared to the BIA or tribal police is a major factor in their preference for the FBI's maintaining a substantial role in the investigation of major crimes. David Vrooman, United States attorney for South Dakota, stated:

> I do not believe the Indian tribes have yet recognized the separation of power. As long as the executive is calling the shots, I think it is going to be dangerous to have all crimes investigated on the reservation where, when you have an election, people's jobs are at stake. The FBI, I think at this point, goes in, does not have any local pressure insofar as their investigative techniques are concerned.[75]

In a similar view, Robert O'Leary, United States attorney for Montana, stated:

> I believe. . .that the Indian tribes and the residents on the reservations do have confidence in the FBI and the FBI investigations, and the independence of the FBI. . .which is not colored in any way by any connection with the operation or the overall administration of the Indian reservations.[76]

In offenses involving Indian participants or witnesses from different tribes, for example, Navajos and Hopis, the FBI is said to be the only investigative agency viewed as impartial and therefore having credibility within the Indian community.[77]

The generalized expertise of FBI agents and the quality of their investigations, however, must be viewed in light of their knowledge of and familiarity with Indian reservations and Indian culture. The basic training provided to FBI agents at the FBI Academy does not include any specialized training in Indian law and culture.[78] FBI agents newly assigned to agencies with investigative responsibilities in Indian country may receive some on-the-job orientation from their colleagues on an ad hoc basis,[79] but there is no coordinated system on a national basis to see that this orientation is provided. Moreover, FBI agents are not stationed on Indian reservations and thus are outsiders.

Some FBI officials express the view that the FBI's professional investigative expertise transcends any cultural differences. The head of the FBI's Minneapolis Division stated:

> Our agents are not specially trained to work on reservations because we do not feel as investigators that there is any difference in investigating a crime on the reservation, necessarily, than any other type of federal crime.[80]

It is the strongly held view, however, of tribal and BIA criminal investigators that the FBI is handicapped in its investigative abilities by reservation residents regarding them as outsiders. Henry Gayton, BIA special officer for the Standing Rock Sioux Reservation, stated: "We have had instances. . .where people of the community have wanted to talk to one of us rather than somebody that is not living there."[81]

A tribal criminal investigator from the Pine Ridge Reservation had a similar observation:

> People are a lot more open to you if they know you. If you are going to go in a community and nobody's seen you before and you come from 40 miles away, they are going to look you over for about 2 days before they are going to start talking to you.[82]

Fred Two Bulls, captain of the Oglala Sioux Tribal Police of the Pine Ridge Reservation, concurred, pointing out the advantages of the bilingual ability of his investigators on a reservation where many residents speak the native language:

> There [are] many times when this happens [that reservation residents will not talk to the FBI].

[74] Brumble Testimony, *South Dakota Hearing*, p. 207. See also Webster Testimony, *Washington, D.C., Hearing*, vol. 1, pp. 6–7.
[75] David Vrooman, testimony, *South Dakota Hearing*, p. 196.
[76] O'Leary Testimony, *Washington, D.C., Hearing*, vol. 1, p. 155.
[77] Leon Gaskill, special agent in charge, Phoenix Office, FBI, interview, Apr. 9, 1979.
[78] Brumble Testimony, *South Dakota Hearing*, p. 195.
[79] Gaskill Interview.
[80] Brumble Testimony, *South Dakota Hearing*, p. 193.
[81] Henry Gayton, testimony, ibid. p. 174.
[82] Lee H. Antelope, testimony, ibid. p. 123.

> The people just would not communicate with someone that isn't from there. It helps a lot to be bilingual in this line of duty on the reservation to some of the people. They do speak English but not to a point where they can really express themselves or make you understand what they really want. In their own language they feel more comfortable.[83]

Tribal Autonomy

An inevitable result of the requirement that FBI agents must present major crime cases to the U.S. attorney for a decision whether or not to prosecute is seen as a loss of tribal control over the handling of serious offenses that threatens the reservation community. The lack of control can affect reservation tranquility and security and the credibility of the tribal government. As the governor of the Gila River Community pointed out:

> We're getting quite a bit of concerned calls, in other words, we're getting some pressure from our community members.
>
> The only thing that we would do is to say that we don't—we, the tribal government, at least in the executive body doesn't have anything to do with investigation of these cases, and it's to them it's kind of like a cop-out.
>
> But the working relationship, I think, between the tribe, the Bureau (BIA), and the FBI are not that good, at this point.[84]

Tribal investigators have expressed their desire to assume responsibility for the investigation of major crimes as a way of increasing their standing and prestige within the Indian community they serve. Asked if this was his goal, the captain of the Oglala Sioux Tribal Police replied:

> Yes, that is what we are striving to do right now, make it this way. In taking over the investigation, we'd feel more professional. Like what we are doing now, we feel like we are just a figurehead between the crime and the FBI there, that at times we don't get any credit for what we have done in some of the investigations.[85]

Asked how he thought it would affect the residents of the reservation if his department took over primary investigative authority, he replied:

> Well, I imagine it would be some that would disagree with it, some will like it. . . .I think they would give us a second look. They know that we are investigating and we mean business. This would give us more prestige.[86]

A lieutenant from the Oglala Sioux Tribal Police expressed his opinion about being the primary investigator presenting a case to the United States attorney without the involvement of the FBI: "Every time you have a middleman involved somewhere you are not getting the credit sometimes that you really want."[87]

A related consideration is the widely held perception within the Indian community that FBI agents, who are not part of the reservation community and do not have a personal stake in the maintenance of law and order there, do not always make a strong presentation to the United States attorney for the prosecution of cases. The American Indian Court Judges Association, in its survey, reported hearing such accusations:

> In our field trips, interviews and informal conversations, we have heard accusations against the F.B.I. which we cannot substantiate. These remarks have all been oral and have not been put in writing by any of the persons who have made them. Whether they are true or not, they are important because the people who related them believe them to be true. The main complaint is that the F.B.I. doesn't truly care about cases arising from Indian reservations. These individuals contend that since there is no glory in, or publicity for, such cases, the F.B.I. is interested only in cases involving kidnapping, drug rings, organized crime, etc. As a result, they declare, the F.B.I. doesn't pay much attention to the ordinary cases arising on Indian reservations.[88]

An area special officer for the BIA expressed a similar view that FBI agents are often less than positive when they present cases to the United States attorney, resulting in a denial of prosecution.[89] At any rate, the shielding of the United States attorney from direct contact with tribal or BIA investigative officers means a denial of tribal participation in decisions that profoundly affect law enforcement and thereby the quality of reservation life.

[83] Fred Two Bulls, testimony, ibid. p. 174.
[84] Quoted in *Task Force Four Report*, p. 38.
[85] Two Bulls Testimony, *South Dakota Hearing*, p. 174.
[86] Ibid., pp. 174–75.
[87] Antelope Testimony, ibid, p. 123.
[88] "Federal Prosecution on Indian Reservations," pp. 32–33.
[89] Eugene Trottier, interview, June 7, 1978.

What is at stake is a critical element of Indian self-determination.

Prosecution

The prosecution of Federal offenses in Indian country is almost exclusively handled by the United States attorneys of the various Federal districts in which Indian reservations are located. Although they are responsible for prosecuting offenses falling under the Major Crimes Act, the General Crimes Act, and other Federal statutes, there is no requirement that they prosecute every case that is presented to them. Each United States attorney possesses wide discretion in the cases he or she accepts or declines for prosecution.

Geographical and Cultural Barriers

The jurisdictional framework that has developed for Federal prosecution of the most serious offenses committed on Indian reservations produces tremendous logistical and cultural problems. In its review, the Task Force on Indian Matters of the Department of Justice noted the law enforcement difficulties caused by the rural isolation of most Indian communities:

> Indian reservations encompass enormous geographic areas where the population is sparse and scattered rather than conveniently gathered in cities or towns. The Navajo reservation, for instance, spreads into four states containing roughly 16 million acres in total area and 136,000 people. More common, however, are reservations of 1 to 2 million acres supporting a population of 500 to 2,000 people. It is not uncommon for several hours to elapse between the time a crime is committed and the time a law enforcement officer arrives at the scene by car. Providing effective law enforcement services under these circumstances is very difficult.[90]

In its 1974 study of Federal prosecution of crimes on Indian reservations, the American Indian Court Judges Association noted that the difficulties of law enforcement on rural reservation areas are compounded by the fact the the Federal courts and Federal prosecutors are located in major cities often remote from Indian communities. The geographical separation leads to a cultural separation and, in the view of the association, a tendency on the part of Federal prosecutors to minimize the importance of Indian cases:

> The remoteness of the United States Attorney's offices from the Indian reservations causes the importance of cases occurring on those reservations to seem less important than, in fact, they are. These cases are generally not publicized in the major cities and do not appear to be matters of great urgency or public concern. In addition, the great distances involved often mean that the United States Attorney and his staff are generally unaware of the cultures of varying Indian communities. They tend to impute the culture of one tribe to other tribes. Thus, they cannot fully grasp the problems of law enforcement on any specific reservation. Furthermore, they learn little of progress and change on the reservations, nor do they know of the moods and attitudes of the reservation's residents.[91]

The Department of Justice Task Force recognized in its report the prevalent feeling among Indian people that the Federal Government does not consider Indian cases important enough to devote sufficient prosecutorial resources:

> Citizen lack of confidence in the reservation law enforcement system is widespread. Residents of several reservations believe there has been a complete breakdown of law and order. They are cynical about the willingness and ability of the [Federal] government to protect persons and property. In many cases, no effort is made to report crime because of the feeling that nothing would be done. Self-help is common among both Indians and non-Indians. . . .
>
> Far more widespread and serious than concern about response time is the belief among Indians that the Federal Government simply declines to prosecute Indian cases because it is unwilling to devote federal prosecutive resources to anything but the most unusually serious offenses.[92]

Declinations of Prosecution

The high rate of declination of prosecution of major crimes offenses by United States attorneys has been a source of dissatisfaction in the Indian community for some time. Precise statistics are not maintained by Federal law enforcement agencies, but it appears that in excess of 80 percent of major crimes cases, on the average, presented to United States attorneys are declined for prosecution.[93] Offenses

[90] *Department of Justice Task Force Report*, p. 24.
[91] "Federal Prosecution on Indian Reservations," pp. 23–34.
[92] *Department of Justice Task Force Report*, pp. 23–45.
[93] *South Dakota Hearing*, p. 186.

covered by the Major Crimes Act are serious felony offenses. Ordinarily, there is no alternative to Federal prosecution other than referral for prosecution within the tribal system, where the 6-month limitation on sentences that can be imposed is often an inadequate sanction for the seriousness of the offense.

The Department of Justice Task Force on Indian Matters examined the excessively high rate of declinations by United States attorneys and came to the conclusion that the exercise of prosecutorial discretion did not appear to be deliberately discriminatory, but it was nevertheless unsatisfactory in terms of the Federal responsibility:

> It is our conclusion that U.S. Attorneys treat Indian country cases in the same manner as they treat other types of criminal cases. It is also our conclusion that to treat these cases in the same manner as other federal cases overlooks the role of state/local prosecutor which, in addition to being the federal prosecutor, the federal government through the U.S. Attorney must play.[94]

There is no question that Federal prosecution of cases arising in Indian country presents unique difficulties. The geographical separation of Federal prosecutors and courts from reservation areas creates logistical difficulties in terms of transportation of defendants and witnesses for court appearances. The large percentage of alcohol-related offenses often presents impediments to successful prosecution because of the unreliability of the perception and memory of witnesses. Language and cultural barriers may cause reservation residents to seek to avoid having anything to do with a case in Federal court. The Department of Justice Task Force found that all these factors affected the exercise of prosecutorial discretion by United States attorneys in the face of competing priorities:

> U.S. Attorneys are committed to bringing cases they can win. Regardless of the seriousness of the offense, Indian cases present a range of problems any one of which often defeats a successful prosecution. Against these odds, it is difficult for a U.S. Attorney to justify great expenditures of time given the competing demands on his resources. . . .
>
> [W]hat we face in the prosecution of crimes occurring in Indian country is a fundamental difference in goals and objectives on the part of the managers of the federal system, the prosecutors, and the consumers of that system, the Indians. The managers are faced with heavy competing demands against which they must weigh Indian cases. As a general rule they prosecute cases in which the government has a good chance to win. Indian cases by their very nature are extremely difficult to win and are atypical of the kinds of cases usually brought in federal court.[95]

However, as noted earlier, it was the Federal Government, and not the Indian tribes, that took the initiative to assume Federal jurisdiction over serious felony offenses in Indian country and to deprive tribes of the authority to exact meaningful sanctions. Thus, the Federal Government should bear the burden of providing adequate resources for an adequate prosecutorial effort:

> [O]ne cannot help but be concerned over the application of these factors [affecting the decision to decline prosecution] to cases arising from Indian reservations. The Indian people did not ask the Federal Government to assume the duties of prosecuting major crimes. This task was assumed voluntarily by the government and the government should bear the burden of all accompanying costs.[96]

The American Indian Court Judges Association recognized the difficulties in prosecuting violent crimes in which abuse of alcohol is a contributing circumstance, but condemned the effect on the exercise of prosecutorial discretion:

> In declining these types of cases, the prosecutor too often allows the real needs of the Indian community to fall victim to his own beliefs about what will be viewed as moral, acceptable or excusable behavior.
>
> It is estimated that over 50 percent of the federal cases arising from violations committed on Indian reservations involve alcoholic intoxication. . . .Though this sort of behavior may occur often or regularly on reservations, it is not, in fact, acceptable. Failure to prosecute in such cases could be interpreted as approving of anti-social behavior and, in effect, as licensing such activity.[97]

In addition to the encouragement of antisocial behavior, failure to prosecute a crime engenders

[94] *Department of Justice Task Force Report*, p. 45.
[95] Ibid., p. 48.
[96] "Federal Prosecution on Indian Reservations," p. 43.
[97] Ibid., pp. 38–39.

communal anger and a breakdown of the social structure when "reservation residents see an individual set free without having been punished for his crime."[98]

A more profound effect on the Indian community is the shattering of trust in the good faith of the Federal Government, which has assumed the responsibility of law enforcement in regard to serious offenses without effectively fulfilling its responsibility. The Chief of Law Enforcement Services of the Bureau of Indian Affairs described the effect on Indian communities of the breakdown of law and order caused by failure to prosecute serious offenses:

> They [felony offenses under the Major Crimes Act] are serious offenses. And whether alcohol, which is one of the biggest problems on reservations, is a good basis for prosecution or not, a number of United States attorneys will not prosecute if alcohol is involved. . . .
>
> The fact remains that the Indian community looks to the Federal Government for the prosecution of serious offenses, and when it's not happening, you have, again, this negative impact in the eyes of the Indian community as to the role of the Federal Government in Indian country. That's where the whole problem starts. The mistrust begins at that level, and when you begin to mistrust the police and the criminal justice system, all the other little sections of the wall begin to crumble.[99]

Possible Directions for Change

The serious problems for law enforcement in Indian country are to some degree a product of neglect. It appears that where participants in the system are open to change, possibilities for improvement exist. An examination of some innovative programs recently put into effect in the State of Arizona and on the Pine Ridge Reservation of South Dakota demonstrates that a more positive Federal role in law enforcement can be achieved.

The broad discretion vested in the United States attorneys in the various Federal districts permits the initiation of innovative programs on a local level. It is instructive to examine, therefore, the comprehensive evaluation and modification of existing practices undertaken by one United States attorney in the investigation and prosecution of Federal cases in Indian country.

The State of Arizona contains 17 Indian reservations of varying sizes and characters. The Navajo Nation is the largest and most populous, with more than 150,000 members occupying a reservation of 9 million acres located within 3 States.[100]

Michael Hawkins became United States attorney for the District of Arizona in February 1977. In looking at Federal investigation and prosecution of major crimes on Indian reservations in Arizona, he noted the same duplication of investigative efforts that had been condemned in 1975 by the now-defunct Department of Justice Task Force on Indian Matters:

> [T]he single most dramatic thing. . .I saw [upon taking office as United States attorney] was significant duplication and overlap of the law enforcement services being offered either by tribal police agencies, the Bureau of Indian Affairs Law Enforcement Services, and the FBI. I found instances, for example, where three separate reports were being prepared by three separate agencies, witnesses being interviewed three and four times by different agencies—no sense, no standards, no guidelines as to the referral of those reports, nothing beyond informal understandings between individuals about investigative jurisdictions between the agencies. I felt a compelling need, at least on my part, to deal with that situation.[101]

Mr. Hawkins perceived the effect of the duplication of investigations to be detrimental to effective law enforcement, as well as wasteful:

> Beyond the cost to taxpayers of such duplication of responsibility, this overlap posed significant practical problems for federal law enforcement. Witnesses to crimes were often interviewed by two or three separate agencies, sometimes producing such inherently conflicting statements that subsequent criminal prosecutions were rendered enormously difficult, if not impossible.[102]

To develop a more effective law enforcement program in Arizona, Mr. Hawkins initiated discussions with tribal and law enforcement officials of the Navajo Nation:

[98] Ibid., p. 43.
[99] Eugene Suarez, testimony, *Washington, D.C., Hearing*, vol. I, p. 131.
[100] Arizona, New Mexico, and Utah.
[101] Michael D. Hawkins, testimony, *Washington, D.C., Hearing*, vol. I, pp. 148–49.
[102] Michael D. Hawkins, statement to the United States Commission on Civil Rights, Mar. 20, 1979, p. 5.

> We began with the Navajo Nation, America's largest tribe, which has a fairly sophisticated tribal government and its own very independent well-trained police force, its own independent judiciary, and they have a real willingness to deal with the problem. So we began there and then moved on to the other Indian nations. . . .
>
> The Navajo guidelines were drafted after a series of meetings. . .with representatives of the tribal police and Bureau of Indian Affairs officers and the FBI and myself.[103]

As a result of these meetings, guidelines were issued on a 120-day trial basis within the Arizona portion of the Navajo Nation. The guidelines set forth: (1) the types of Federal offenses that would be routinely declined for prosecution by the United States attorney and thus could be investigated and prosecuted within the tribal system; and (2) the division of investigative responsibilities for Federal offenses among the tribal police, the BIA, and the FBI.[104] Following the 120-day trial period, Mr. Hawkins met again with officials from the Navajo Nation, the BIA, and the FBI and, with minor adjustments, issued final guidelines for the investigation and prosecution of Federal offenses occurring within the Navajo Nation. The United States attorneys for Utah and Arizona agreed to apply the guidelines to those portions of the Navajo Nation lying within those States, and there are now uniform standards for Federal offenses within the Navajo Nation, despite the fact that it lies within three States.

After a year's experience with the guidelines, Mr. Hawkins met with most leaders of the remaining Indian nations in Arizona, who, for the most part, wished to have the guidelines put into effect on their reservations. With minor alterations, the guidelines are now in effect in virtually all the Indian nations in Arizona.[105]

The use of the guidelines first within the Navajo Nation and then in other Indian nations in Arizona has ended the former duplication of investigative efforts by tribal, BIA, and FBI investigators, according to Mr. Hawkins:

> [W]e now have direct reporting. . .by tribal agencies, the BIA, and the FBI. There's no overlap in the reports; single investigations are done; single interviews of witnesses to crimes are done.[106]

The greater involvement of tribal officers, Mr. Hawkins said, has also improved the quality of Federal law enforcement by diminishing cultural barriers between the Anglo justice system and Indian participants within it.

> It [use of the guidelines] has enhanced significantly the direct relationship between tribal police officers and our own officers. They are now more intimately involved in what we do. They participate in grand jury proceedings, and they are a tremendous help and benefit to overcome language and cultural and experience barriers that may exist between Anglo prosecutors and crimes which involve inhabitants or members of various Indian nations.[107]

Officials of the Federal Bureau of Investigation in Phoenix participated in the development of the guidelines and concur with the United States attorney that the implementation has been positive. The special agent in charge of the Phoenix Division of the FBI said the guidelines have provided a more effective use of its investigative resources, since the FBI is no longer required to investigate those types of cases that would be routinely declined for Federal prosecution. With the reduction of the number of FBI agents on a national level and other priorities that demand resources, the FBI official said, it is necessary to encourage greater involvement of tribal police and the Bureau of Indian Affairs in the

[103] Hawkins Testimony, *Washington, D.C., Hearing*, vol. I, p. 149.
[104] In summary, the guidelines provide as follows:
Absent aggravating circumstances, the following types of offenses will be routinely declined for prosecution by the United States Attorney, and thus may be investigated by the tribal police and prosecuted within tribal court: alcohol violations, theft offenses involving less than $2,000 in property loss, and assault, except upon a Federal officer, not resulting in serious bodily harm.
The following types of offense may be investigated by Bureau of Indian Affairs investigators for presentation directly to the United States attorney: rape, carnal knowledge, incest, theft offenses with property loss in excess of $2,000, public assistance violations involving less than $1,000, and arson not resulting in death or serious bodily harm.
The following types of offenses will be the primary responsibility of the FBI for investigation and presentation to the United States attorney for prosecution: murder, manslaughter, assault on a Federal officer resulting in serious bodily injury, arson where death or serious bodily harm results, bank or other armed robbery, embezzlement, kidnapping, and public assistance violations involving more than $1,000 loss.
The guidelines further provide that in all cases where the United States attorney declines prosecution, the report of the investigation shall be returned to the originating agency for reference to tribal officials for processing in tribal court.
The complete text of the guidelines is attached to the Statement of Michael D. Hawkins, in exhibits, *Washington, D.C., Hearing*, vol. II.
[105] *Washington, D.C., Hearing*, vol. I, p. 149.
[106] Ibid.
[107] Ibid., p. 150.

investigation of Federal offenses in Indian country.[108]

Representatives of the Navajo Nation have also been pleased with the implementation of the guidelines. Closer working relations have developed between the Navajo Police Department and the FBI, with the clarification of investigative responsibilities. The chief of law enforcement services of the Navajo Nation said the tribal police will soon be capable of more extensive investigative responsibilities, with the eventual goal of assuming primary responsibility for the investigation of major crimes, with the FBI playing a supportive role.[109]

One goal of the United States attorney in promulgating the guidelines was to expand tribal investigative and prosecutorial responsibilities in order to put the Federal law enforcement effort more in accord with the policy of Indian self-determination. At the time the guidelines were first put in effect, Mr. Hawkins set this goal:

> This expansion of responsibility for Navajo Tribal Police officials is in the spirit of self-determination. We look forward to the day when the Tribal Police will have primary responsibility for all criminal violations occurring within the Indian Nation, with federal agencies providing such scientific and other support as may be necessary.[110]

In his view, Mr. Hawkins said, the increased responsibilities given to the tribal police by the guidelines and the greater contact with Federal prosecutors has improved their investigative capabilities:

> As to those Indian nations with larger tribal police forces, we have found a significant improvement in the communication between officers of those agencies and our own office. Since those officers now have direct contact with our prosecutors, they have a greater understanding of federal procedural and evidentiary requirements, and we have seen a resultant improvement in the efficiency of investigations conducted by them.[111]

Under the guidelines, the United States attorney will accept referrals for prosecution for some types of cases directly from tribal and BIA investigators.

The greater responsibilities given to tribal and BIA police have had another positive effect:

> [W]e found that the report-writing abilities of tribal police officers and BIA law enforcement specialists have improved as a result. That's not to say that there weren't problems initially, and particularly when you're dealing with the language barrier and terminology barrier. But it increased their proficiency in the report-writing immensely. And I think both sides have benefited from it.[112]

In sum, the experience in the District of Arizona demonstrates that increased responsibility given to tribal and BIA police increases their ability to assume an even greater role in Federal law enforcement.

Other examples exist of increased communication and cooperation among tribal and Federal officials in regard to law enforcement on Indian reservations. According to the United States attorney for Montana, the quality of law enforcement on Indian reservations in that State has improved since the 1960s because of the "development. . .of more adequately trained Indian and tribal law enforcement officers and. . .better cooperation with the FBI in the delivery of law enforcement to the Indian reservations."[113] He has systematically brought tribal investigators into the prosecution of major crimes cases, both to develop their capabilities and to improve communication among tribal and Federal authorities:

> With respect to the tribal police, in three of the reservations we have made every effort to encourage the tribal police forces to submit their written reports to us on any case that has been accepted for prosecution, to bring the tribal officers to the grand jury, make them a part of the full prosecution system, because I feel it makes a better operation for them as tribal policemen as far as participating in the system from the beginning to the end. And it also encourages cooperation between the FBI and the tribal policemen who, frankly, get together at grand jury, get together with us. . .to discuss it with myself and my assistants, and we found it to be very helpful as far as the law enforcement on the three major reservations in Montana.[114]

[106] Leon M. Gaskill, special agent in charge, Phoenix Division, FBI, interview, Apr. 9, 1979.
[109] Larry Benally, acting commissioner of public safety, Navajo Police Department, interview, Dec. 15, 1979.
[110] Michael D. Hawkins, United States attorney for the District of Arizona, press release, Aug. 30, 1977 (Commission files).
[111] Hawkins Statement, *Washington, D.C., Hearing*, vol. II.
[112] Hawkins Testimony, *Washington, D.C., Hearing*, vol. I, p. 154.
[113] O'Leary Testimony, ibid., p. 151.

Another example of a more constructive Federal role is found on the Pine Ridge Reservation in South Dakota,[115] both in terms of the development of an improved tribal law enforcement system and the initiation of better relations between the FBI and the Indian community. These developments are all the more remarkable in view of the recent, well-publicized, armed confrontations on the reservation and the almost complete deterioration of law and order.

Notable in the recent history of the Pine Ridge Reservation was the occupation of the village of Wounded Knee in 1973. The American Indian Movement (AIM) had come into existence in the late 1960s as a militant organization seeking to provoke change on behalf of Indians by public confrontations. Dick Wilson, then tribal chairman of Pine Ridge, was bitterly opposed to AIM's ideology and tactics and announced his intention to drive AIM off the reservation. On February 27, 1973, some 200 AIM members and Oglala Sioux seized the town of Wounded Knee, site of the massacre 84 years earlier, and declared their determination to stay and die. The Federal Government responded by surrounding Wounded Knee with 250 FBI agents, U.S. marshals, and BIA police equipped with armored personnel carriers, machine guns, and rifles.

The siege at Wounded Knee went on for 2-1/2 months, observed and reported by news media from all parts of the United States and several foreign countries. During the occupation, two Indians were killed and Indians and government agents alike received serious wounds from the thousands of rounds fired in the course of the standoff.

Following the occupation of Wounded Knee, a period of violence and conflict set in on the reservation as AIM and its sympathizers clashed with tribal officials, BIA police, and the FBI. A series of shootings and deaths followed as various factions contended for control of day-to-day affairs on the reservation. Many of these homicides remain unsolved.

A special commission was established in the spring of 1975 by the Secretary of the Interior to examine and report on the causes of the unrest on the Pine Ridge Reservation. A major contributing factor identified was the inadequacy of the tribal law enforcement system. The special commission found massive dissatisfaction among the tribal police officers themselves and in the Indian community they served. The special commission reported:

> The morale of the Department is very low due to improper grade structure, lack of leadership, poor uniforms and equipment, unqualified persons assigned to leadership positions and political pressures. . . .
>
> The relations between the Police Force and the public is very negative in all respects. Great dissatisfaction with the police was expressed in all meetings. The people related experiences with selective enforcement, harassment, intimidation, drunken officers, and general non-professional activities and abuses.[116]

The special commission concluded that: "The present patchwork police force could be characterized as an armed, only slightly controllable faction of the community rather than a coherent stabilizing force."[117]

Law enforcement problems at Pine Ridge were exacerbated by the shootout on June 26, 1975, at Oglala that resulted in the killing of an Indian man and two FBI agents who were attempting to execute an arrest warrant. Following the deaths, more than 100 heavily armed FBI agents, including a Special Weapons and Tactics (SWAT) team, combed the reservation looking for suspects. The Department of Justice Task Force on Indian Matters reported: "The number of FBI agents on the reservation has increased tensions and has resulted in numerous complaints of harassment, illegal searches, and general disruption of the Reservation."[118]

Following the Oglala killings, the number of FBI agents assigned to the Rapid City office, which serves the reservation, was greatly increased. As standard procedure, FBI agents would travel on the reservation in caravans of two to three vehicles,

[114] Ibid., p. 155.
[115] Pine Ridge Reservation, home of the Oglala Sioux Tribe, is located in southwest South Dakota in Bennett, Shannon, and Washabaugh Counties. Of the original 2.8 million acres provided under the 1889 treaty, approximately half remains in Indian ownership. Tribal headquarters are located in the village of Pine Ridge, where approximately 2,000 of the reservation's population of 12,000 Indians live. The remainder of the population is widely dispersed through the reservation in primarily rural areas.
[116] Report to the Secretary of the Interior from the Secretarial Commission on the Pine Ridge Indian Reservation, June 24, 1975, pp. 17–18.
[117] Ibid., p. 19.
[118] *Department of Justice Task Force Report*, p. 63.

armed with automatic weapons and occasionally escorted by a helicopter.[119] Although the upgrading of FBI personnel and weaponry was characterized by the FBI as a necessary security measure, the display of force served to intensify hostility against the FBI on the part of reservation residents.

Several factors over the past several years have brought a considerable measure of improvement in law enforcement on the Pine Ridge Reservation. Foremost has been a restructuring of the Oglala Sioux Tribal Police under a contract between the tribe and the Bureau of Indian Affairs, pursuant to the Indian Self-Determination Act.

Following a change in tribal administrations in 1977, the Oglala Sioux Tribe contracted with the Bureau of Indian Affairs to establish a tribal police system with a fundamentally different operational structure from the former BIA police system, which had received widespread criticism. Two key elements characterize the operation of the new Oglala Sioux Tribal Police: decentralization and community control. Under the previous BIA system, most police officers were stationed in the village of Pine Ridge, and their services were not readily accessible to residents in outlying and rural parts of the reservation. The lack of a law enforcement presence was a contributing factor to the earlier climate of violence and lawlessness.

Under the new system, officers are stationed in each of nine districts throughout the reservation. This decreases the response time when the police are summoned and places them in closer contact with the communities they serve. A lieutenant of the Oglala Sioux Tribal Police described the difference between the old and new systems:

> Well, I think there is more policemen over a bigger area in the communities. Each community, we just about know the people there and how they are going to react, and we are available. I mean, there is no such thing as having to wait for officers for 2 or 3 hours like you had before. We are divided into nine districts. . . .In the past, most of the police officers were stationed in Pine Ridge or in Kyle. And from Pine Ridge to Martin it took them at least 45 minutes to get there if they had a call. And we got our response time on a call down to about 7 minutes.

> [There are] small detachments all over the reservation for the community and for each district.[120]

A member of one of the outlying reservation communities described the improvement brought about by the availability of law enforcement services within the community:

> As compared to a few years back when the BIA had the law and order system, it is a lot better in that when the law and order was under the BIA, most of the policemen were stationed in Pine Ridge. That is about 50 miles away from Martin. Any time we needed the help of the law, we had to call over to Pine Ridge; sometimes it was 2 hours, 3 hours, and sometimes they never showed up. It was bad back then. It is a lot improved. . . .Because the police are right there, right in the community. They are right down the street when you need them.[121]

A corollary to the decentralization of the tribal police is a system of local community control of police personnel and activity. The Oglala Sioux Tribal Police are under the direction of a police commission, composed of commissioners elected from each of the nine local districts, which sets policy and oversees the operation of the law and order program. Each district also elects a district public safety review board that has the authority to hire, fire, and discipline the police personnel of its district. Police are thus stationed in each of the local districts and are responsible for their conduct to the elected review board in that district.[122]

A member of the American Indian Movement, residing in the Porcupine community of the Pine Ridge Reservation, praised the new police system that makes the officers accountable to the community:

> Now, the tribal police, we get along with them good at Porcupine. We have a community police review board. If there is any trouble, they have a way to view the complaint and the grievances and the people on the police force, we know them and get along very well.[123]

The police officials themselves have accepted and now are firmly in favor of the concept of community control. A lieutenant described his initial ambiva-

[119] Brumble Testimony, *South Dakota Hearing*, p. 193.
[120] Antelope Testimony, ibid., pp. 119-20.
[121] Alice Flye, testimony, ibid., p. 111.
[122] Gerald Clifford, interview, Apr. 6, 1978.
[123] Means Testimony, *South Dakota Hearing*, p. 111.

lence about control by a community review board and his later acceptance based on how the system was working in practice:

> When I first heard of this review board idea, I felt that policemen can't work for the board, that was my idea. And in about 2 months after I seen the operation and was part of it, I changed my idea. It can be done and it's working this way.[124]

No doubt a number of interrelated factors have contributed to the lessening of tension and violence on the Pine Ridge Reservation, but the improved law enforcement system must be seen as a major influence. The improvements in law enforcement would not have been possible without Federal funding.

At the same time, there has been marked improvement in relations between the Indian community on the Pine Ridge Reservation and the FBI. Many points of contention still exist, but there appears to be a basis for discussion and working out of differences. The FBI has established a working relationship with the new Oglala Sioux Tribal Police. Of primary importance is training provided by the FBI to tribal police officers, arranged through the FBI's Rapid City and Minneapolis Area Offices, to prepare tribal policemen to assume greater responsibility in the investigation of major crimes. The Director of the Minneapolis Area Office explained his purpose in making FBI resources available for training:

> I would like to see them be able to become a greater or have a greater role in it [investigating major crimes]. To this end, I am committed to as much training as I can possibly provide to both the BIA service officers as well as the tribal police. . . .we are trying to accommodate them by bringing the instructors here from Washington.[125]

In addition to formal class training, the FBI has been providing onsite instruction in investigative techniques, a practice one of the supervisors of the Oglala Sioux Tribal Police said he has found most useful:

> Well, they take the evidence that I collect and they take some of the photos or they go ahead and take the photos themselves and all the sketches that they make there. So far they have commented that we done a good job of getting all the evidence and all that stuff. It's making their job easier. . . .
>
> The things that we have missed are the things that they are teaching us when they go and do their investigation. The officers I have sent out with them. . .go right ahead and help them take the fingerprints and photographs. They are learning right along with them. That is, the new men I have on the force.[126]

Issues of conflict nevertheless persist between the FBI and the Oglala Sioux Tribal Police. Among them are the FBI's practice of coming onto the reservation without acknowledging an obligation to inform tribal authorities of their presence. Also at issue is the view of some tribal officials that some FBI agents assigned to the Pine Ridge Reservation since 1975 have a racist attitude toward Indians. Tribal officials and reservation residents also allege that there is an inadequate and discriminatory pattern of investigation of major crimes by the FBI. If the potential defendant is someone identified with former tribal president Dick Wilson, they say, the FBI is slow to act, but if the defendant is someone the FBI believes is a member of the American Indian Movement, the FBI moves zealously to investigate the case.[127]

A basis exists, however, for discussion of these matters of controversy. Meetings have been held among tribal police officials, the FBI, and the U.S. attorney to air differences and in some instances to work out solutions. For example, the U.S. attorney agreed to provide detailed information to tribal authorities about his reasons for declining to prosecute in major crimes cases. He has also established prosecutorial guidelines[128] that set forth in general terms the types of major cases that will be routinely declined for prosecution, thus affording tribal authorities the opportunity to place these types of cases more quickly within the tribal justice system. Both tribal officials and the FBI are firmly in favor of continuing the training programs provided by the FBI to tribal police.

The most significant development in the relations of the FBI to the Pine Ridge Reservation is a reduction by half of the number of agents assigned to the Rapid City office that serves the reservation.

[124] Antelope Testimony, ibid., p. 120.
[125] Brumble Testimony, ibid., p. 195.
[126] Ellsworth Brown, testimony, ibid., p. 122.
[127] Clifford Interview, Means Testimony, *South Dakota Hearing*, p. 110.
[128] *South Dakota Hearing*, exhibit 14, pp. 306-10.

Although the FBI still perceives a need for special security measures on certain portions of the Pine Ridge Reservation, the lessening of tensions and violence has occasioned a reexamination of the level of security and the number of personnel necessary to serve the reservation.[129] The decrease in the amount of force displayed by FBI agents on the reservation has apparently lessened the hostility toward them. A lieutenant of the Oglala Sioux Tribal Police described the change of attitude of community residents toward the FBI in his district:

> [The] population there in the community are a little bit leery of the FBI because the way they went and represented themselves before. . . .Well, before they usually come in there and they pack weapons and surround the house and all that stuff, and this is the image that they went and made for themselves. But so far now lately, well, we go over there and there is no weapons showing or anything like that, and even some of the agents are invited into the house and they do their interviewing right there. And the relationship between us and the special agents with the community is getting better. I think they are being accepted a little bit more. That isn't all the community, but, you know, it's the ones that they go visit—well, they are not afraid of the FBI anymore.[130]

The reduction of FBI personnel serving the Pine Ridge Reservation has resulted in an increased assumption of responsibility by the tribal police, a development welcomed by the tribe, the FBI, and the United States attorney. The Federal role on the reservation in this period has been to encourage and facilitate greater tribal participation in law enforcement and to take steps to reduce the level of hostility between the Indian community and the FBI. Although the animosity still persists to some degree, Pine Ridge is an encouraging example of the positive results that can be obtained by putting into practice the Federal policy of Indian self-determination.

The National Coordinating Role: A Vacuum

After completing its review, the Department of Justice Task Force on Indian Matters came to the conclusion that the Federal Government's law enforcement effort on Indian reservations was, in fact, contributing to the decline of law and order on Indian reservations:

> While a review of the available evidence demonstrates that there is no conscious or systematic discriminatory handling of Indian cases, it appears that current federal practices and standards applied in determining declinations in Indian cases have created a serious problem for the overall maintenance of law and order on reservations and have undermined the respect and confidence which the Indian people feel in the federal government's efforts to respond to the growing crime rate. Stated succinctly, Indian communities feel that the federal government is doing little or nothing to solve the crime problem. This fact alone should be of serious concern. At a minimum there has been a breakdown in communication between the Justice Department and Indian communities. At a maximum, the federal government is exacerbating the reservation crime problem and undermining Indian confidence in a system of laws by prosecuting so few offenders.[131]

The Task Force, in developing recommendations, recognized that the difficulties and inadequacies identified in the Federal law enforcement effort on Indian reservations do not admit to easy solutions but nevertheless could be addressed in a specific, coordinated manner. Federal responsibility for criminal prosecutions in the District of Columbia illustrates the kind of effort that would be required to improve the Federal performance on Indian reservations:

> The District of Columbia is also a federal enclave in which the Federal Government must play a state government role in the criminal justice area in a manner similar to that required of it with respect to Indian communities. The effort exerted in the 1960's to reform and revamp D.C.'s court system is an excellent example of the level of commitment required of the federal government in regard to the Indian criminal justice system. . . .
>
> Since the bulk of Indian reservations are located in less than ten federal districts, the problem is of manageable size.[132]

Foremost among recommendations of the Task Force was Federal assistance to improve tribal law enforcement and court systems, through a coordinated effort by the Bureau of Indian Affairs of the Department of the Interior and the Law Enforcement Assistance Administration of the Department

[129] Vrooman Testimony, ibid., p. 185.
[130] Brown Testimony, ibid., p. 122.

[131] *Department of Justice Task Force Report*, p. 49.
[132] Ibid., p. 51.

of Justice. The Task Force urged increasing funding for law enforcement and court programs and for training.

The Task Force also urged that greater use be made of the services of the Indian desk of LEAA to aid communication with the tribes and to provide their court and law enforcement systems with assistance:

> LEAA has a national Indian desk and personnel in several regional offices who grant and administer a multi-million dollar program of assistance to individual tribes and Indian organizations in the criminal justice area. LEAA has been a resource of major significance and influence. Its mission is extraordinarily well suited to meet the needs of Indian tribes and the most common points of contact with the Department for most Indians will have been through LEAA and its programs. LEAA has developed an excellent Indian program and positive contacts and communication with Indian people. It is a source of expertise which should be far more extensively utilized by other units of the Department.[133]

The Task Force recommended increased allocation of investigative and prosecutorial resources to Indian cases. It also recommended the adoption of a system for improved coordination of Indian matters within the Department of Justice. In regard to criminal matters, the Task Force recommended that the departmental coordinating function include the following components:

Establishing better communication and coordination among all elements of the federal criminal justice system and Indian tribes;
Working with FBI agents and FBI training personnel to develop a greater degree of specialized expertise on Indian law and reservation investigations among agents assigned to reservation areas;
Working with BIA and FBI investigators to ensure effective, thorough presentment of cases to U.S. attorneys;
Developing standards of prosecution for Indian cases which reflect the Department's role as State as well as Federal prosecutor;
Developing ways to gain greater cooperation from Indian people in the prosecution of cases including the assignment of a representative of the tribal government to work with the U.S. attorney's office in overcoming language and cultural barriers, and to keep the tribe advised of the status of cases;
Instituting methods for using the magistrate system more effectively so as to favor making arrests over seeking indictments and for diverting Federal misdemeanor cases to magistrate court for disposition.
Involving the Federal courts in the effort to make justice less remote to Indians by periodically sitting in areas near reservations and increasing the numbers of Indians on juries;
Reviewing and updating departmental directives for FBI intelligence-gathering activities on Indian reservations;
Assisting tribes in their codification of tribal law so as to create a coherent scheme of Federal tribal offenses; and
Assisting the Department in developing reasonable legal and legislative approaches to Indian jurisdiction and related issues.[134]

The Current Lack of Coordination

After the demise of the Task Force on Indian Matters, its recommendations in the area of criminal justice were not implemented. The problems continue to exist, as discussed in the preceding pages, and some have been exacerbated. Coordination of Indian criminal justice matters within the Department of Justice and with other Federal agencies has reverted to its former fragmented nature.

Oversight for the Department's criminal prosecution and investigations, including those in Indian country, is handled by the Deputy Attorney General. Key divisions under his direction include the Executive Office of U.S. Attorneys, the Criminal Division, the FBI, and LEAA. Deputy Attorney General Benjamin Civiletti, later Attorney General, did not employ and would not favor an ongoing system for monitoring the effectiveness of law enforcement in Indian country outside the ordinary channels of the Department.[135]

There is little or no monitoring on a national level of the FBI's investigative work in Indian country, nor is there any ongoing policy discussion about how best to employ those investigative resources in a time of diminishing budgetary resources. FBI Director William H. Webster in testimony before the U.S. Commission on Civil Rights discussed the

[133] Ibid., p. 68.
[134] Ibid., pp. 52–53 (notes omitted).

[135] Benjamin Civiletti, interview, Mar. 3, 1979.

possible assumption by BIA and tribal investigators of some or all of the responsibility for investigation of major crimes on Indian reservations and the lack of any national coordinating role. Asked if there was any ongoing discussion between the Department of Justice and the BIA, he said:

> It is my understanding that there really is not. BIA is highly dispersed in terms of its authority and activity. I'm not sure that there's been much carryover from the 1975 recommendations of the Department of Justice Task Force on Indian Matters.
>
> I think perhaps it would be well to try to reconstitute some discussions in this area. We are, as you pointed out, having on-the-site discussions with the U.S. attorney very much involved in particular areas.
>
> I've asked and I've been advised that the level of cooperation and coordination is spotty; it's very good in some places and nonexistent in others.[136]

Despite the FBI's key role in Federal law enforcement in Indian country, there is no systematic communication with other divisions of the Department of Justice or other Federal agencies on issues of policy. FBI Director Webster said, "I don't think that we have been involved in national policy with respect to the Indians in any significant way."[137] Statistics are not collected or monitored that would permit an evaluation of the problems on a reservation-by-reservation basis. Finally, there is no planning on a national level to compensate for decreasing FBI resources in Indian country.

Although the Department of Justice Task Force recommended greater use of the expertise of LEAA's Indian desk in implementing law enforcement responsibilities in Indian country, there has been little subsequent contact between the Indian desk and other divisions of the Department of Justice. Dale Wing, Chief of the Indian Criminal Justice Program of LEAA, reported:

> Departmental communication in the Justice Department with respect to Indian affairs is sporadic and responds to where the greatest pressure originates. At the time of Wounded Knee I was part of the task force. Following that I have not been privileged to meet with any departmental unit concerning Indian programs.[138]

More serious, however, is the decrease in funding for LEAA-sponsored Indian criminal justice programs. The Task Force on Indian Matters strongly urged an increase of LEAA training assistance to the BIA and tribal police and an expansion of the funding LEAA provided to tribal court systems. Discretionary funds for Indian criminal justice programs were available in the amount of $5 million in 1976. Programs were developed in such diverse areas as model correctional systems for Indian inmates and training of Indian court judges; criminal justice programs were also funded for individual tribes. For 1979, however, funding was cut more than 50 percent from the 1976 level—to $2 million. Mr. Wing reported:

> Anytime you cut off either the Bureau of Indian Affairs budget or plateau their funding level or you cut back on the amount of money that LEAA provides, it's going to influence and impact the Indian community very negatively. . . .
>
> In fact, there are going to be some hard decisions to be made as to which program is curtailed and which one is moved along. So because of the continuation process that we have going, anything that you cut out of the monies, then you're going to have cut one or two of the program areas.[139]

Nor can the Bureau of Indian Affairs pick up the slack when LEAA funding is reduced. The Chief of Law Enforcement Services of the BIA reported:

> Because they cut LEAA's money does not necessarily mean that we get an increase in our budget. . . .
>
> With rare exception, we have not been able to accommodate any of the programs that have been terminated by LEAA. . .because of the lack of funds. . . .So it creates a real problem, and although we coordinate as much as we can, there are still limited funds available, and when his program stops, the tribe does not have the money to pick up the program, the Bureau does not. It creates a great big impact and a hole

[136] Webster Testimony, *Washington, D.C., Hearing,* vol. II, p. 8.
[137] Ibid.
[138] Dale Wing, testimony, *Washington, D.C., Hearing,* vol. I, p. 134.
[139] Ibid.

> that's left by the services formerly given by that program.[140]

There seems to be across-the-board agreement that improvement of tribal law enforcement and justice systems is critical; however, the lack of coordination within the Federal system has seemed to work against achieving improvement.

Another example of the negative results produced by lack of coordination has been the failure of the Federal Government to respond to the problems created by the decision in *Oliphant v. Suquamish Tribe,* which settled only part of the continuing conflict between tribes and States concerning jurisdiction over non-Indians on reservations.

Jurisdiction Over Non-Indians—Federal Inaction

Inevitably, the issue of whether tribal courts possess authority to try and punish non-Indian offenders became the subject of litigation. The case eventually to reach the U.S. Supreme Court arose in Washington State on the Port Madison Reservation of the Suquamish Tribe, an area of some 7,276 acres of which 37 percent is in trust status with the remainder held in fee simple title by non-Indians. The population of Port Madison consists of approximately 3,000 non-Indians and 50 Indians. The tribe in 1972 modified its law and order code to provide for criminal jurisdiction over all persons, both tribal members and nonmembers, on its reservation.

Oliphant, a non-Indian resident, was arrested by tribal authorities during a tribal celebration and charged with assaulting a tribal officer and resisting arrest. The circumstances under which the tribe had occasion to arrest him were described in the opinion of the Ninth Circuit Court of Appeals:

> When the Suquamish Indian Tribe planned its annual Chief Seattle Day celebration, the Tribe knew that thousands of people would be congregating in a small area near the tribal traditional encampment grounds for the celebration. A request was made of the local county to provide law enforcement assistance. One deputy was available for approximately one 8-hour period during the entire weekend. The Tribe also requested law enforcement assistance from the Bureau of Indian Affairs, Western Washington Agency. They were told that they would have to provide their own law enforcement out of tribal funds and with tribal personnel.
>
> Appellant was arrested at approximately 4:30 a.m. The only law enforcement officers available to deal with the situation were tribal deputies. Without the exercise of jurisdiction by the Tribe and its courts, there could have been no law enforcement whatsoever on the Reservation during this major gathering which clearly created a potentially dangerous situation with regard to law enforcement.[141]

Oliphant applied for a writ of habeas corpus to the U.S. district court challenging the tribal court's jurisdiction over him, which was denied. The Ninth Circuit Court of Appeals affirmed the denial, saying that the "power to preserve order on the reservation. . .is a *sine qua non* of the sovereignty that the Suquamish originally possessed" and no treaty or congressional statute had removed such powers.[142] The U.S. Supreme Court agreed to hear the case.

The *Oliphant* litigation had been widely recognized to have broad implications beyond the interests of the individual petitioners and itself became an arena of conflict between Indian and non-Indian interests. Indeed, the attorneys general for Washington and South Dakota appeared before the Court as *amicus curiae,* arguing that Indian tribes lacked jurisdiction to try and punish non-Indians. They were joined in their briefs by the attorneys general of Montana, Nebraska, New Mexico, North Dakota, Oregon, and Wyoming, all States with significant portions of Indian country. The Solicitor General of the United States, acting pursuant to the Federal trust responsibility for Indian tribes, also entered as *amicus curiae,* arguing the position of the United States that Indian tribes did, in fact, possess jurisdiction to try and punish non-Indians. Several national Indian organizations filed *amicus* briefs expressing the interest of all tribes in the issue of tribal criminal jurisdiction over non-Indians.

The U.S. Supreme Court in a 6 to 2 opinion written by Justice William H. Rehnquist reversed the court of appeals and held that Indian tribal courts do not have inherent criminal jurisdiction to try and punish non-Indians.[143] The Court found that both Congress and the executive branch had operated historically on the assumption that such jurisdiction did not exist, at least in part because tribes

[140] Suarez Testimony, ibid., pp. 134-35.
[141] Oliphant v. Schlie, 544 F. 2d 1007, 1113 (9th Cir. 1976), *reversed sub nom.* Oliphant v. Suquamish, 435 U.S. 191 (1978).
[142] *Id.* at 1009.
[143] *Id.*

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did not have justice systems similar to or recognizable by the United States. This assumption was given significant weight by the Court in interpreting the purpose and effect of jurisdictional provisions in the early treaties, the Point Elliott Treaty with the Suquamish, and congressional jurisdiction legislation. Utilizing its recently modified rule of Indian treaty and statutory construction[144]—that "treaty and statutory provisions which are not clear on their face may 'be clear from the surrounding circumstances and legislative history',"[145] the Court determined that collectively the treaties and statutes imply the absence of tribal criminal jurisdiction over non-Indians.

The opinion is a departure from doctrines of Indian law enunciated in other decisions in this century by the United States Supreme Court.[146] Most important is the principle of Indian treaty construction in *United States v. Winans* that "a treaty was not a grant of rights to the Indians, but a grant of rights from them. . .a reservation of those not granted."[147] The Treaty of Point Elliott, between the United States and the Suquamish Tribe, is silent on the matter of criminal jurisdiction over non-Indians and thus, under *Winans,* would presumably be a reservation by the tribe of such jurisdiction. A commentator has noted:

> [B]y refusing to acknowledge the vitality of the *Winans* doctrine. . .Mr. Justice Rehnquist appears to prefer nineteenth century case law and vague readings of congressional intent, to the concept of tribal sovereignty that has been developed by the Court in this century.[148]

The Court acknowledged the development of Indian tribal courts, the procedural protections afforded to all persons subject to Indian tribal courts by the Indian Civil Rights Act of 1968, and the prevalence of non-Indian crime on Indian reservations that had led tribes to assert criminal jurisdiction, but held that these were all "considerations for Congress to weigh in deciding whether Indian tribes should finally be authorized to try non-Indians."[149] They "have little relevance," the Court said, "to the principles which lead us to conclude that Indian tribes do not have inherent jurisdiction to try and to punish non-Indians."[150] The holding and opinion were addressed solely to the matter of tribal jurisdiction to try and punish non-Indians for criminal offenses.

The Aftermath of *Oliphant*

The *Oliphant* case arose on a small reservation with a relatively large number of non-Indian residents compared to the tribal population. Despite the great diversities among Indian reservations and their populations, however, the U.S. Supreme Court's holding that Indian tribes lack jurisdiction to try and punish non-Indians committing offenses on their reservations falls with indiscriminate effect on all reservations. Substantial law enforcement problems have arisen in the wake of *Oliphant,* particularly in those reservations containing vast geographical areas crossed by major highways where there is significant non-Indian traffic, where Indian residential population and land ownership is intermixed with tribal land and population, or where there are considerable numbers of non-Indians temporarily present because of economic development or tourism.

The Supreme Court's holding in *Oliphant* precluded, at least without the consent of the accused, the prosecution of non-Indian offenders in tribal courts. The Court gave no guidance about what procedures are lawful for the handling of non-Indians accused of committing offenses on Indian reservations. Some of the jurisdictional questions that have resulted, with practical implications for day-to-day law enforcement, are whether tribal police may lawfully arrest and detain non-Indian offenders on the reservation and hold them for submission to local authorities, how to determine whether an accused offender is an Indian or a non-Indian, and whether and under what circumstances the State or the Federal Government has jurisdiction over offenses committed by non-Indians on Indian reservations.

As a result of the confusion about these jurisdictional issues, there has been great divergence of opinion and practice among various State, Federal, and tribal officials. Illustrative of the difficulties and inconsistencies in resolving these post- *Oliphant*

[144] DeCoteau v. District County Court, 420 U.S. 425 (1975).
[145] 435 U.S. at 208, n. 17.
[146] A critical analysis of the majority opinion in *Oliphant* is found in Comment, "Oliphant v. Suquamish Indian Tribe: A Jurisdictional Quagmire," *South Dakota Law Review,* vol. 24 (1979), p. 217 (hereafter cited as *Jurisdictional Quagmire).*

[147] 198 U.S. 371, 381 (1905). The Supreme Court utilized the *Winans* doctrine recently in United States v. Wheeler, 435 U.S. 313 (1978).
[148] *Jurisdictional Quagmire,* p. 231.
[149] 435 U.S. at 1022.
[150] *Id.* at 1022-23.

issues are the experiences of Federal, tribal, and State officials in South Dakota.

One unresolved issue is the appropriate procedure for determining whether an accused offender is an Indian or a non-Indian and therefore whether the tribal court has jurisdiction. A South Dakota State's attorney outlined the practical and legal difficulties in determining the status of an accused offender:

> [T]he problem is also inseparable with the problem of what actually constitutes an Indian person. We have again, as I understand it, a law case which in effect says that there is a two-pronged test: first, is there a recognizable amount of Indian blood and, second, is he acknowledged as an Indian in the community in which he lives?
>
> Now this is great if you have several months and a lot of time and a lot of witnesses and the usual appellate procedures available to you. But it doesn't really give any guidance to the police who are charged with enforcing this, and, I don't know, it's part of the whole overriding problem here. How do you determine what happens?[151]

Tribal chairmen of the Oglala Sioux and the Cheyenne River Sioux expressed the view that the tribal court, rather than a police officer, should determine the status of an accused offender and therefore its jurisdiction:

> Not all white people are bad, but you know, we have Indians that look like white people too, blond hair, blue eyes, so it would be our opinion, since the *Oliphant* thing, is [for the police] to make the arrest and bring them in to a tribal hearing to determine whether they are Indian or non-Indian.[152]
>
> [Y]ou cannot ask a policeman out there when someone is breaking the law to stop and determine whether or not he is an Indian or a non-Indian. The policeman has no business making an assumption of whether or not he has jurisdiction over a person if he is breaking the law. That is the court's prerogative, and since the *Wheeler* decision that says that the tribal courts are not arms of the Federal courts, I believe that the tribal court has. . .to determine its own jurisdiction over any case that comes before it.[153]

Another issue left unaddressed by *Oliphant* is the authority of tribal police to arrest and detain a non-Indian offender for submission to local or Federal authorities, in the absence of a formal cross-deputization agreement. As an example of the practical difficulties caused by the uncertainty, officials in South Dakota hold widely differing opinions that result in great divergence throughout the State in how arrests of non-Indians are handled. David Vrooman, United States attorney for South Dakota, stated his own view that tribal officers do, in fact, possess such authority, although no guidance at that time (some 4 months after the decision in *Oliphant)* had come from the Department of Justice:

> I might say I don't think the Department has made an opinion yet as to whether the tribal officers have the right to arrest and turn over [non-Indians] to the States. My personal opinion is that based on the Treaty of 1889, that based on my understanding of case law which has developed for 100 years, and also based on the dissent in *Oliphant,* which I thought very well made the point, I think they do have the right to arrest non-Indians.[154]

Philip Hogen, State's attorney for Jackson and Washabaugh Counties, whose jurisdiction includes a portion of the Pine Ridge Reservation, was of the view that, in light of *Oliphant,* tribal police had no authority to arrest non-Indians based on their status as law enforcement officers but could make citizen's arrests under South Dakota law for offenses committed in their presence, with no greater or lesser right than other South Dakota citizens.[155]

On the other hand, Tom Tobin, State's attorney for Tripp County, South Dakota, whose jurisdiction includes portions of the Rosebud Reservation for purposes of State government, said he thought it was doubtful that tribal police officers had the authority to make citizen's arrests of non-Indian offenders and that he was not accepting complaints based on such arrests for prosecution in State court.[156]

Also left unanswered by *Oliphant* is whether so-called "victimless crimes," such as speeding, possession of drugs, or driving while intoxicated, committed by non-Indians on Indian reservations fall within the exclusive jurisdiction of the State or Federal courts or whether jurisdiction is concurrent.

[151] Leonard Anders, testimony, *South Dakota Hearing,* p. 75.
[152] Elijah Whitwind Horse, testimony, ibid., p. 86.
[153] Wayne Ducheneaux, testimony, ibid., p. 238.
[154] Vrooman Testimony, ibid., p. 189
[155] Philp Hogen, testimony, ibid., p. 85.
[156] Tom Tobin, testimony, ibid., p. 168-69.

Leonard Andera, State's attorney for Brule County, South Dakota, summarized the difficulties the confusion presents for law enforcement in Indian country and his own view that the State does not have jurisdiction over minor offenses committed by non-Indians on Indian reservations:

> The difficulty that arises as a practical matter is that if the tribal court does not have "criminal" jurisdiction over non-Indians within the boundaries, then who does? And I can go along with the concept that the Federal Government may have jurisdiction for Federal offenses within the reservation boundaries, but the thing that the tribes will deal with from day to day are not Federal crimes. They are not major crimes; they are not the assimilated crimes, but they are instead traffic violations, intoxication violations, disturbing the peace, criminal destruction of private property, simple assaults—these are the types of things that they deal with. And in most instances, all the instances that I am aware of, these would be violations of State law. Now, we have the question then as to whether the State has jurisdiction to do anything within the exterior boundaries of an Indian reservation. If these offenses take place off a State highway, for example, if they take place on the Indian trust land does the State have jurisdiction to say you have violated a section of the State code? My own personal feeling is that they do not. . . .[157]

In contrast, the State's attorney for Jackson County stated his view that the State of South Dakota has exclusive jurisdiction over offenses committed by non-Indians anywhere in the State, including Indian reservations:

> Within Washabaugh County [the Pine Ridge Reservation] I do not consider that the State of South Dakota has jurisdiction over anyone that is an Indian. I consider that, pursuant to the *Oliphant* decision and the law that went before that, the State of South Dakota has jurisdiction over everyone not an Indian. I think the *Oliphant* decision said we solely would have that jurisdiction.[158]

These uncertainties have exacerbated tensions between Indians and non-Indians. A non-Indian rancher residing within the Pine Ridge Reservation, for example, expressed apprehension about the extent of authority of the tribal police to arrest non-Indian traffic offenders on the reservation:

> I think that, yes, there has got to be law enforcement. . . .I think there is a lot of misunderstanding among the people just exactly to what extent the tribe does have jurisdiction over people or where. . . .
>
> [I]n view of the *Oliphant* decision, in view of the lack of communication of whether or not they have a working agreement with the county, I feel that these individuals [the tribal police] do not have the authority to stop me.[159]

Conversely, Indian residents of reservations can legitimately ask whether non-Indians are, in effect, above the law because of the uncertainty about tribal arrest. The chairman of the Colville Tribe in Washington described the tensions there following *Oliphant:*

> [A]ll hell has broken loose back on the reservation between the tribe and county and the State court since *Oliphant* has been made public. . . .
>
> There had been cross-deputization between the State, county, city municipalities, and the tribal officers.
>
> That agreement that was signed by the sheriff and our chief of police is in effect; and yet one of our officers has just been arrested for. . .unlawful imprisonment. He arrested a non-Indian for reckless driving, endangering life and property. . . .
>
> It looks like the county got this individual to sign a complaint against our officer. . . .We are going to make it a tribal fight. . . .But I want to make clear that the individual citizens on the reservation are as concerned about the situation out there as we are. Our officers are the only ones that have been able to provide any sort of protection out on the reservation.
>
> Now, since *Oliphant,* it is wide open.[160]

Negotiations between tribal governments and local governments about the handling of non-Indian offenders have been hampered by uncertainty about the legal ground rules, particularly the authority of tribal police to arrest and detain non-Indian offenders and the allocation of jurisdiction between the

[157] Andera Testimony, ibid., p. 66.
[158] Hogen Testimony, ibid., p. 84.
[159] Marion Schultz, testimony, ibid., p. 128–29.
[160] Mel Tonashet, testimony, *Hearings on S.2502 Before the Senate Select Committee on Indian Affairs,* 95th Cong., 2nd sess., Mar. 9–10, 1978, pp. 230–31.

State and Federal Government for prosecution of "victimless" offenses.

There are currently nine reservation areas located in whole or in part in South Dakota, all occupied by different bands of the Great Sioux Nation. The handling of non-Indian offenders on these reservations indicates that the Federal Government has not played an assertive or effective role, either prior to or subsequent to the *Oliphant* decision. The effect is that reservation public safety has become subject to the willingness of local governments to enter into cooperative arrangements with the tribes for the handling of non-Indian offenders.

Pine Ridge

The Pine Ridge Reservation of the Oglala Sioux, the largest reservation in South Dakota, is located in the southwestern portion of the State. A population of approximately 11,000 people live on a land base of nearly 3 million acres. Following the 1973 occupation of the village of Wounded Knee and its aftermath of tribal factionalism and the significant presence of Federal law enforcement agencies, the public has perceived the Pine Ridge Reservation as an area of violence and lawlessness.

Despite the public view, however, personal working relationships have developed between some tribal officials and county law enforcement officials that have afforded a workable interim arrangement for the handling of non-Indian offenders.

Law enforcement for matters under State jurisdiction in the Washabaugh County portion of the reservation is the responsibility of the sheriff of Jackson County. A close working relationship exists between the Jackson County sheriff and the tribal police lieutenant whose reservation territory lies adjacent to Jackson County. If the tribal police arrest a non-Indian offender on the reservation, they will detain the offender until the sheriff can arrive and take the person into custody for prosecution. Sheriff Arnold B. Madsen of Jackson County and Lieutenant Ellsworth Brown of the Oglala Sioux Tribal Police described their arrangement for the handling of non-Indian offenders:

> COUNSEL. Lieutenant Brown, could you tell us how it's handled if you or one of your officers observe a non-Indian committing some sort of offense within Washabaugh County on the Pine Ridge Reservation?
>
> MR. BROWN. Well, the one thing that happened was that about 8 months ago one of my officers went and stopped a vehicle for a DWI [driving while intoxicated] and when we turned it over to Sheriff Madsen—well, the State's attorney went and had my officer go ahead and make citizen's arrest and then went to court up there in Kadoka and the person got convicted.
>
> COUNSEL. Did your officer testify in the State court?
>
> MR. BROWN. Well, yes, that is what I and Sheriff Madsen was talking about. That is the way we worked it out. . . .
>
> COUNSEL. What happens if, for example, you would stop an intoxicated driver who turns out to be a non-Indian? How do you handle that in terms of detaining the person?
>
> MR. BROWN. Well, I would call Sheriff Madsen over and have him take the matter. Until he makes the arrest, I will be the one that signs the complaint. . .I will hold him right where we're at. We have a substation down there where we keep them. And it's just a matter of minutes before Sheriff Madsen can get there.
>
> COUNSEL. Would you like to comment on what Lieutenant Brown said as far as handling of non-Indian offenders, Sheriff Madsen?
>
> MR. MADSEN. Yes. In our area, that is the way it works. And like I said, it's working real well between the tribal officers and myself.[161]

However, no formal cross-deputization exists between the tribe and the county. According to the State's attorney for Jackson and Washabaugh Counties, the tribal police in arresting a non-Indian are merely making a citizen's arrest, which would not allow them the immunities available to law enforcement officers if sued for misconduct.[162] Nevertheless, the State's attorney accepts for prosecution in the State court complaints from tribal police officers regarding non-Indian offenders, and in his view the informal system works smoothly.[163]

Similarly, in Bennett County, the diminished portion of the Pine Ridge Indian Reservation where checkerboard jurisdiction exists, the tribal police will transport a non-Indian offender observed committing an offense on trust land to the county sheriff's office for eventual prosecution in State

[161] *South Dakota Hearing,* p. 114.
[162] Hogen Testimony, ibid., p. 86. (Ordinarily a law enforcement officer is immune from civil liability if his actions were reasonable and in good faith.)
[163] Ibid.

court although, again, no formal cross-deputization agreement exists.[164] A tribal officer described the arrangement:

> Well, up until now we have arrested the person and produced them at the sheriff's office at which time we sign a complaint and incarcerate them if it was a jailable offense. . . .
>
> We take them to the county court or State court or whatever or the magistrate, see the magistrate for that matter and dispose of it that way.[165]

Asked if the State's attorney accepted the arrest as a citizen's arrest and took the offender to court, the tribal officer replied, "Yes, he does."

The cooperative working arrangements between county and tribal law enforcement officials in regard to the Pine Ridge Reservation demonstrate that, despite the jurisdictional complexities, a workable arrangement for the handling of non-Indian offenders is possible if all parties approach the matter in good will and good faith. The personal and noninstitutional nature of the arrangements, however, renders them vulnerable to changes of circumstances and changes of personnel in the official positions of the counties and the tribe.

Rosebud

In the early 1970s, the Rosebud Sioux Tribe entered into litigation against the State of South Dakota regarding the boundaries of its reservation. This culminated in a ruling by the U.S. Supreme Court in 1977 that the various allotment acts had diminished the exterior boundaries of the reservation to one of the four counties that constituted the original reservation created by treaty in 1889.[166] The remaining portion of the reservation, Todd County, is attached to adjacent Tripp County for purposes of county and State administration.

Since the *Oliphant* decision, the Rosebud Sioux, the Bureau of Indian Affairs, and the county government have not worked out a cooperative arrangement for handling non-Indian offenders, and no cross-deputization agreement exists.[167] Unlike Jackson and Bennett Counties, the State's attorney for Tripp County has declined to accept for prosecution complaints issued by tribal police to non-Indian traffic offenders, despite the fact that such a system existed in the 1950s before the tribe and the State became adversaries in the jurisdictional litigation.[168]

The gap in law enforcement has apparently led some non-Indians to believe that their conduct on Indian reservations is beyond the reach of the law. George Keller, Superintendent of the Rosebud Reservation Agency, Bureau of Indian Affairs, described an incident where a non-Indian traffic offender had flouted tribal police and the county authorities refused to take any action:

> I would like to point to an instant previous, in fact 2 days ago, where a non-Indian passed a tribal police unit equipped with red lights. The police unit had a radar system in it. The car that passed was exceeding the speed, I don't know, it was well—60, 65 miles an hour. She was cited. The ticket was taken to Winner. The tribal police officer was disallowed even to sign a complaint.[169]

Mr. Keller said that, in his view, the failure of the county and the tribe to reach an agreement for the handling of non-Indian offenders indicated that a system of Federal prosecution was necessary to protect the public safety on the reservation:

> I don't like to make an issue of these things, but I am in fact continually faced with them every day and night, and I am pushing to try to get some agreement set up. We are willing to meet in every respect with the State and try to get something worked out and with the tribe too. We are caught somewhat in the middle. The tribe did pass a resolution indicating they would like to have a Federal magistrate stationed at Rosebud, which in effect would answer a lot of these questions.[170]

Sisseton

After protracted litigation initiated by a reactivated tribal government in the early 1970s, the U.S. Supreme Court held that the Lake Traverse Reservation of the Sisseton-Wahpeton Sioux Tribe in northeastern South Dakota had in fact been terminated by the allotment process.[171] The tribe itself was not terminated and retained its Federal recognition, but the result of the decision was that the Federal Government and the tribe retained jurisdiction only over the remaining trust land within the

[164] Antelope Testimony, ibid., pp. 114–15.
[165] Ibid., p. 114.
[166] Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977).
[167] *South Dakota Hearing*, pp. 157–58.
[168] Ibid., p. 158.
[169] George Keller, testimony, ibid., p. 160.
[170] Ibid., p. 169.
[171] DeCoteau v. District County Court, 420 U.S. 425 (1975).

former reservation area, with non-Indian-owned land under the jurisdiction of the State. Trust land and land under State jurisdiction are intermingled in a checkerboard pattern of jurisdiction.

The undiminished trust land portions of the Sisseton-Wahpeton Sioux Tribe lie within five counties in northeastern South Dakota. In 1976 and 1977 Eugene Trottier, Assistant Area Special Officer, Bureau of Indian Affairs, in recognition of the particular law enforcement problems occasioned by checkerboard jurisdiction, convened a series of informal meetings between tribal and county officials in an attempt to facilitate cross-deputization agreements. Mr. Trottier explained why cross-deputization is necessary for effective law enforcement in an area of checkerboard jurisdiction:

> There were many times that in an accident situation it took us a half hour or more, either with the sheriff's department or the highway patrol, trying to determine whose jurisdiction actually it was on. Without cross-deputization, I felt law enforcement officers just couldn't do their jobs. . . .
>
> I am convinced that the only way to have effective law enforcement is for the officer who observes the violation to be able to take the action and to get the successful prosecution.[172]

The tribe entered into a formal cross-deputization agreement with Marshall County, one of the five counties. Tribal police officers are cross-deputized as Marshall County deputies and Marshall County deputies are deputized as tribal officers, with the result that all law enforcement officers can function in both State and tribal jurisdictions in the county. According to both tribal and Marshall County law enforcement authorities, the cross-deputization arrangement has functioned well. Sheriff Ralph Olauson of Marshall County reported:

> Since this new cross-deputization went in effect, we haven't had any real problems. Most of the arrests that tribal police have made was speeding violations. There has been a few drunken driver violations. There was one question that went to court where the white man they had arrested for drunk driving, he didn't feel they had jurisdiction, and as the State's attorney explained to him, we had cross-deputization and he accepted that.[173]

In contrast, there exists a longstanding, pervasive lack of trust and cooperation between the tribal government and county government in Roberts County, the site of the town of Sisseton and the tribal headquarters, that has adversely affected the quality of law enforcement and the relations between Indians and non-Indians, despite efforts at mediation and conciliation by Federal officials.

Prior to the late 1960s, the tribal government of the Sisseton-Wahpeton Sioux was relatively unorganized and inactive. In the early 1970s, an activist tribal government came into existence and, utilizing grants and contracts made available under the Federal policy of Indian self-determination, undertook programs that generated rivalry and clashes with the county government and the non-Indian business community.[174] During the period of litigation in *DeCoteau v. District Court*, the uncertainties as to whether the tribe or the county government had jurisdiction exacerbated tensions between Indians and non-Indians and created chaos in law enforcement. Tribal Chairman Jerry Flute described the situation in Sisseton while the *DeCoteau* case made its way through the courts:

> During this period of time, the tribe, because of jurisdictional problems, and these were caused primarily by a number of lawsuits that were filed in the State and Federal courts and ultimately resulted in the U.S. Supreme Court decision that ruled the reservation boundaries had been terminated and the reservation was diminished to those parcels of trust land.
>
> [P]rior to the Supreme Court decision when the lower courts were ruling on the issue, we went through a period of about 2 months where there was absolutely no law and order for the Indian people on the reservation. The State courts had ruled and the appeals courts had ruled the State did not have jurisdiction over any Indian people anyplace within the boundaries of the reservation, and this left the tribe and the community in a chaotic situation that the tribe was not prepared financially or manpower-wise to quickly put into effect the judicial system or court system.
>
> The court rulings forced us to do this. It was the long-range plan of the tribe to eventually do this in a staged process. The lower court rulings forced us into this. This caused many problems within the community. When the case was

[172] Eugene Trottier, testimony, *South Dakota Hearing*, pp. 19 and 28.
[173] Ralph Olauson, testimony, ibid., p. 28.
[174] Jerry Flute, testimony, ibid., pp. 35–36.

finally resolved by the U.S. Supreme Court and the decision was that the boundaries had been terminated and that the tribe had jurisdiction only over its own members on trust land again, we went through a chaotic period of time when no one really knew who had jurisdiction, where law enforcement started, where somebody else took over, whatever the situation was.[175]

The deteriorating relations between the tribal government and the county government and non-Indian business community resulted in the tribe's moving its headquarters from Sisseton to trust land outside the town, which further increased the isolation between the two communities.[176] Although county officials attended some of the informal meetings arranged by Mr. Trottier of the Bureau of Indian Affairs in an attempt to work out a cross-deputization agreement, the Roberts County commissioners ultimately voted not to enter into a cross-deputization agreement with the tribe.[177] During this period, the tribe began to assert criminal jurisdiction over offenses committed by non-Indians on trust land after the county terminated the previous arrangement of accepting complaints from tribal officers in the county courts.[178]

Following the *Oliphant* decision, the climate of ill feeling between the tribal government and county government resulted in the county's refusal to enter into any sort of cooperative arrangement for the handling of non-Indian offenders. The county sheriff holds the view that tribal police lack authority after *Oliphant* to arrest non-Indians who commit minor offenses on trust land, and the State's attorney has declined to accept such complaints from tribal police for prosecution.[179] Thomas DeCoteau, chief of police of the Sisseton-Wahpeton Sioux Tribe, said:

> We ain't doing nothing now. We catch non-Indians violating laws on the trust land, usually for traffic. We usually just stop them and let them go, because we attempted to file charges and the State court—State's attorney wouldn't accept it.[180]

Efforts at mediation and conciliation by Federal officers at the local and regional level have proved unsuccessful in bringing about an agreement for the handling of non-Indian offenders between the Sisseton-Wahpeton Sioux Tribe and Roberts County officials. The Community Relations Service of the Department of Justice, through officials from its Denver regional office, attempted over an 18-month period to bring about a cross-deputization agreement and to form a human relations commission to address the tensions between the Indian and non-Indian communities in Sisseton. Leo Cardenas, Regional Director of the Community Relations Service, expressed optimism that keeping lines of communication open might eventually bring about a resolution of the differences. He acknowledged, however, that the efforts of the Community Relations Service had yet to produce results: "We have not. . .seen positive results, you know, that we could take to the bank today."[181]

Officials from the Bureau of Indian Affairs have also been unsuccessful in their attempts to mediate between tribal and county officials an arrangement for the prosecution of non-Indian offenders on trust land. Walter V. Plumage, Area Special Officer in the Aberdeen Area Office of the Bureau of Indian Affairs, described his responsibility as a Federal official to help develop a working agreement between the tribe and the county for the handling of non-Indian offenders:

> [W]e at the area level. . .generally do not get involved unless it is requested. We had the local Sisseton agency try to work out an agreement with the County of Roberts as far as prosecution of non-Indians, because they were not being prosecuted. So, therefore, we stepped in, in an attempt to set up a meeting with officials at the county. . . .Nothing was resolved from the meetings.
>
> Like I say, we as a Bureau feel like it is our responsibility that when the life of Indian people are involved, there is a possibility they are going to be hurt or somebody is going to be killed, then it is our responsibility to move in and see if we can get things going in the right direction.[182]

He said that his attempts at mediation had no further utility, however, because of the apparent unwillingness of State and local officials to work out an agreement with the tribe:

[175] Ibid.
[176] Ibid.
[177] Trottier Testimony and Neil Long, testimony, ibid., pp. 19-21.
[178] Thomas DeCoteau, testimony, ibid., pp. 22-23.
[179] Ibid., p. 23.
[180] Ibid.
[181] Leo Cardenas, testimony, ibid., p. 234.
[182] Walter Plumage, testimony, ibid., pp. 177-78.

> I feel. . .that we as a Bureau, also as [the] tribe, have, attempted to work out an agreement. We are not getting the response of the State's attorney, local sheriffs, [or] the State of South Dakota attorney general's office. They don't want to work out an agreement. If they do, they are not coming forward and showing they want to do this.[183]

Mr. Plumage said it was his conviction that the Department of Justice must act to protect the safety of Indian communities such as Sisseton where efforts have failed to work out a cooperative arrangement with local officials for the handling of non-Indian offenders:

> I felt it was our responsibility first. I feel now we have done all we can do. . . .I feel now that, if we can't do anything, then the U.S. Attorney's office should attempt to enforce the assimilated crimes law or attempt to set up a Federal magistrate. . . .
>
> I would sooner see us work it out locally. If we can't, I feel it should be done at the Washington level, at the Department of Justice. The Attorney General has the authority to look into these matters.[184]

As the situations at the Rosebud and Sisseton Reservations show, the efforts of individual Federal officials to act as mediators in the development of cooperative law enforcement arrangements have been ineffective without the ability to invoke Federal prosecution of non-Indian offenders when State and local governments have failed to do so. In South Dakota the lack of a Federal response has, in effect, subjected public safety on reservations to the willingness of local officials to enter into cooperative arrangements for the handling of non-Indian offenders. That the Federal role, active or passive, is of critical importance is shown by other examples of the handling of non-Indian offenders after the *Oliphant* decision.

Cooperative arrangements that exist between a tribe and local government are always vulnerable to change, as demonstrated by the recent litigation brought by the Mescalero Apache Tribe against the United States.[185]

The Mescalero Apache Tribe occupies a reservation located entirely within the boundaries of Otero County in southern New Mexico, a mountainous area crossed by two State highways. Substantial non-Indian traffic passes on these highways through the reservation, and the tribe operates a ski resort that attracts non-Indian tourists. In the past, Bureau of Indian Affairs police were cross-deputized as deputy sheriffs, and they enforced State traffic laws when non-Indian violations occurred on the reservation, by citing them before State magistrates. Because of the satisfactory nature of this arrangement, the Mescalero Apache Tribe never attempted to exercise criminal jurisdiction over non-Indians prior to the *Oliphant* decision.[186]

Following *Oliphant,* however, the attorney general for New Mexico issued an opinion withdrawing the authority of BIA and tribal officers to enforce State traffic laws. The tribe filed suit in the United States district court requesting an injunction that would require Federal law enforcement agencies to enforce traffic laws against non-Indians pursuant to the Assimilative Crimes Act. Over the objections of the Department of Justice, the court issued an injunction mandating Federal enforcement for a 10-day period surrounding the Christmas holidays. According to the BIA's Special Officer for the Mescalero Agency, the injunction served its purpose:

> The enforcement of the traffic regulations, utilizing the Federal authority, has served its purpose of a deterrent factor and for both the Christmas and New Year's holiday weekends. As a result of strict enforcement of the traffic regulations, there were no reports of any serious vehicle traffic mishaps.[187]

The New Mexico State Legislature has subsequently taken action to restore the cross-deputizations for Bureau of Indian Affairs police assigned to the Mescalero Agency, so that non-Indian offenders can again be handled within the State system.[188] The point, however, was the critical role played by Federal law enforcement in the period during which no cooperative arrangements existed.

A contrast to the essentially passive role displayed by the Federal Government in South Dakota following the *Oliphant* decision is found in Arizona. The United States attorney there undertook to use his good offices to secure cooperative arrangements

[183] Ibid., pp. 178-79.
[184] Ibid., p. 178.
[185] Mescalero Apache Tribe v. Bell, No. 78-926C (D. N.M. filed Dec. 14, 1978).
[186] *Id.*, defendant's brief.
[187] *Id.*, motion for summary judgment.
[188] H.132, N.M. 34th Legis., 1st sess. (1979).

among tribal and local governments for the handling of non-Indian offenders on the 17 Arizona Indian reservations. He found that such arrangements "worked well in those Indian nations who have long-standing good working relationships with local and state governmental officials outside their borders."[189]

Where it was not possible to secure cooperative arrangements with local officials, however, the United States attorney made other arrangements: first, to cross-deputize tribal police officers, tribal fish and game officers, and BIA law enforcement officers as Federal officers, and, second, to authorize "issuance of citations into U.S. Magistrate's Court for certain misdemeanor violations by non-Indians committed in Indian country."[190] The Federal posture in Arizona thus provided what was lacking in South Dakota—Federal prosecution of non-Indian offenders in the event State and local authorities fail to enter into a cooperative arrangement with tribal authorities.

Implications for Future Jurisdictional Issues

The passive response or "non-response" of the Federal Government to the problem of handling non-Indian offenders after the *Oliphant* decision leaves Indian tribes hostage to potentially or actually hostile local governments. Indeed, the Federal response to *Oliphant* calls into question the commitment of the executive branch, particularly the Department of Justice, to the Federal trust responsibility for Indian tribes and the stated Federal policy of Indian self-determination.

The implications of the Supreme Court's decision in *Oliphant* on March 9, 1978, for the the public safcty of Indian communities and the need for a Federal response was immediately apparent to Indian tribes and leaders. Philip S. Deloria, former director of the American Indian Law Center, on April 24, 1978, wrote to the Deputy Attorney General, Department of Justice, saying, "[W]e must recognize that the Court has presented us all with a situation where the tribes cannot protect themselves and where the reality of the case is that other jurisdictions have not filled the gap."[191] He called upon the Department of Justice to make a forthright public commitment that the peace and safety of Indian reservations would be ensured by whatever means necessary:

> [T]here must be a clear indication from the Department of Justice. . .that the Department considers the protection of the peace and safety of Indian communities to be a matter of the highest priority. Both Indians and non-Indians know when the Justice Department means business and when it is taking a pro forma position, and I'm sure that you are aware of the perception of Indians that in the past the Department has not taken a clear stand in favor of Indians. Surely such a stand is called for here where the federal responsibility is unambiguous. This step alone, if taken effectively, would have a powerful deterrent effect and would likely result in better protection for Indian communities [than] we have reason to expect at the present time.[192]

The "clear indication" sought from the Department of Justice has not been forthcoming, and Mr. Deloria's prediction has unfortunately been accurate, as demonstrated by Sisseton and Rosebud, that "those places where relations between Indians and the surrounding communities are the worst will be the very places where law enforcement will be lacking."[193]

Of course, the legal and political attacks on tribal jurisdiction will not end with the ruling by the Supreme Court on tribal criminal jurisdiction over non-Indians. The Court in *Oliphant* was silent on the issues of whether tribes may exercise civil regulatory jurisdiction over the conduct or property of non-Indians on Indian reservations.

The issues of civil regulatory and taxing authority of Indian tribes is critical to the continued viability of the Federal policy of Indian self-determination. The ability of an Indian tribe to exercise control over its territorial and economic base through land use planning and taxation is essential to its political, economic, and cultural autonomy. A commentator has stated the significance of this issue:

> With such jurisdiction [to exercise land use planning and zoning control], a tribe may regulate or prohibit the development of reservation lands, and thus exercise a measure of control over the future of its reservation. Without zoning jurisdiction, most tribes would be forced to submit to the judgments of non-Indians about the uses of reservation lands.[194]

No doubt the issue of tribal civil jurisdiction over non-Indians will soon be presented to the Supreme Court. Already, a Federal court in the Western District of Washington has ruled, based on *Oliphant,* that tribes do not have the authority to zone fee land owned by non-Indians within the boundaries of a reservation.[195] On the other hand, a Federal district court in Arizona has ruled, *Oliphant* notwithstanding, that the Navajo Tribe has the authority to tax non-Indian interest in leased land on the reservation.[196]

A number of courts, as discussed previously, have held that non-Indians and their property within reservation boundaries are subject to tribal civil regulatory and taxing ordinances. Regulation is meaningless, however, without the authority of enforcement against those who choose to defy the regulating jurisdiction. *Oliphant* has brought into question the ability of tribes to enforce civil regulations against non-Indians within reservation boundaries.

It appears clear that the Federal Government will be called upon to ensure that the Federal policy of Indian self-determination does not become meaningless rhetoric in the face of opposition by non-Indians and State governments. Already, Federal criminal statutes exist that provide Federal prosecution for violations of certain tribal civil regulatory laws.[197] In the event that the Supreme Court denies to tribes enforcement authority for tribal taxing and land use of regulations against non-Indians, Congress will be called upon to provide the jurisdictional mechanism for Indian self-determination.

Congress has the plenary authority to authorize tribal court jurisdiction over all persons within reservation boundaries, including non-Indians, for any and all violations of tribal criminal and civil regulations. An alternative would be for Congress to grant to Indian tribes the authority to prosecute civil violations in Federal court.

Or the Federal Government could continue its stated policy of Indian self-determination, but also continue its passive role displayed in the wake of *Oliphant* and in effect leave tribal self-determination vulnerable to potentially or actually hostile State and local governments and their non-Indian citizens.

The conflict over jurisdiction is political and economic. As a commentator summarized:

> The ultimate lesson, however, is that jurisdictional doctrine cannot be understood apart from the historical, political, and institutional framework within which it is applied. Jurisdictional rules may be framed in terms of sovereignty, but they evolve as prevailing assumptions about the functions of power change and as the consequences of the exercise of that power change as well.[198]

Findings

Federal Law Enforcement

1. Through the historical development of treaties, statutes, and case law derogating tribal functions, the Federal Government has assumed primary responsibility for law enforcement in Indian country.

2. The United States attorneys of the various Federal districts containing Indian land have primary responsibility for the prosecution of serious criminal offenses occurring in Indian country.

3. Through custom and historical circumstances, the Federal Bureau of Investigation has assumed primary responsibility for the investigation of serious felony offenses occurring in Indian country that fall under the Major Crimes Act (18 U.S.C. §1153).

4. Many facets of Federal law enforcement in Indian country have received widespread, repeated, and justified criticism from public and private organizations over the past decade.

5. The statistics kept by the Federal Government regarding law enforcement on Indian reservations do not permit accurate analysis or systematic monitoring of the quality of law enforcement.

6. The FBI's role in investigating criminal offenses in Indian country, for the most part, results in delays and duplication of the efforts of Bureau of Indian Affairs and tribal investigators.

[189] Hawkins Statement, *Washington, D.C., Hearing,* vol. II, pp. 7–8.
[190] Ibid.
[191] Philip S. Deloria, letter to Benjamin Civiletti, Deputy Attorney General, Department of Justice (Commission files).
[192] Ibid.
[193] Ibid. Factors affecting the lack of a response to the law enforcement difficulties occasioned by *Oliphant* include a fragmented decisionmaking process within the Department of Justice in regard to Indian matters, a dispute between the Department of Justice and the Department of the Interior regarding the allocation of jurisdiction between the Federal Government and the States for victimless crimes, and the lack in general of a coherent Federal Indian policy.

[194] Comment, "Jurisdiction to Zone Indian Reservations." *Washington Law Review,* vol. 53 (1978), pp. 677–78.
[195] Trans-Canada Enterprises v. Muckleshoot Indian Tribes, No. C77-882M (W.D. Wash. 1978), 5 Indian Law Rep. Sec. F-153.
[196] Salt River Project Agricultural Improvement and Power Dist. v. Navajo Tribe of Indians, No. 78-352 (D. Ariz. July 11, 1978), 5 Indian Law Rep. F-116.
[197] For example, 18 U.S. C. §1159 (misrepresentation of products as Indian-made); §1161 (tribal liquor laws); §1165 (tribal hunting and fishing regulations) (1976).
[198] Carole Goldberg, "A Dynamic View of Tribal Jurisdiction to Tax Non-Indians," *Law and Contemporary Problems,* vol. 40, no. 1 (1976), p. 189.

7. The current level of FBI resources available for the investigation of criminal offenses in Indian country is insufficient.

8. The FBI provides no specialized training for its agents assigned to investigatory duties in Indian country.

9. Indian perceptions of FBI agents as "outsiders" hampers their investigative efforts in Indian country; FBI agents are perceived widely in the Indian communities as biased against "militant" Indians and Indian organizations.

10. Procedures for investigating allegations of agent misconduct are inadequate in the following ways:

- No regulated, publicly promulgated, complaint-intake procedure exists.
- Complainants are not notified of the disposition of their complaints.
- The monitoring of complaint procedures and compilation of data are inadequate.

11. Federal law enforcement in Indian country is extremely difficult because of the enormous geographical distances and the cultural separation between Indian communities and the nontribal prosecutorial and judicial systems.

12. The disproportionately high rate of Federal declination of prosecutions in Indian country adversely affects public safety in Indian communities.

13. The Federal Government is providing insufficient prosecutorial resources to meet the responsibilities it has assumed in Indian country.

14. There is no coordination or systematic monitoring within the Federal bureaucracy of Federal law enforcement responsibilities in Indian country.

15. The lack of a coordinated Federal approach results in individual rather than institutional decisionmaking, inefficient use of resources, and failure to take advantage of lessons learned by past experiences in the performance of Federal law enforcement functions.

16. The decision of the United States Supreme Court in *Oliphant v. Suquamish Tribe,* which held that Indian tribes lack jurisdiction to try and to punish non-Indian offenders, has caused substantial law enforcement problems on those reservations where significant numbers of non-Indians are present.

17. In some areas, tribes and local governments have been able to work out cooperative arrangements for the handling of non-Indian offenders.

18. The Federal Government has not taken sufficient action to ensure the safety of Indian reservations from non-Indian crime.

19. The Federal Government has not sufficiently asserted the legitimacy of the exercise of governmental powers by Indian tribes.

Recommendations

Law Enforcement

1. The Department of the Interior should conduct a review and provide its findings to the Department of Justice on the status of law enforcement on all Indian reservations, identifying those areas of difficulty in the arrest and prosecution of non-Indian offenders.

2. In light of the *Oliphant* decision, the Department of Justice, through the Attorney General, should publicly state its commitment to the protection of public safety on Indian reservations from non-Indian offenders by whatever means are necessary and effective.

3. The Department of Justice should undertake the following steps to implement its commitment to public safety on Indian reservations, in consultation with affected tribal governments:

- Employ the good offices of Department officials, including the U.S. attorney and the Community Relations Service, to encourage the development of a cooperative working arrangement between tribal and local governments for the arrest and prosecution of non-Indians committing offenses on Indian reservations.
- In the event that arrangements cannot be developed for prosecution of non-Indian offenders in the State system, a directive should be issued by the Department of Justice through the *Manual for United States Attorneys* that non-Indian offenders be prosecuted in U.S. district court or magistrate's court.
- In those situations where there is reason to believe that State or local authorities are discriminatory in failing to prosecute non-Indian offenders committing offenses on Indian reservations, the Civil Rights Division of the Department of Justice should investigate and seek appropriate injunctive relief in the U.S. district court under Title II of the Indian Civil Rights Act.

4. The Department of the Interior, in consultation with the Department of Justice and tribal governments, should undertake a program to upgrade tribal police forces so that all State requirements for cross-deputization can be satisfied.

5. Congress should enact legislation permitting Indian tribes, at their option, to assume criminal jurisdiction over all persons within reservation boundaries, in compliance with the limitations and procedural guarantees specified by the Indian Civil Rights Act.

6. The FBI charter should be amended to provide the following types of checks on agent misconduct:

- Oversight responsibility of the House and Senate Judiciary Committees, assigned in the proposed charter for the FBI (S.1612, 96 Cong., 2nd sess.), should specifically provide both committees with full access to information about FBI internal investigations of allegations of misconduct.
- A civil right of action for recovery of damages for violation of the charter's mandate should be included.

7. The FBI should provide complainants who allege misconduct by FBI agents with information about the disposition of their complaints.

8. The Department of Justice, in consultation with the Department of the Interior, should establish a uniform system for the collection of statistics by reservation on criminal complaints and their disposition.

9. The FBI should be relieved of its primary role for investigating major crimes occurring in Indian country, and this responsibility should be assumed by the Bureau of Indian Affairs and tribal investigators, with the FBI providing back-up support as requested. The FBI should also be utilized on reservations similarly to the ways it is utilized in other governmental jurisdictions, such as in the investigation of generally applicable Federal statutes.

10. The FBI should be directed, and should be provided with adequate resources, to train BIA and tribal investigators in investigative techniques.

11. United States attorneys should be directed to accept referrals for prosecution directly from BIA and tribal investigators.

12. Federal officials assigned responsibilities in Indian country should be given specialized training in Indian law and culture.

13. Additional assistant United States attorneys and Federal judges should be assigned to Federal districts containing Indian country to assure adequate prosecutorial and judicial resources to meet the Federal responsibility.

14. The jurisdiction of tribal courts should be expanded to include offenses committed by Indian and non-Indian defendants with maximum sanctions of imprisonment for 1 year or a $1,000 fine.

15. The Department of Justice and the Department of the Interior should establish an interagency coordinating committee on Federal law enforcement effort in Indian country to monitor statistical patterns of criminal offenses on individual Indian reservations; to determine what Federal law enforcement, prosecutorial, and/or judicial resources or training are necessary or desirable to improve the quality of criminal justice on particular reservations; and to examine local experiences with Federal law enforcement in Indian country to ascertain what innovative practices may be useful on a wider scale.

FBI AUTHORIZATION—FORENSIC SCIENCES LABORATORIES

TUESDAY, MARCH 24, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 9:50 a.m., in room 2322 of the Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, and Sensenbrenner.

Staff present: Catherine LeRoy, chief counsel; Michael Tucevich and Janice Cooper, assistant counsel; and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

Today's hearing is the first of two authorization hearings which will focus on the FBI Forensic Laboratory. The FBI labs have long enjoyed a reputation for the best labs, not only in this country, but throughout the world. It is our wish to assist the Bureau in a joint effort to insure the quality which we have come to expect and rely on. To maintain and where possible, share their expertise with State and local agencies.

Our witnesses this morning are: Mr. Joseph Kochanski. Mr. Kochanski is the Associate Director of the National Institute of Justice, Department of Justice. And Mr. John Sullivan, the Project Director of the LEAA sponsored proficiency testing program. And on my right is Dr. Walter McCrone, who is director of the nationally known McCrone Research Institute in Chicago. Dr. McCrone has lectured widely in the field, and has taught at the FBI Academy at Quantico as well as having instructed FBI personnel at the McCrone Institute.

So we may proceed. Mr. Sullivan, you are recognized. Without objection, all of the statements will be made part of the record in full, and you may proceed on your own time.

[The complete statement follows:]

STATEMENT

OF

JOHN O. SULLIVAN
MANAGER
FORENSIC SCIENCE RESEARCH PROGRAM
NATIONAL INSTITUTE OF JUSTICE

It is a pleasure to appear today, Mr. Chairman, before the House Subcommittee on Civil and Constitutional Rights to discuss the Forensic Sciences Programs of the National Institute of Justice (NIJ). My statement discusses the basic roles and responsibilities of the NIJ in Forensic Sciences. Specifically, I would like to describe the nature and results of the Crime Laboratory Proficiency Testing Program.

By definition, the forensic sciences include those disciplines whose services constitute a direct application to the purpose of the law. At a minimum, the following disciplines are included in the forensic sciences profession: Criminalistics, Forensic Pathology, Forensic Toxicology, Forensic Odontology, Forensic Physical Anthropology, Questioned Document Examination, Forensic Psychiatry, Forensic Jurisprudence, and Evidence Technician. Since it is often more meaningful to describe a profession in terms of its organization, the Institute has chosen to examine the forensic science profession according to its organizational units or team activities. These are: crime laboratories, drug laboratories, medical examiner and coroner offices, forensic toxicology laboratories, and mass disaster identification teams.

The bulk of the casework involving the forensic sciences is handled through crime laboratories and medical examiner/coroner activities. The role of NIJ relative to these activities is to provide assistance to state and local agencies in developing improved methods of operations. Pursuant to the Justice System Improvement Act of 1979, NIJ supports a continuing assessment of the state-of-the-art of the several disciplines comprising the forensic sciences and encourages research and development in advanced methods and techniques of scientific investigation.

In 1974, in consonance with the recommendations of the Criminalistics Section of the American Academy of Forensic Sciences, NIJ instituted a program to examine and assess the performance and quality of services of crime laboratories throughout the United States. Although there had been previous attempts to judge the capabilities of the laboratories, such attempts were sporadic and inconclusive. The specific objectives of the research were to:

--Determine the feasibility of preparation and distribution of different classes of physical evidence;
--Assess the accuracy of criminalistics laboratories in the processing of selected samples of physical evidence;
--Conduct statistical analyses of the tests administered; and
--Prepare an agenda of research to assist the laboratories in achieving still higher levels of proficiency.

Twenty-one samples were prepared and submitted to some 240 laboratories. Response was voluntary and was based on the laboratory's own estimate of their ability to undertake the test. Because we were not concerned at this point with individual laboratory capabilities, responses were aggregated.

The proficiency testing project showed us that the ability of crime laboratories in the United States to accurately handle the types of physical evidence presented varied considerably. The weaknesses in the criminalistics profession to accurately handle selected types of evidence were exposed for the first time. The appendix to my statement reveals the results of the project.

The study documented a wide range of proficiency levels among the nation's crime laboratories and noted that "there are several physical evidence types with which the laboratories are having serious difficulties." It attributed these deficiencies

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to one of the following reasons: 1) Carelessness; 2) Lack of experience: 3) Failure to use adequate or appropriate methodology; 4) Mislabelled, contaminated or non-existent standards against which to compare an unknown substance; and 5) Inadequate training of personnel.

As a result of this study, the National Institute developed and implemented a "National Program to Upgrade Crime Laboratories." The program is described in detail in the Summary of Proceedings from the Workshop on Crime Laboratory Improvement sponsored by the National Institute of Justice. I have brought a copy of that document for the information of the subcommittee. This workshop was held on December 5, 1977, for the purpose of soliciting recommendations and suggestions from leading forensic scientists on a proposed NIJ program. The program included projects to: a) Develop and disseminate new and improved methodology of evidence analysis as well as evidentiary laboratory standards; b) Train laboratory personnel in forensic microscopy, forensic serology (bloodstains), and gunshot residue analysis; c) Improve the technology for the analysis of fibers, hair, dust, bloodstains, and rape evidence; d) Develop a certification board for crime laboratory examiners; and e) Automate routine laboratory analyses. Although many of these programs have been concluded, research is continuing on semen, hair, and fiber analytical developments.

I have a number of copies of the reports referenced above for the subcommittee's examination. I will now be happy to answer any questions on the program which you may have.

APPENDIX TO TESTIMONY OF JOHN O. SULLIVAN*

PERCENTAGES OF LABORATORIES REPORTING RESULTS OF "UNACCEPTABLE PROFICIENCY"

$$\frac{\text{Number "unacceptable" responses}}{\text{Number of laboratories responding with data}} \times 100 = \text{Percent "Unacceptable"}$$

Sample Number	Sample Type	Number of Labs Responding With Data	Number of "Unacceptable" Responses	% of Laboratories Submitting "Unacceptable" Responses
1	Drugs	205	16	7.8%
2	Firearms	124	35	28.2%
3	Blood	158	6	3.8%
4	Glass	129	6	4.8%
5	Paint	121	24	20.5%
6	Drugs	181	3	1.7%
7	Firearms	132	7	5.3%
8	Blood	132	94	71.2%
9	Glass	112	35	31.3%
10	Paint	111	57	51.4%
11	Soil	93	33	35.5%
12	Fibers	120	2	1.7%
13	Physiological Fluids (A&B)	129	(A) 3 (B) 2	(A) 2.3% (B) 1.6%
14	Arson	118	34	28.8%
15	Drugs	143	26	18.2%
16	Paint	103	35	34.0%
17	Metal	68	15	22.1%
18	Hair (A,B,C,D,&E)	90	45 25 49 61 32	(A)50.0% (B)27.8% (C)54.4% (D)67.8% (E)35.6%
19	Wood	65	14	21.5%
20	Q.D. (A&B)	74	4 14	(A) 5.4% (B)18.9%
21	Firearms	88	12	13.6%

* Crime Laboratory Proficiency Testing Research Program, National Institute of Law Enforcement and Criminal Justice, page 251, October, 1978.

TESTIMONY OF JOHN O. SULLIVAN, PROJECT DIRECTOR, FORENSIC SCIENCE PROGRAM, NATIONAL INSTITUTE OF JUSTICE, AND JOSEPH KOCHANSKI, ASSOCIATE DIRECTOR, NATIONAL INSTITUTE OF JUSTICE, DEPARTMENT OF JUSTICE

Mr. SULLIVAN. Mr. Chairman, I'm John Sullivan, Manager, forensic science programs, in the Police Division of the National Institute of Justice. The material which follows represents a summary of the basic roles and responsibilities of the Institute in forensic sciences, and specifically describes the crime laboratory proficiency test in the program.

By definition, the forensic sciences include those disciplines whose services constitute a direct application to the purpose of the law. At a minimum, the following disciplines are included in the forensic sciences profession: criminalistics, forensic pathology, forensic toxicology, forensic odontology, forensic physical anthropology, questioned document examination, forensic psychiatry, forensic jurisprudence, and evidence technician.

Since it is often more meaningful to describe a profession in terms of its organization, the Institute chose to examine the forensic science profession according to its organizational units or team activities. These are: crime laboratories, drug laboratories, medical examiner and coroner offices, forensic toxicology laboratories, and mass disaster identification teams.

The bulk of the casework involving the forensic sciences are the crime laboratories and the medical examiner/coroner activities. Under the Justice System Improvement Act of 1979, the Institute supports a continuing assessment of the state of the art of the several disciplines comprising the forensic sciences and encourages research and development in advanced methods and techniques assigned to the investigation.

I will speak to the specific subject which we were requested to address, the criminalistics study and the result of that study.

In 1974, in consonance with the recommendations of the Criminalistics Section of the American Academy of Forensic Sciences, NIJ instituted a program to examine and assess the performance and quality of services of crime laboratories throughout the United States. Although there had been previous attempts to judge the capability of the laboratories, such attempts were sporadic and inconclusive. The specific objectives of the research were to one, determine the feasibility of preparation and distribution of the different classes of physical evidence. Two, assess the accuracy of criminalistics laboratories in the processing of selected samples of physical evidence. Three, conduct statistical analyses of the tests administered; and four, prepare an agenda of research to assist the laboratories in achieving still higher levels of proficiency.

Twenty-one samples were prepared and submitted to some 240 laboratories. Response was voluntary and was based on the laboratory's own estimate of their ability to undertake the task. Because we were not concerned at this point with individual laboratory capabilities, responses were aggregated.

What then was the value of the proficiency testing project? It showed us that the state of the art of crime laboratories in the United States to accurately handle the types of physical evidence presented varied considerably. Still, for all its shortcomings, the

proficiency testing program exposed, for the first time, the weakness in the criminalistics profession to accurately handle selected types of evidence. And I bring your attention to appendix A.

In brief, the study documented a wide range of proficiency levels among the crime laboratories and noted that there were certain physical evidence types with which the laboratories were having severe, serious difficulties. I might add that those evidence categories included blood stains, glass, paint, soil, wood, animal hairs, and to some degree, firearms. The study attributed these deficiencies to one or more of the following reasons: One, carelessness; two, lack of experience; three, failure to use adequate or appropriate methodology; four, mislabeled, contaminated or nonexistent standards against which to compare an unknown substance; and, finally five, inadequate training of personnel.

As a result of the study, the National Institute developed and implemented a national program to upgrade crime laboratories. The program is described in detail in the summary of proceeding from the workshop on crime laboratory improvement sponsored by the National Institute of Justice. This workshop was held on December 5, 1977, for the purpose of soliciting recommendations and suggestions from leading forensic scientists on the proposed Institute program.

In brief, the program included projects to (a), develop and disseminate new and improved methodology of evidence analysis as well as evidentiary laboratory standards; (b), train laboratory personnel in forensic microscopy, for forensic serology, and gunshot residue analysis; (c), improve the technology for the analysis of fibers, hair, dust, bloodstains, and rape evidence; (d), develop a certification board for crime laboratory examiners; and (e), automate routine laboratory analyses. Although many of these programs have been concluded, research is continuing on semen, hair, and fiber analytical developments.

We have a number of copies of these reports referenced above for your examination and we will be very happy to answer any questions on the program which you may have.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Mr. Sullivan.

Dr. McCrone, you're welcome, and you may proceed.

[The complete statement follows:]

TESTIMONY OF WALTER C. MCCRONE

I am Director of the McCrone Research Institute, an organization devoted to basic research and teaching in the field of light microscopy. As a result I have taught many courses for crime laboratory personnel throughout the U.S. During 1978–1979 I arranged and taught most of 20 workshop courses for more than 350 crime lab personnel from nearly 200 different crime laboratories. These courses were taught under contract to LEAA. Ten of these "students" were from the FBI. I have also taught a short survey course in trace evidence examination in the FBI laboratory. In addition, more than 400 additional crime lab personnel have taken other forensic microscopy courses in our classrooms in Chicago. I have written extensively in this field and have testified many times as an expert witness, in both State and Federal courts, both in civil and criminal cases and for both defense and prosecution.

In connection with these activities I have evaluated crime lab personnel as students and their laboratory performance by proficiency tests. My results confirm the results of similar recent evaluations, expecially a highly publicized set of proficiency tests by the Forensic Science Foundation in 1975. All such tests have shown that there are very few competent criminalists in U.S. laboratories. Trace evidence,

i.e., drugs, explosives, gunshots residue, hair, fibers, glass, paint, etc., are seldom adequately collected from the crime scene; those collected are seldom analyzed; those analyzed are seldom anaylzed correctly.

In one series of proficiency tests to 350 criminalists only 9 (less than 3 percent) were 100 percent correct in identifying common fibers and explosives. In fact, only 69 (20 percent) of 350 attempted to make the analyses and submit results. In other words, 80 percent submitted no results and of those submitted 97 percent were wrong. The reasons for this sad state of affairs are:

1. Inadequate budgets for equipment.
2. Inadequate salaries.
3. Inadequate opportunities for training.
4. Too high a caseload for too few criminalists.

The excuses given by those who failed the above tests included (1) no equipment, (2) no time and (3) test samples lost.

How did the FBI personnel do?—The 10 students from the FBI taking classes with criminalists from other prosecution laboratories ranked: 1, 2, 3, 7, 12, 13, 20, and 21 in their classes (of about 20 students); 2 were unable to complete the courses because of court appearances or family problems. Of the 8 participants in the proficiency testing only 2 returned their analytical results and 1 of these was right, one wrong. In spite of this poor showing the FBI laboratory undoubtedly ranks higher than the various State and City crime labs. They have better equipment and can attract and hold better scientists. Yet FBI personnel, as a group, are far from acceptably competent. The biggest problems for all crime laboratories are lack of formal academic training, lack of on-the-job training and too large a caseload for present staff.

There are, of course, many good criminalists in the FBI and other prosecution laboratories across the country. Hopefully, this nucleus of good performers can be used to help train the others. Universities and colleges should be encouraged to initiate forensic science curricula and to upgrade the courses now offered. The FBI Academy for training criminalists should be expanded to help upgrade their own and especially outside crime lab personnel. In time, the local laboratories will become proficient and able to handle their caseloads adequately. In the meantime, I see no alternative to the present system of direct FBI assistance to the local jurisdictions in the form of analytical services.

TESTIMONY OF WALTER C. McCRONE, PH. D., DIRECTOR, McCRONE RESEARCH INSTITUTE, CHICAGO, ILL.

Dr. McCRONE. Gentlemen, following the excellent review we have just had from John Sullivan, I can be a little bit more brief. And you have my writeup, I will just emphasize a few of the points there.

My background is principally in teaching the methods which criminalists would use. At the same time I have been interested in testing them both to see whether I'm doing any good as a teacher, and to see what the state of the art is in the criminalistic area. I had summarized here also the results of the same proficiency test that John was referring to, but I had results of additional tests as well.

The first round, a number of tests of all of the crime labs in the country did not turn out very well. The more recent tests have not shown any significant improvement. Eighty laboratories, for example, were tested for their ability to identify explosives in bombing cases and 11 of the 80 laboratories responded, only 6 correctly. That's percentage—14 percent responding and 7.5 percent who obtained the right answer. On fibers, which microscopists or analysts would regard as the easiest category to identify, again, 80 different criminalists were tested, 16 or 20 percent achieved correct results.

The reasons for all of this are indicated both by John and I in my report, but often they used the wrong methods and they have not had adequate training. We have to accept as fact that the

criminalists in this country are not well trained, but they have some excuse, perhaps, in that they, the schools, do not teach in general the kinds of courses that they need. The methods that should be used by criminalists are not taught.

The question came up in a letter from the chairman to me as to the status of the FBI. One of the things that the earlier proficiency test did not do is identify the laboratory, so it isn't known from those results how the FBI compared. However, I was under no such restraint. In the tests that I made, as a result of the courses that I had been teaching, criminalists—from 350 criminalists examined, only 20 percent returned results of which 3 percent were correct. The FBI responses were better and their results were better, but they were far from good.

I have listed in the second paragraph on the second page of my report the standing of the FBI personnel who were mixed in with personnel, criminalists from other laboratories. And they, every one of these 1, 2, 3, 7, 12, 13, 20, and 21, in that paragraph refers to their standing in individual courses. In other words, the one means that the FBI man was first in his class. The 20 and 21 means that those FBI men were at the bottom of their class of competition with other criminalists from around the country. So, in spite of the fact that the FBI is better, they have better equipment and they are paid a little bit better than crime labs out in the countryside, they are still far from good.

The trace evidence that is examined—and more of it should be—is not examined as well as it could be. The need, of course, is obvious that more training should be available and more testing should be done. The testing is a way of evaluating whether the training is adequate and the state of the criminalists profession at the moment.

I was also asked to comment on the GAO recommendation that services be reduced. Well, naturally, I don't think they should be reduced. I think instead that more trace evidence should be examined. There are two ways to go about that. To hire more criminalists or to train the ones that are already there.

And, of course, I think now that probably 5 to 10 percent of the evidence that goes into or that could be obtained from crimes is actually reexamined and examined successfully and that is not a very large percentage. If the present personnel were adequately trained, it undoubtedly would be possible to increase our percentage and do a better job. I think that would be the first requirement. Reducing service at this point would, you might say, would not do very much harm because there are only 5 percent efficient.

But, I think what you have to address in the long run is service and in the criminalists area, that is very bad. And they have to be improved one way or the other. The prime consideration should not be reducing service, but in increasing the proficiency in the criminalists we now have.

Thank you very much, Mr. Chairman.

Mr. EDWARDS. Thank you, Dr. McCrone.

The gentleman from Wisconsin, do you have any questions?

Mr. KASTENMEIER. Thank you, Mr. Chairman.

Do I understand that you evaluate various crime labs throughout the country and in terms of whether they pass muster or not, at least by providing forensic guidelines to their activities?

Mr. SULLIVAN. The background of the past was that the type of samples chosen were common representative type samples which could be conducive to analysis by a wide range of testing procedures available in sufficient qualities—quantities that could be analyzed by most, if not all, laboratories. It was a straightforward sample containing no tricks. And, of course, it was a voluntary effort. But they were the type samples that were purposely chosen because every laboratory in the country should be able to analyze this type of evidence using a wide range of instrumentation from a microscope to the most advanced instrumentation in the laboratory.

I hope that answers your question.

Mr. KASTENMEIER. My question was simply have you been grading the various crime labs that are operated, let's say, under State auspices and other auspices?

Mr. SULLIVAN. No; we have not graded any specific individual laboratory. The program was under complete anonymity and we were not aware when we originally arranged this program, we did not intend to know what the performance of each laboratory was, but strictly as an aggregate. We were only interested in the state of art—of the aggregate of this country.

Mr. KASTENMEIER. Just because I suppose it's at the moment very notorious case history, in the Atlanta killings, what forensic laboratory resources are being used? Are the Federal Bureau of Investigation's, its resources, now being used, or what resources for the analysis in terms of trying to——

Mr. SULLIVAN. I don't know the details, but it's my understanding from reading news accounts that both the FBI laboratories, as well as the Georgia State Crime Laboratories are involved. Both labs are, of course, very good.

Mr. KASTENMEIER. Both labs are quite good, you say?

Mr. SULLIVAN. Yes.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Sensenbrenner?

Mr. SENSENBRENNER. I'm wondering if any one of the witnesses can describe internal blind testing program and how that insures better quality control.

Mr. SULLIVAN. There are several types—there is an internal blind testing and we have an external blind and external double blind. Internal blind testing program is a sample that is prepared within the laboratory and submitted to the appropriate examiner in the appropriate section. A blind test external to the laboratory is prepared by an independent organization and noted as a proficiency testing sample. And in this case usually it's been our experience and that of the advisory committee, that the very best resources are put on their testing so they can get the very best answer.

A double blind testing a sample which is submitted as a case material and they do not know it is actually a test sample.

Mr. SENSENBRENNER. How does this kind of test provide the proficiency crime lab——

Mr. SULLIVAN. Particularly with the Department of Defense our experience has been laboratories in which they were doing urine samples in the detection of drugs in servicemen. When they monitor those laboratories that were not proficient after being notified that they had problems, it was the experience of the Department of Defense that they all eventually became very proficient, based on these test samples.

Mr. SENSENBRENNER. What results are derived from a blind test program? In other words, what kind of a report does the lab receive following one of these tests? Let's assume that it is one that shows they are not proficient.

Mr. SULLIVAN. There could be a number of reasons why they are not proficient. Training or methodology and usually a testing procedure will indicate whether using appropriate methodology or appropriate protocol, the proper controls and these are all aids to enhance the capability of the lab. So it is a very valuable tool.

Mr. SENSENBRENNER. Mr. Chairman, I'm wondering if the committee could receive a copy of a report on a blind test. It does not have to be included in the record, but I would just like to see what kind of constructive criticism is given following one of these blind tests so we can see if this would be useful.

I have no further questions.

Mr. EDWARDS. I think it is a good idea. Are they described in the book that you have?

Mr. SULLIVAN. Yes; in this final report they have each case, each sample has been examined. They report their results in detail and finally there is an evaluation in which they describe in great detail how to take anyone—for example, test No. 4, glass analysis, was reported by 123 of the 129 laboratories. And then they describe areas in which the errors were made, interpretation of the refractive index determination, a discussion about the methodology, a discussion about one laboratory using one technique.

I could think of another one, for example, firearms examination. Conclusions: Carelessness on the part of the examiner, lack of experience of training on the part of the examiner, inadequate supervision by a qualified firearms identification expert.

And I could go on. They're described in great detail here.

Mr. EDWARDS. Well, is it correct that the program in 1974 that you referred to, Mr. Sullivan, in your testimony, is the only instance where the FBI has been tested by an outside organization?

Mr. SULLIVAN. It is my understanding because they are listed in the index as having participated in the examination.

Mr. EDWARDS. Is that correct, Dr. McCrone?

Dr. MCCRONE. Well, to the extent I tested the individual criminalists who have taken my courses in the FBI that I have tested, that is perhaps half of the criminalists in the trace area. And in that sense they have been tested on the outside. I have a standard procedure in the courses I teach to have a proficiency test following up each one of those courses.

I find it is psychologically to the advantage to have proficiency tests. I have people, prospective students, writing me and saying I have got to take your course. I can't do badly on the next proficiency test, or on the positive side, I have to take your course because I want to handle these proficiency tests. And I think they feel that

way throughout the whole system. I know the Alabama labs as a group, they have 10 laboratories down there. Their students have really pestered us.

We have one in our laboratory now on a sabbatical. He didn't even ask me if he could, he just appeared one day and said my boss said I could stay here for 3 months. I want to do every one of the proficiency tests. I'm going to go back and teach the rest of them. And I think the proficiency test developed that attitude in people. I think it's helped in the FBI because I talked to a few of them and they felt the same way about proficiency. I think everybody does that. And our department apart from criminalists, we have the same thing, almost every analyst expects to get blind samples periodically. He has no idea that they are not real cases and they are handled in exactly the same way. He is called in then and told what happened, what he did wrong or what he did well.

On each of these cases I have written individually to the student to tell them how well he did. And to tell them where they went wrong and where they—and what they should study and learn to do it right the next time. I think that is the major part of the whole system.

Mr. EDWARDS. It is my understanding that this is not done at the FBI lab. It is done with the private labs; is that correct?

Dr. MCCRONE. Of course. DEA, yes. Various States; they have to do it when they take courses from me, of course, because that's part of my system. But as far as I know otherwise, they don't do it.

Mr. EDWARDS. But after they have left your class and return to Washington, then you have no further contact with the people who work at the FBI unless they come back for another course?

Dr. MCCRONE. Another course.

Mr. EDWARDS. And they do from time to time; is that correct? Do you still teach at Quantico?

Dr. MCCRONE. Actually, the course I taught with them was in their laboratory here in Washington, not at Quantico. It amounts to the same thing.

Mr. EDWARDS. Well, the universities throughout the country have courses in——

Dr. MCCRONE. There are at the most, half a dozen universities that have adequate courses in this area.

Mr. EDWARDS. And do they turn out specialists, scientists that do appropriate work with the necessary skills?

Dr. MCCRONE. To a large extent; yes. They vary a bit, too. But even under the best of conditions with those schools we aren't getting more than maybe 20 or 30 a year. And we have need for 2,000. Let's say it's disproportionate. There are too few schools that teach courses in this area.

Mr. EDWARDS. It seems to me that it is very possible that an important part of the criminal justice system of the United States is in trouble if we are getting the examinations and testimony at criminal trials that might not be totally reliable.

Dr. MCCRONE. I think that is the major point I would like to reinforce. I think that is definitely true. I think every effort should be given to the FBI's Quantico effort. Anything that can be done there should be done.

Mr. EDWARDS. Well, the FBI, I believe, is asking for fewer funds this year. Although it's not entirely clear, I believe that they have said that they will no longer continue to perform lab tests for local labs if they can do it themselves back home. And, of course, that is the best of all possible worlds.

Dr. MCCRONE. Sure.

Mr. EDWARDS. Or, only after important FBI work is done. In other words, the priority is their own work first, and I don't think we can quarrel with that.

Dr. MCCRONE. Certainly.

Mr. EDWARDS. But is it the opinion of all the witnesses that all labs, including the FBI, should have a regular program of testing to detect people who might be doing a bad job and it is difficult sometimes if scientists are doing a good or bad job. How do you know? Should all labs have a system, a regular system of blind testing?

Mr. SULLIVAN. Yes. I'd like to bring to your attention that there was a series of testing done on the clinical laboratories in the late sixties. And the error rate of the clinical laboratories comparable to that overall of the crime laboratories, was in the order of 25 percent. Based on that Congress passed a Clinical Laboratory Improvement Act in which testing of medical laboratories is mandatory and not voluntary.

Mr. EDWARDS. Well, what about the programs at DEA lab and the ATF lab or labs? Are they suitable programs of blind testing quality control?

Mr. SULLIVAN. I'm not personally aware of the details, but I think the fact that they are testing is admirable and I think it is very good.

Dr. MCCRONE. Mr. Chairman, I would like to add a point that most criminalists really would like to see this. I've talked to many of them and they would like to have proficiency tests and would feel more secure. They think it would help to point out in the need in general for more training and equipment, which is one of the ways they would have of emphasizing that need.

Mr. EDWARDS. They are willing to take the risk, in other words, of being embarrassed by a blind test?

Dr. MCCRONE. Right.

Mr. SULLIVAN. Not only is the testing a method of determining whether an examiner is obtaining the right answer, but it's revealing a wealth of information as to how we can design our educational programs and research programs. As a matter of fact, the Institute is taking the crime laboratory proficiency test data and has literally redesigned its remedial efforts based on that data. And it is the best possible data that can be used to upgrade crime laboratories. So it has a dual purpose.

Mr. EDWARDS. Counsel?

Mr. TUCEVICH. Thank you, Mr. Chairman.

Mr. Sullivan, are you familiar with the forensic—I guess it's the Forensic Science Foundation which has an ongoing proficiency testing program?

Mr. SULLIVAN. Yes.

Mr. TUCEVICH. Can you testify how that program works?

Mr. SULLIVAN. As described in the recent article of the American Society of the Crime Lab Digest, it is a voluntary effort, a flat rate per evidence category has been charged per sample, and at this time approximately 90 laboratories across the Nation are participating in this program. And the categories of testing selected by the laboratories was voluntary. Drugs, blood, paint, glass, fibers and firearms.

Mr. TUCEVICH. Now, is that voluntary participation on the part of individual crime labs?

Mr. SULLIVAN. That is correct.

Mr. TUCEVICH. Are those results kept confidential?

Mr. SULLIVAN. They are. That's my understanding.

Mr. TUCEVICH. So could the FBI, or any Federal agency for that matter participate in the program and be assured that the results, even if those results were bad, would not be disclosed to outside individuals?

Mr. SULLIVAN. I know of no reason why it couldn't be.

Mr. TUCEVICH. Would it be your opinion that the FBI could benefit from participation in such a program?

Mr. SULLIVAN. No doubt.

Mr. TUCEVICH. Dr. McCrone, would that be your opinion?

Dr. MCCRONE. Very definitely.

Mr. TUCEVICH. Mr. Sullivan, in terms of the proficiency testing program that you developed, referee labs, I understand, were set up as a control.

Mr. SULLIVAN. That's correct.

Mr. TUCEVICH. And wasn't it the case that these referee labs were originally selected based on national reputation and prominence as opposed to performance?

Mr. SULLIVAN. That is correct.

Mr. TUCEVICH. And at one point, following disclosure of some of the results, the project advisory group of the program changed the selection criteria from reputation to that of performance? Was that because of, well, some concern over the ability of the referee labs themselves to conduct these tests?

Mr. SULLIVAN. That is correct.

Mr. TUCEVICH. Would it be your opinion that the general state of the art of criminalistics today, should make it standard practice that a proficiency testing program be mandatory?

Mr. SULLIVAN. Yes.

Mr. TUCEVICH. Dr. McCrone?

Dr. MCCRONE. I do.

Mr. TUCEVICH. We are in an era of budget cutbacks and—there seems to be an indication at least from DEA and other Federal agencies that the State and local jurisdictions may be cut back. Given the fact that the picture that you have presented for us today is that there need be more training rather than less, what would you emphasize or urge the FBI to do to alleviate these performance problems?

Mr. SULLIVAN. I would emphasize that the FBI undertake more training and as regards the GAO report regarding reducing its service, I would recommend that these be a phased reduction, not abrupt, and perhaps phased say over a 5-year period, depending on

the progress and the ability of these crime laboratories to achieve equality in services.

Mr. TUCEVICH. Dr. McCrone, you were discussing the numbers of people who are now trained. I believe you indicated that it was a rather marginal number. I believe you said it should be in the thousands.

Do you think that the FBI reasonably has the capability to do that type of training?

Dr. MCCRONE. No. I don't think the FBI should be expected to do that. What is really needed in the longrun is a college curriculum that covers all of the courses that a criminalist should need. And it is this type of training, the schools in like John J. or Cal Berkeley and one or two others are doing a pretty good job in this direction, but it is still training, what, 6 to 10 a year for each of those schools. The FBI is teaching specialized courses similar to the ones I teach in a particular area. They can come to me for a week and learn how to identify fibers or the FBI similiarly.

I think that should be extended. But the individual laboratory, the personnel there, have to be able to get to that kind of course and they have to be able to get the instrumentation they need to use which they don't all have that means. There is a real lack, right across the board, in terms of personnel, training, office personnel, the equipment they need, the methods that aren't developed. The whole thing—it's pitiful. It is a shambles right now. We are trying to solve problems with the same kind of personnel and equipment that we had a hundred years ago.

Mr. TUCEVICH. In terms of equipment, how great an expense are we talking about where a normal crime lab in a State or local jurisdiction could perform the majority of criminalistic demands that are placed upon them and to make the proper analysis? What type of equipment would be needed?

Dr. MCCRONE. You are placing me in a position where I have a hard time defining even generally, although I'm absolutely definite that the equipment we need in the laboratory is a light microscope, which has been around for a hundred years or so, and the ability to use that light microscope.

And it can cost just a paltry $3, $4, $5000, and the laboratories do not really need the $100,000 instruments that they like to have. It makes the laboratory to have it, but to solve most of the problems except perhaps for body fluids, Iverson and a couple of other case types, they do not need fancy equipment. They can do it with the light microscope. Eighty percent of the cases across the country could be solved with a light microscope if the criminalists had training in that area.

The training itself is not expensive. It is more an attitude of mind in getting the right people in the crime lab. If they want to do it, they do it on their own and just periodically come out to get the training for a week or two weeks to give them another push for a year while they work on it themselves.

Mr. SULLIVAN. I don't want to detract from Dr. McCrone's use of the microscope, but I talked to a number of individuals, they're knowledgeable ones, that are of the opinion that the United States crime laboratories probably did better microscopic analysis 50 years ago than they are doing today.

Mr. TUCEVICH. What would you attribute that to?

Mr. SULLIVAN. Again, problems that Dr. McCrone cited. There are no university courses, very few, very limited university courses for qualified individuals. I first encountered that problem when I was with the Boston Police crime laboratories. I searched for a course on microscopy. I found out that the Harvard Medical School didn't have one. They had one, but not in 1970. And I went to Tuft's University, and they didn't have one either. The medical school I wanted to send my man to be trained on microscopes, so the only opportunity I had was Dr. McCrone or one of the manufacturing representatives to spend a couple of days with the laboratory's personnel. So this is the problem.

Mr. TUCEVICH. Thank you.

Mr. EDWARDS. How many classes do you have a year? Also, how many students can you handle at your institute?

Dr. MCCRONE. At the moment we have about 50 a year, which allows me about 2 weeks of vacation. They are 2-week courses. We are teaching now about 750 students a year. This, however, includes people who want to identify pigments in painting on contaminants in drugs, not just criminalists. We probably teach 150 to 175 criminalists.

Mr. EDWARDS. Should there be a degree in laboratory criminology or whatever?

Dr. MCCRONE. There should be and there is in maybe three or four schools in the country .

Mr. EDWARDS. But these people can get jobs right away, I imagine?

Dr. MCCRONE. Well, that is partly true, but there are budget problems. The slots, let's say, are pretty well filled with these 5 percenters at the moment. There is not that much money available and there is not much incentive for chemists to go into that work. They aren't very highly paid. I mentioned the attitude. They have to have the right attitude, which means they love that kind of work and are willing to do it for low salaries. That's another part of the whole problem.

Mr. EDWARDS. Are there some disturbing things happening in criminal trials throughout the country as a result of this inadequacy?

Dr. MCCRONE. I don't think there is any question but that 75 percent of them at least are handled in an inferior manner, and most of those—some of those do result in incorrect decisions, one way or the other. No question in my mind.

Mr. EDWARDS. Is there a due process problem there?

Dr. MCCRONE. I'm not going to get into the legal side of this, if I can avoid it. There was a book entitled "Scapegoat Justice" written 4 or 5 years ago by a trial attorney about one such case. A brilliant example, brilliantly written, and a good example of one case, that put a man on death row for 12 years when he was innocent. And now it finally came out because some good crime work was done by good criminalists, and straightened the whole thing about, in a matter of minutes.

Mr. EDWARDS. That's a well kept secret from the American people. We're used to Dr. Quincy and the infallibility of the lab people.

Dr. MCCRONE. I'm afraid criminalists don't watch Quincy.

Mr. EDWARDS. Mr. Boyd?

Mr. BOYD. Are you suggesting that the weight which juries give to expert testimony on laboratory tests, and the likelihood that that testimony is accurate, presents a real major problem in our criminal courtrooms?

Dr. MCCRONE. I very definitely do. I hope there are no press here today, but I definitely feel that way. I have heard many criminalists say that they would, if they had evidence from a crime laboratory that showed that this hair, which was a unique hair 3 feet long and bright red in a case and if they found the suspect with red hair 3 feet long, they would then believe the crime laboratory. If there was an eyewitness. And that's about the way things are.

Mr. BOYD. In this series of proficiency tests which you documented in your statement, you indicate that some 80 percent of those to whom the tests were submitted did not turn in any results, which means you were basing your statistical study on a response percentage of about 20 percent; is that correct?

Dr. MCCRONE. That is correct. That was the first or the initial voluntary request for results to come back. We followed up on all of those and eventually we got over 80 percent of them back and the correctness went up because we kept sending back replacement tests. If they go one wrong, they were given another chance with another test; similar, but not identical. So eventually 80 percent of them returned results and all of those, except for two or three, were able to get certificates of completion, successful completion. But it took 2 years to push them to that point.

Mr. BOYD. But don't you think one factor in getting responses was not so much ability or proficiency, as it was time and resources?

Dr. MCCRONE. Certainly time and resources were a part of it, but the time they would need to do it—and most of them that did it wanted to do it. They did it on their own time, a weekend or a Sunday afternoon. Didn't take that long to do it.

Mr. BOYD. But it was done on their own time?

Dr. MCCRONE. Most of the time.

Mr. BOYD. And I believe you said that 80 percent of those—close to 80 percent—received certificates?

Dr. MCCRONE. Right.

Mr. BOYD. What level of proficiency was reflected by those certificates?

Dr. MCCRONE. That merely means that they had completed the course that was taken successfully. They had gotten a passing grade in that course that they had taken and that they successfully completed a proficiency test.

Mr. BOYD. And they therefore, we can assume, are competent criminalists?

Mr. MCCRONE. No.

Mr. BOYD. We can't assume that?

Mr. MCCRONE. No. We can assume that they completed that course simply, and did well on one proficiency test. And I would say it increased their proficiency, but I would like to see them do

additional proficiency tests, in other areas. That was just explosives or just one set of methods that they did.

Criminalistics is a tough area, because almost no two cases are alike. They have to have a very, very good background to do this right, and know how to use a light microscope and a few different instruments. It isn't an easy field, so I can't say how generally proficient any of these people were.

Mr. BOYD. Thank you.

Mr. Sullivan, you recommend a gradual assumption of responsibility by State and local labs?

Mr. SULLIVAN. That's correct.

Mr. BOYD. Several years——

Mr. SULLIVAN. Five years.

Mr. BOYD. Based on the amount of dollars and other resources which have been used by LEAA over the last 10 years or so, how competent do you think they are to assume those responsibilities?

Mr. SULLIVAN. Well, LEAA, of course, put in approximately $81 million over a period of 10 years from 1968, in which there were less than 100 laboratories, and now there are over 250. In spite of that, they do need training and more equipment to become efficient.

I'm not sure whether I answered you correctly. I'm saying that they probably need more aid, training, and very definitely assistance in methodology to become proficient.

Mr. BOYD. From the Federal Government?

Mr. SULLIVAN. Yes.

Mr. BOYD. Where will it come from?

Mr. SULLIVAN. There are no more funds in the LEAA, as you know.

Mr. BOYD. Thank you, Mr. Sullivan.

Thank you, Mr. Chairman.

Mr. EDWARDS. Are you saying that the modest program of testing that the National Institute of Justice has been engaged in for the past few years is endangered?

Mr. SULLIVAN. We do have a modest program but we would like to think that we have invested the money wisely. We have, with small funds, been able to get a great deal of information on the forensic sciences, not only the crime laboratories, but we are looking in the forensic toxicology laboratories and we intend to examine the medical examiner activities in the next several years, which is another area which needs to be investigated. But with some modest funding I believe we can achieve that.

Mr. EDWARDS. You intend to continue the work?

Mr. SULLIVAN. Yes; we intend to achieve that.

Mr. EDWARDS. Are the people that you train all FBI agents or are there others that work in the FBI lab who are not agents but rather technicians or criminalists? Are all the people that you gave tests to from the FBI? Were they special agents of the FBI?

Mr. MCCRONE. All of the ones that we are training are special agents. I believe they do have civilians or technicians who are not special agents.

Mr. EDWARDS. I believe that the GAO was critical of the FBI's system whereby they utilized FBI special agents in the laboratories

rather than use technicians who were not necessarily special agents; is that correct?

[No audible response.]

Mr. EDWARDS. Dr. McCrone, are you aware of the critical paper that was submitted at the meeting of the American Academy of Forensic Sciences in Los Angeles by one Peter Barnett? Are you aware of his qualifications? He points out several errors in methodology used by the FBI. Do you believe these are isolated examples or is there a greater problem?

Mr. MCCRONE. I know Peter Barnett very well and I'm familiar with the paper. He was one of my better students. I think what he stated is correct, but in the real sense it is isolated and it just happens to be the one. He was making a case that such can happen, even at the FBI, and in doing so he made it sound as if that was representative of all the cases they ever handled, and it is far from true in that sense. But, I'm sure it does happen, even with the FBI.

Mr. EDWARDS. Well, if you—I can ask this of any of the witnesses—if you were sitting up here with responsibility for oversight and budget and assistance to the FBI, wherever we can give it, what should be our course of conduct? What kind of a recommendation would you make to the Department of Justice and the FBI and the Congress and the appropriations committee with regard to their crime lab? Mr. Sullivan?

Mr. SULLIVAN. Perhaps not toward the FBI in particular, but I would like to address the results we obtained from the proficiency testing program which indicates that extensive training is needed for the professional staff of crime laboratories in this county. And I highly recommend that the FBI increase their facilities for training and retraining, which I suspect will be a 10-year effort to complete this task.

The second point that we observed in this proficiency testing program is there is a serious problem. We really don't have that many validated methods. So I would recommend in general that a study be continued on validating appropriate methodology for use, first for training, and second for distribution to crime laboratories. Our results clearly indicated "a problem" with use of appropriate methodology. And so those are my recommendations.

Mr. EDWARDS. Thank you.

Dr. McCrone?

Mr. MCCRONE. I would subscribe to that. I think John is optimistic about 10 years. I think much longer than that. A continuing program is necessary as far as we can see ahead. Methodology—some of the things that are done—I could give a paper at the next academy meeting on funny stories of people using what amounts to a pogo stick to try to get to the Moon. It sounds that silly to anyone who knows what's going on.

Mr. EDWARDS. But you're not talking about the equipment at the FBI lab?

Mr. MCCRONE. I'm talking about the kind of misuse of equipment, and this does occur at the FBI laboratory. They do not use my favorite tool, again, and we have to discount this to some extent. I feel defensive about the microscope because it's not used as much as it should be. Well, the FBI themselves admit that they

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do not use it as much as it should be used. They could save an awful lot of time if they used simpler instruments instead of going to more complex instruments.

They have their place, but most of the cases could be solved with a light microscope and save a lot of time and money.

Mr. EDWARDS. Mr. Kochanski, do you feel about the same?

Mr. KOCHANSKI. Yes, sir.

Mr. EDWARDS. Mr. Sullivan, does the National Institute coordinate its services and training programs in forensic sciences with the FBI?

Mr. SULLIVAN. Very definitely so, Mr. Chairman.

Mr. EDWARDS. Well, I think we have covered quite a lot of ground and your testimony has been helpful to the subcommittee, and we thank you very much.

[Whereupon, at 10:45 a.m., the hearing was adjourned.]

[Additional material follows:]

Forensic Failures

Evidence Tests Stump Labs

The last six of 21 tests involving physical evidence continue to show that many crime laboratories are unable to correctly identify samples of typical evidentiary material.

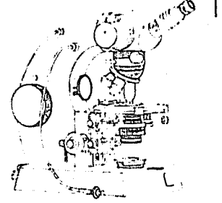
Results of the last tests are comparable to 15 earlier tests in which unacceptable responses ranged from 2 percent for drugs to 71 percent for bloodstains.

The tests started in 1975 and were completed in 1977.

Crime lab results are commonly introduced as evidence in criminal proceedings.

The unacceptable test scores resulted from carelessness or lack of experience; failure to use adequate or appropriate methodology; mislabelled, contaminated or non-existent standards to compare against an unknown substance; and inadequate training of personnel, the study said.

(continued on page 5)



leaa NEWSLETTER
Vol. 7, No. 7 September 1978

CRIME LABORATORY PROFICIENCY TESTING PROGRAM
Percentages of Laboratories Reporting Results of "Unacceptable Proficiency"

$$\frac{\text{Number "unacceptable" responses}}{\text{Number of laboratories responding with data}} \times 100 = \text{Percent "Unacceptable"}$$

Sample Number	Sample Type	Number of Labs Responding With Data	Number of "Unacceptable" Responses	% of Laboratories Submitting "Unacceptable" Responses
1	Drugs	205	16	7.8
2	Firearms	124	35	28.2
3	Blood	158	6	3.8
4	Glass	129	6	4.8
5	Paint	121	24	20.5
6	Drugs	181	3	1.7
7	Firearms	132	7	5.8
8	Blood	132	94	71
9	Glass	112	35	31.3
10	Paint	111	57	51.4
11	Soil	93	33	35.5
12	Fibers	120	2	1.7
13	Physiological Fluids (A&B)	129	(A) 3 (B) 2	(A) 2.3 (B) 1.6
14	Arson	118	34	28.8
15	Drugs	143	26	18.2
16	Paint	103	35	34.0
17	Metal	68	15	22.1
18	Hair (A,B,C,D,&E)	90	45 25 49 61 32	DOG (A) 50.0 CAT (B) 27.8 DEER (C) 54.4 COW (D) 67.8 MINK (E) 35.6
19	Wood	65	14	21.5
20	Questioned Documents (A&B)	74	4 14	(A) 5.4 (B) 18.9
21	Firearms	88	12	13.6

Labs . . .

(continued from page 1)

"A wide range of proficiency levels among the participating laboratories exists and, in general, there are several evidence types with which the laboratories are having serious difficulties," the report said.

Participants Volunteer

Some 250 local, state, and federal laboratories voluntarily participated in the three year project, but not all laboratories performed each test. The program was conducted by the Forensic Science Foundation using $330,904 in grants from LEAA's National Institute of Law Enforcement and Criminal Justice.

The survey also developed a national proficiency testing program for crime laboratories. The data was used to design education and training programs for crime lab personnel.

Professionals Supervised Tests

The testing procedure was supervised by an advisory committee of eight nationally known crime laboratory directors. Laboratories were scored anonymously by the foundation through a coded system to foster their participation, hence no laboratories were named.

"The laboratories are having difficulties identifying the samples because some examiners don't have adequate experience and training," said John O. Sullivan, LEAA project director and a former crime laboratory director.

"As the report points out," said Mr. Sullivan, "some laboratory personnel did not know how to use the microscope properly. In other cases, similarly simple identification methods were not employed because the personnel were not aware of these tests or did not know how to use them properly. Once they get the training, I am confident they will do well."

Upgrades Crime Labs

On the last six tests, the study showed 34 percent of the labs couldn't differentiate among three paint samples; 22 percent among three metals; 50 percent missed dog hair, 27 percent cat hair, 54 percent deer hair, 67 percent cow hair and 35 percent mink hair; 21 percent couldn't differentiate among three wood samples; 5 percent and 18 percent missed on two separate documents; and 13 percent failed on firearms.

The testing procedure is part of a larger program to improve forensic sciences by the Institute.

That program, which the Institute began last year after the results of the tests were known, is called the National Program to Upgrade Crime Laboratories.

It will develop testing methods for selected types of physical evidence, train laboratory examiners in microscopy, bloodstain analysis and other areas, improve ways to identify critical items of physical evidence, continue the development of certification procedures for crime laboratory personnel and develop laboratory standards and reference materials for evidence types with which laboratories are having problems.

The program encompasses many of the recommendations made in the final report, entitled "Laboratory Proficiency Testing Research Program."

The report will be available about October 1 from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. ■

FBI SUBMISSION ON FORENSIC SERVICES

	1981 Appropriation Anticipated			1982 Base			1982 Estimate			Increase/Decrease		
	Perm. Pos.	WY	Amount	Perm. Pos.	WY	Amount	Perm. Pos.	WY	Amount	Perm. Pos.	WY	Amount
Forensic Services - Federal.....	288	280	$11,245	288	280	$11,872	312	301	$14,516	24	21	$2,644

Long-Range Goals: To provide the best possible forensic and graphic services and the most modern scientific and technical equipment in support of FBI and other Federal investigative activities.

Major Objectives:

To provide professional, expeditious handling of requests for examination of physical evidence.

To assist in the prosecution of criminal matters by providing factual, objective, expert testimony in a wide variety of forensic disciplines.

To provide technical expertise and support for FBI investigative operations.

To conduct research sufficient to maximize the use of physical evidence and to stay abreast of new technology.

To complete staffing and equipping of the Forensic Science Research and Training Center. This center will increase service to Federal law enforcement and further professionalize state and local law enforcement personnel decreasing their dependence on Federal facilities.

To provide specially designed devices and apparatus for use in criminal and counterintelligence investigative activities.

Base Program Description: Requests for examinations of evidence come to the FBI Laboratory as a result of FBI field investigations and from other Federal agencies which do not have the technical capability to perform a particular type of examination.

The cases received include specific requests made by the contributor to conduct a wide range of forensic examinations on the physical evidence (specimens) obtained during the investigation of the crime. Requests are received in the Evidence Control Center where pertinent information concerning the request is computerized. The request is then assigned a priority for examination and assigned to a principal examiner. The examiner is totally responsible for the case — determining what examinations must be done to obtain the greatest technical information from the specimen(s), maintaining the chain of custody of the evidence, obtaining auxiliary examiners, supervising, and conducting examinations, reading and assembling the results of other examinations and writing the final laboratory report. The examiner may be called upon to render expert testimony concerning the results of the examination in subsequent court proceedings.

On occasion, during the investigation of FBI matters such as terrorist bombings, arson matters, undercover operations, kidnaping, etc., laboratory personnel are required to provide on-site technical support or to conduct a crime-scene search. Agent examiners are also requested to perform undercover work when persons having a technical background are needed during an investigation.

Laboratory examiners are utilized to teach specialized forensic science courses offered at the FBI Academy, Quantico, Virginia, and, as necessary, in other parts of the country. Such courses are usually offered for one-to-two week periods and include lectures and practical laboratory instruction for Federal, state, and local crime laboratories and law enforcement personnel.

Accomplishments and Workload: Accomplishments of the Forensic Services - Federal program are presented in the following table:

			Estimates	
	1979	1980	1981	1982
Requests for examination	11,956	12,147	12,200	12,300
Specimens submitted	124,306	154,454	155,000	167,400
Examinations conducted	287,269	378,149	380,000	410,400
Workdays Spent on Research	2,410	2,230	2,035	2,925
Trial and Investigative Aids Prepared	5,873	5,721	7,150	7,150
Charts, Miscellaneous Graphics and Exhibits Prepared	12,424	16,350	16,350	16,350
Photo Prints Processed	1,212,144	1,434,143	1,450,000	1,500,000
Testimony workdays	776	886	950	1,025

The workload data set forth in the above table show a significant increase in the number of examinations performed in 1980. A portion of this unusual increase is because of two very large Federal gambling cases involving syndicated gambling (47,669 examinations) and one case involving theft from interstate shipment (17,219 examinations). Even without these large cases there was a substantial increase in examinations. This is due to the increased awareness of Federal investigators of the value of physical evidence in the solution and prosecution of crime; more complex cases involving white-collar and organized crime; and increased capability which permits more examinations on a single piece of evidence.

Other accomplishments include:

A continuing automation effort which incorporates a management information system with automated scientific and technical data processing. Through computer terminals located in most laboratory units, managers have the ability to quickly retrieve important case information, study examiner case loads, select auxiliary examiners, and answer inquiries from contributors concerning the status of cases from data entered into the system in the Evidence Control Center. These same terminals are utilized by the examiners and technicians to more rapidly process results of instrumental analysis, process large blocks of data from multi-specimen cases, query files, etc. Plans were completed for the construction of the $4.1 million Forensic Science Research and Training Center which will be located at Quantico, Virginia. A construction contract was awarded in November 1979, and construction began in December 1979. The facility is expected to be fully operational by early Summer 1981.

Other accomplishments include the publication of the "Crime Laboratory Digest"; coordination of the Seventh Annual Symposium on Crime Laboratory Development and the following successful research projects; (a) The detection of lead alkyls in gasoline and arson residues; (b) The determination of the sex of an individual from a dried bloodstain; and (c) Capillary method for the Lewis typing of red blood cells.

Program Changes: Increases of 24 positions and $2,644,000 are requested for 1982 for the Forensic Services - Federal Program. These increases will permit the following:

Examination: Federal investigators are maximizing the use of physical evidence in the investigation of Federal violations. In 1980 the FBI Laboratory experienced a 24% increase in the amount of physical evidence submitted for examination. This increase has caused a 32% increase in the number of examinations performed by the Laboratory in Federal matters. Those Federal violations producing the greatest workload increases in examinations are kidnaping (90%), bomb threats (145%), Federal Reserve Act (90%), Racketeer Influenced Corrupt Organization (240%), and Hobbs Act - Corruption of Public Officials (722%). This increased workload has caused undue pressure on some units of the FBI Laboratory. For example, the Mineralogy/Metallurgy Unit has experienced a 110% increase in general metallurgical examinations and a 58% increase in mineralogical examinations. The Explosives Unit has experienced a 92% increase in the examination of explosive components and the Firearms-Toolmarks Unit a 17% increase in general toolmarks examinations. The enhancements requested in 1982 will provide the resources necessary to enable the Laboratory to respond in an adequate manner.

Research and Training: Funds to construct the FBI's Forensic Science Research and Training Center were approved by the Congress in FY 1979. The building at the FBI Academy is expected to be completed by the Spring of 1981. In order to utilize the facility, the resources are needed to complete staffing and to purchase equipment and supplies. Additionally, some research projects have been pursued to the point that industry assistance is required.

Three of these research areas are: Image Processing, Digital Analysis of Handwriting, and Photogrammetry. This unique research is directed toward development of computer programs for the complex mathematical manipulations necessary to gain information from a photographic image. The development of this capability is essential to provide adequate support for priority investigative areas such as white-collar crime, foreign couterintelligence, and organized crime. The increase for 1982 will provide the software, studies, and equipment prototypes necessary for this research.

Due to the increased value of, and need for, polygraph examinations in organized crime, white-collar crime, and foreign counterintelligence investigations, there is a great need to train additional agents as polygraph examiners. There are no schools available which can provide training or offer the type and quality of training desired for the number of agents who require this training. It is essential for the FBI to institute its own polygraph training program. This increase will provide funding to meet the initial requirements in this area.

	1981 Appropriation Anticipated			1982 Base			1982 Estimate			Increase/Decrease		
	Perm. Pos.	WY	Amount	Perm. Pos.	WY	Amount	Perm. Pos.	WY	Amount	Perm. Pos.	WY	Amount
ADP and Telecommunications.	400	389	$36,154	406	394	$38,556	406	394	$51,268	-	-	$12,712

Long-Range Goal: To support the FBI's information collection, storage, retrieval, and dissemination requirements through the use of ADP, telecommunications, and word processing resources.

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

CRIME LABORATORIES MANAGEMENT POLICIES AND CHALLENGES: A REVIEW OF SELECTED ISSUES

Louise Giovane Becker
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Science Policy Research Division
March 20, 1981

CONTENTS

CONTENTS (Cont.)

I. INTRODUCTION

Forensic science is an important ingredient in the criminal justice process. An integral part of forensic science, the crime laboratory, provides support to criminal justice officials and, in many instances, is the essential element in aiding conviction of the guilty and the release of the innocent. Apparently there is a widespread belief that forensic sciences or scientific evaluations are inherently true and indisputable. It is perhaps this broad acceptance of the findings of the forensic laboratory that makes it imperative that these analyses be accurate and reliable as well as timely. Therefore, improving the management of laboratory operations and the quality of the crime laboratory analysis has emerged as a central issue in the administration of justice. The fundamental premise of forensic science, as analyzed in a paper by J.L. Peterson, expressed key concepts and concerns relevant to crime laboratory management. An abstract of Peterson's paper summarizes these as follows: 1/

> Forensic science does not exist independently as a scientific disicipline. It is a service to legal decisionmakers. The viability of the forensic science profession depends on its services. Forensic science profession needs to be concerned with the following: (1) guaranteeing the quality of its services; (2) drawing attention to its unique contribution of objectivity and impartiality to criminal investigations; (3) demonstrating its cost effectiveness in clearing crime, prosecuting the accused and ensuring a high-quality of justice; (4) conducting research to advance the state-of-the-art in forensic science to a level commensurate with knowledge in allied scientific fields; (5) developing core curriculums and career paths to attract qualified personnel to the field; and (6) promoting communication between scientists and criminal justice officials.

1/ Peterson, J.L. and R.K. Peterson. Promise and Problems of Forensic Science. In Forensic Science Services and the Administration of Justice. Washington University Research Corporation, 1978. (From an abstract from the National Criminal Justice Reference Service.)

Today there is a demand by the legal professional and law enforcement system to upgrade quality of analysis in the crime laboratory. Over the years testing, regulatory, and clinical laboratories have instituted a variety of standards and quality control programs to improve the analysis function (see section II. A.) The concept of quality assurance is relatively new to the crime laboratory, but there are indications that it is becoming an important element.

The critical role of forensic science is evident perhaps best illustrated in drug cases where positive identification of a drug was essential. 2/ Improving the analytical capability of laboratories therefore becomes a relevant issue.

The advent of complex and sophisticated equipment and techniques has contributed to increased interest in crime laboratory management. Today computers and microprocessors are being used in a variety of crime laboratory operations. When appropriately used there new tools add a measure of accuracy not previously attained. These factors have encouraged crime laboratory decisionmakers to consider improving all aspects of the crime laboratory operation.

A. MAJOR ISSUES AND PROBLEMS

Many crime laboratories today are in transition. The demand for a higher quality of service must be balanced against limited funds and a shortage of skilled manpower. The crime laboratory manager, at all levels of government,

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2/ Sobol, Stanley P. and John W. Gunn, Jr. The Role of the Forensic Drug Laboratory. Presented at the Toxicology-Drug Abuse Section, Sixth International Meeting, Edinburgh Scotland, September 1972. p. 1.

faces the problem of trying to meet a growing demand for service in a time of decreasing resources (capital outlays, equipment, materials, personnel, and training/education). This basic problem of limited resources in the face of increasing demands has implications for a wide range of issues, including:

- certification of laboratory examiners,
- accreditation of the laboratory facility,
- proficiency testing,
- quality assurance programs,
- standardization of methods and analysis techniques,
- training and education, and
- centralization vs. decentralization of facilities.

There is a definite sensitivity among crime laboratory personnel regarding these issues. The fact that crime laboratories are an important element in the criminal justice system has focused attention on quality in the identification and analysis of physicial evidence. In addition, the expectation that science is devoid of prejudice has made crime laboratories analyses a critical element in judicial proceedings. Therefore, the crime laboratory community has been disturbed by reports, true or false, of inefficiency or inappropriate analysis by some laboratories. The credibility of all crime laboratories is affected by this type of adverse publicity.

The Federal laboratories assistance to non-Federal criminal justice officials has received some attention. A General Accounting Office report (detailed in Section II) outlines some of the problems resulting from Federal laboratory support of State and local crime laboratories. The crime laboratory community generally has advocated the national laboratories training programs

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and have expressed that this assistance has been critical in improving the quality of analysis.

Quality assurance programs at the Federal level are beginning to receive some attention. While agencies vary as to their approach to instituting quality assurance programs, most have some type of controls in place. (See sections III and IV.)

Another issue is the integration and coordination of Federal crime laboratory facilities. For the most part, informal communications tend to be the major avenues of approaching areas of mutual interest. Federal policies affecting national crime laboratories are not necessarily uniform and consistent. (See section II.C.) There seems to be a need for more information exchange and cooperation among Federal crime laboratory managers.

Questions regarding the merits or limitations of centralization and decentralization of laboratory facilities has not received much attention, but may be an important issue in an era of scarce resources. Streamlining laboratory management structures with a view to improving quality of analysis and performance of the analyst remains critical.

B. SCOPE AND NATURE OF THE REPORT

This report is concerned primarily with the management and policies of crime laboratories, specifically Federal facilities. The problems associated with quality assurance and the role of technology are highlighted. The attempts of the crime laboratory community and the Federal agencies in coming to grips with the intrinsic management issues of creditation, certification, and quality assurance programs are discussed.

Background information is included, in section II, on congressional concern with standards and controls in the clinical laboratory environment which may have implications for the crime laboratory. Section II also includes a review of two relevant General Accounting Office crime laboratory studies and the National Institute of Justice forensic science research program. Section III provides a cursory overview of selected activities and programs of three Federal crime laboratories, with special emphasis on the Federal Bureau of Investigation. A few of the activities and interests of the forensic science community regarding improving laboratory analysis are described in section IV. Technological and computer support activities, along with a description of quality assurance program objectives, are outlined in section V. Section VI focuses on the challenges facing the crime laboratory manager and presents a set of questions for possible consideration by the Congress.

II. BACKGROUND

Improving the quality and management of the crime laboratory is a continuing endeavor at all levels of government. There is evidence that a wide range of approaches and options are available to assist in improving laboratory performance. Limited resources and, in some instances, lack of qualified manpower have caused consideration of curtailing some services and programs. The two General Accounting Office reports reviewed below discuss some of these problems. Efforts to improve laboratory performance include consideration of additional controls and more effective management of the crime laboratory resources.

Two topics, certification and accreditation, have continued to receive particular attention.

Certification of the individual analyst has certainly been a controversal subject in the crime laboratory community. Although formal certification has not been widely accepted, some crime laboratories have instituted stringent educational requirements and training programs in an effort to improve the competency of the crime laboratory analyst.

Accreditation of the laboratory facilities and operations has been considered by the crime laboratory community and there are indications that some action is underway to begin a formal program in this area. (See section IV.A.) An accreditation of the crime laboratory will assist in evaluating the improvement of laboratory performance.

Proficiency testing, discussed below, is also part of the effort to improve performance of the crime laboratory. Proficiency testing measures the ability of a laboratory to effectively identify, analyze, and quantify a given specimen.

A. CONGRESSIONAL CONCERN

Over the years Congress has supported an encouraged the development of an effective crime laboratory system. The capability inherent in the national crime laboratories, as examplified by the laboratories in FBI, DEA, and ATF, represents an important national resource. Congress has supported the development and improvement of State and local crime laboratories through Federal assistance programs. State and local officials have benefited from Federal support programs that provide education and training assistance. (See section III for details.)

1. Clinical Laboratory Improvement Act

Congressional consideration of quality assurance and management of laboratories has focused for the most part on those laboratories involved with health conditions. In 1967 Congress enacted the Clinical Laboratories Improvement Act (CLIA) P.L. 90-174, 81 Stat. 533, 42 U.S.C. 263). This law is concerned with improving clinical laboratories which provide information for diagnosis, prevention, or treatment of disease and assessment of human health. The law is directed at regulation and licensing of laboratories as well as setting some minimum standards.

In the last decade, additional legislative measures directed at improving laboratory accuracy and performance have been proposed in Congress, but while more have received final action, they have stimulated interest in this subject. The hearings and studies on the Clinical Laboratory Improvement Act of 1979 indicate some of the problems, including the need for standards, internal

quality control programs, inspection of equipment, and establishment of personnel qualifications. In addition, there has been a special focus on developing a system of proficiency testing as well as safeguards to assure accuracy of collection, processing, and transmission of laboratory findings. 3/ The guidelines and safeguards suggested by the legislation proposed in 1979 have some relevancy in the management of criminal laboratories.

B. NATIONAL INSTITUTE OF JUSTICE

The National Institute of Justice (NIJ), established by P.L. 96-157, the Justice System Improvement Act of 1979, is part of the U.S. Department of Justice. NIJ is one of the three agencies, along with the Law Enforcement Assistance Administration and the Bureau of Justice Statistics, dedicated to providing services and support to the criminal justice community. NIJ's efforts are directed at encouraging research and demonstrations to improve the criminal justice system. NIJ awards grants and contracts concerning civil and criminal justice systems and supports programs that improve the functioning and strengthening of the criminal justice system.

1. Forensic Sciences Research Program

National Institute of Justice Forensic Science Program is directed at increasing the "quantity and quality" of services and improving various aspects

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3/ U.S. Congress. Senate. Committee on Labor and Human Resources. Clinical Laboratory Improvement Act of 1979. Report No. 96-130, to accompany S. 590. 96th Congress, 1st session. Washington, U.S. Govt. Print. Off., 1979. p. 3.

of forensic sciences. The program, provides a state-of-the-art assessment, evaluation of personnel and facilities, education, and scientific procedures as well as encouraging research and development. Highlights of NIJ's Forensic Science Research Program (1975-1983) is outlined in figure 1. 4/

2. Crime Laboratory Proficiency Study (1978)

a. Background

A key element of the NIJ Forensic Science Research Program is the improvement of crime and drug laboratory proficiency. In the late 1970s a study on proficiency testing examined the problems associated with quality assurance and examined laboratory performance. The LEAA funded laboratory research project on crime laboratory proficiency was stimulated in part by the wide discrepancy in the handling and analyzing of laboratory specimens. The study primarily focused on the following: 5/

- Determining the feasibility of preparation and distribution of different classes of physical evidence for nationwide distribution;
- Assessing the accuracy of criminalistics laboratories in the processing of selected samples of physical evidence;
- Conducting statistical studies of the tests administered; and
- Establishing the basis for the designing of education and self improvement programs which will assist the criminalistics profession in the attainment of higher levels of proficiency.

4/ Source: U.S. Department of Justice. National Institute of Justice. Forensic Sciences Research Program. February 1981.

5/ U.S. Department of Justice. National Institute of Law Enforcement and Criminal Justice. Law Enforcement Assistance Administration. Crime Laboratory Proficiency Testing Research Program. October 1978. (Authored by Joseph L. Peterson, Ellen L. Fabricant, Kenneth S. Field with the assistance of J.I. Thorton.) Washington, U.S. Govt. Print. Off., 1978. p. 1.

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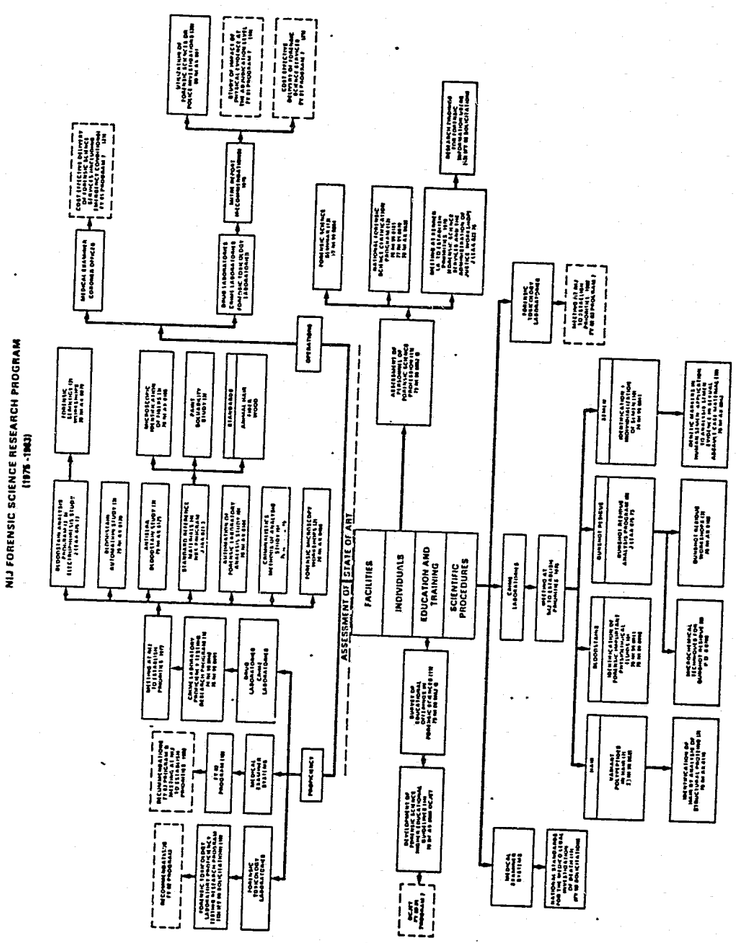
FIGURE 1 :



Source: U.S. Department of Justice. National Institute of Justice Forensic Sciences Program.

CONTINUED

4 OF 10

The concept of a nationwide proficiency testing program was not universally endorsed. The report notes that thee was some "skepticism" on specific aspects, namely; 6/

- traditional concern that independence of operation (a characteristic of autonomy) would be seriously eroded by allowing outside access to individual laboratory operations. This question was resolved by showing the laboratories that the testing mechanics precluded any direct involvement in the operations of any specific laboratory. Rather, because the project was a research effort in "how to run proficiency testing", its impact would be on the profession as a whole... a generic approach to the problems of the profession.

- [A] second area was the issue of standarization. Some individuals felt that proficiency testing could lead to requirements that certain instruments and methods be used to analyze the materials submitted to the crime laboratory.

- concerns related to the profession's direct involvement in the design and administration of the tests. It was agreed by the leaders in the field that few, if any, laboratories would participate in even a pilot proficiency program unless convinced that the profession itself would have a strong hand in designing and guiding the project. The creation of a Project Advisory Committee (comprised of eight prominent criminalists in the field) and their assignment to specific project planning, design and operational responsibilities proved to be a satisfactory solution to this problem.

- confidentiality of data and total anonymity of laboratories.

Regarding this later objection two safeguards were instituted by the project managers (Forensic Science Foundation, Inc.) -- strict limitation on access to the data collected and protection of links to a laboratory and a test result. The second safeguard required by the LEAA grant included the following special conditions. 7/

6/ Ibid. p. 6.

7/ Ibid. p. 8.

- The Forensic Science Foundation shall advise respondents that information is being collected for research and statistical purposes only. Such information will not be revealed or used for any other purpose. Information furnished by any person or agency and identifiable to any specific person or laboratory will not be revealed or used for any purpose other than the research and statistical purposes for which it was obtained.

- Any questionnaires prepared for completion by study subjects shall include the following notation:

> Information on this questionnaire is being collected by the Forensic Sciences Foundation in connection with a grant from LEAA. The information has not been requested by and is not intended for the use of LEAA.

b. Findings and Recommendations

The LEAA-sponsored study pinpointed some general problems regarding quality assurance and more specifically the requirements and inherent difficulties in proficiency testing procedures. Specific findings outlined in the study include: 8/

- Voluntary, anonymous proficiency testing is both feasible and necessary as indicated by the consistently high participation rates throughout the course of the project and the ability of such testing to identify areas in need of improvement.

- There is a need for continuous, ongoing proficiency testing to provide a means to monitor efforts to upgrade and maintain high quality criminalistics services;

- A wide range of proficiency levels among the nation's laboratories exists, with several evidence types posing serious difficulties for the laboratories;

8/ Ibid. p. 2-3.

- The majority of laboratories queried lack the financial resources to participate in the proficiency testing program on a subscription (fee) basis.

In response to these findings, the Forensic Sciences Foundation and the Project Advisory Committee have formulated several recommendations, including:

- A nationwide program of continuous proficiency testing of crime laboratories should be established and administered by a peer group;

- Future proficiency testing programs should contain provisions to render technical assistance to the laboratories which desire and request such help;

- A series of regional workshops to address education and training needs corresponding to deficient areas as identified in this project should be developed immediately;

- Law enforcement agencies at all levels of government must recognize that the problems identified in the research findings are symptomatic of inadequate budgets, and both physical and human resources and should allocate the necessary funds to correct such deficiencies.

As an outcome of the project, the Forensic Sciences Foundation and the Project Advisory Committee made several recommendations. Specifically advocated was a nationwide program of continuous proficiency testing of crime laboratories. 9/ Also suggested was a future proficiency testing program to contain "provisions to render technical assistance to the laboratories which desire and request such help." 10/ The development of specialized/technical workshops to meet education and training requirements of the crime laboratory community also was recommended.

9/ Ibid. p. 3.

10/ Ibid.

In addition, the report alluded to the problems of inadequate budgets and limitations of resources which must be addressed by all levels of government. 11/

Other problems identified in the report included:

- qualifications and certification of personnel;

- accreditation of crime laboratories;

- accreditation of forensic science degree programs; and

- research for improved techniques in scientific analysis.

Many of the issues and problems identified by the study, although not new, focused the attention of the crime laboratory community.

Consequently the report stimulated a controversy regarding the quality of laboratory services. The crime laboratory findings came under scrutiny and action has been undertaken to remedy problems at the State and local levels.

Subsequently the Forensic Sciences Foundation, Inc. the American Academy of Forensic Sciences, and the American Society of Crime Laboratory Directors with grants from NIJ have launched programs to remedy some of these problems. (See section IV for additional details.)

C. GENERAL ACCOUNTING OFFICE REPORTS

In 1980 the General Accounting Office issued two reports which focused on Federal crime laboratories. These reports examined the range and type of assistance Federal laboratories were rendering to State and local governments and the Federal Bureau of Investigation's laboratory personnel requirements and practices.

11/ Ibid.

1. Assistance for State and Local Jurisdictions

The General Accounting Office (GAO) report, Federal Crime Laboratories Lack a Clear Policy for Assisting State and Local Jurisdictions, 12/ reviews some of the problems associated with Federal assistance. GAO recommended that the Federal agencies develop and coordinate a plan to reduce support to State and local law enforcement. The GAO suggested that this plan should:

- provide a time schedule which will enable the States to prepare for the phased reduction in Federal laboratory assistance;
- discontinue the practice of accepting routine requests from local law enforcement agencies, thereby by-passing laboratories where the capability exists or should be developed; and
- define the complex or sophisticated analyses which the Federal laboratories should continue to perform.

Another suggestion by the GAO was that Federal agencies consider, during this phased reduction, the possibility of providing some services on a reimbursable basis. 13/

The GAO report alludes to the budgetary restrictions which may force cancellation of Federal assistance and calls for a more orderly procedure to accomplish this goal.

The Federal crime laboratories, FBI and ATF, have formulated guidelines on the scope of their assistance programs. (See section III.)

12/ U.S. General Accounting Office. Federal Crime Laboratories Lack a Clear Policy For Assisting State and Local Jurisdictions. September 12, 1980. GGD-80-92. p. 18.

13/ Ibid.

On one hand the dependency of State and local jurisdictions on the Federal crime laboratories for examinations and analysis varies greatly. Certain local crime laboratories have come to depend on Federal capabilities. Critics have been concerned that this assistance has encouraged a greater dependency and in some instances has adversely affected the development of State and local crime laboratory capability.

On the other hand, some critics have viewed the phasing out of Federal crime laboratory assistance with concern and they have wondered about the possible consequences of this policy. They claim that the tightening of Federal assistance programs may not necessarily bring about the improvement of State and local laboratories. It is unclear at this time if the implications of restricting assistance are fully understood. It has been suggested that some of the consequences of this assistance restriction policy may be long-term and not identifiable at an early date.

2. FBI Personnel Practices

In July 1980, GAO issued a report on the FBI's use of special agents as crime laboratory examiners. This report indicated that the use of special agents in this capacity increased costs. The benefits, in the view of GAO, were not enough to merit retention of this system. 14/ Specifically the GAO recommended that the FBI "develop and implement a plan leading to the orderly transition to a civilian workforce in the crime laboratory." 15/ The

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14/ U.S. General Accounting Office. Special Agents Should be Phased Out as FBI Crime Laboratory Examiners. July 18, 1980. GGD-80-60. Washington, 1980. p. ii.

15/ Ibid.

Department of Justice, in commenting on the recommendation, indicated that it had reservations and asserted that the GAO had not considered 16/ (1) the nature, scope, and quality of the work performed in the FBI laboratory, and (2) the costs involved in conversion to civilian examiners.

It was argued by GAO that the benefits of the investigative experience were not critical to providing effective testimony and that costs of conversion did not justify retention of this personnel practice. 17/

However, the FBI's unique personnel practice, while a valid ingredient in effectiveness, may not always be critical to ensuring quality assurance and increased proficiency of the FBI laboratory's operations.

In defense of the FBIs position, it can be argued that the investigative experience of FBI agents may enhance their analytical functions because of their more comprehensive understanding of processes and requirements.

16/ Ibid. p. 31.

17/ Ibid. p. 32.

III. SELECTED FEDERAL CRIME LABORATORIES

Certain Federal law enforcement agencies have established sophisticated crime laboratory programs in support of their missions. The Departments of Justice and the Treasury have operated and maintained crime laboratories to assist investigators in their agencies and to provide assistance to other Federal and non-Federal criminal justice officials. In support of this effort crime laboratory programs have been directed to improving the examination of evidential materials and to provide analytical data to combat crime.

This section highlights the crime laboratory program of the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), and the Bureau of Alcohol, Tobacco, and Firearms (ATF). This review while not comprehensive is meant to provide a frame work for identification of some of the key programs being supported. These laboratories are a national resource which provide an analytical capability to identification, analysis, and measurement of evidence for the criminal justice community. In addition, the Federal crime laboratories provide assistance and training, develop new techniques, conduct research in forensic sciences, and cooperate with Federal and non-Federal criminal justice officials.

There seem to be some questions regarding the type of services these laboratories should render. There are also concerns regarding the possible overlapping capabilities that may exist among the Federal laboratories. Some of these overlaps are due to the nature of forensic operations and others are, in fact, duplication. There are indications that a more consistent approach to Federal crime laboratory may be required. Some agencies have launched an effort to eliminate duplication and overlap but it is not entirely clear how extensive an effort is being made.

A. FBI CRIMINAL LABORATORY

The FBI operates and maintains the largest criminal laboratory in the Nation. The laboratory is one of ten divisions within FBI headquarters and functions under the supervision of the Office of the Assistant Director. The operational responsibilities of the laboratory are clustered about three main sections: documents, scientific analysis, and special projects. These sections perform scientific and technical examinations of evidence and are designed to promote coordination of functions.

1. Organization

a. Document Section

This section provides scientific examination of all documents including shoe prints, tire treads, and other imagery analysis. In addition, the document section provides translation and analysis of foreign language material. The administration of the FBI Polygraph Examination Program and deciphering and cryptological analysis and communication are under the purview of the Document Section. 18/

b. Scientific Analysis

Some of the highly specialized examinations requiring chemical, biological (serological), metallurgical, and mineralogical analyses are performed by this section. In addition, scientific analysis includes examinations of arson evidence, firearms, toolmarks, glass fractures, and instrumentatal analysis.

18/ Based on a review of internal FBI briefing document, overview of laboratory functions, dated March 14, 1980. (unpaged)

Chemical, physical, and biological science research and forensic science training are managed by the section. 19/

c. Special Projects

The Special Projects Section provides a wide range of services, including photographic, imagery, and surveillance technology support. Visual aids support is also provided by this section. The section participates and coordinates some aspects of architectural design in cooperation with the Pennsylvania Development Corporation and the Fine Arts Commission. 20/

2. Major Programs and Objectives

The FBI Laboratory focuses on two major programs in support of Federal, State, and local requirements, namely the Forensic Services Program and the Forensic Research and Training Program.

a. Forensic Services Program

This program provides technical and scientific support to on-going FBI investigations, conducts forensic examinations, and provides court testimony in connection with FBI investigations. The FBI also provides forensic examinations and expert testimony to State, local, and Federal law enforcement agencies. 21/

b. Research and Training Program

This program supports on-going research in forensic sciences and assists in the improvement of techniques and innovation in the examination process. Certain techniques are initially implemented and refined in the laboratory and

19/ Ibid.

20/ Ibid.

21/ Source: Federal Bureau of Investigations.

may eventually be included in training programs. Some 43 forensic courses provide Federal and non-Federal forensic scientists with training in the collection, preservation, handling, and significance of physical evidence in the investigation and prosecution of criminal matters. The program is directed at increasing the capabilities of the forensic science community and providing specialized training to forensic scientists. 22/

The FBI Laboratory Division encourages and supports the exchange of information regarding forensic research. The Forensic Research and Training Center, to be openned in May 1981, will be a central facility to assist in expanding research capabilities and permit training for the forensic science community. The primary training responsibility of the Center will be in support of FBI personnel and the FBI Academy. In addition, training programs will be available to personnel of other Federal law enforcement agencies and crime laboratories. 23/

Technical training, field support training, and special forensic investigative training will be some of the critical elements of the program. 24/ Courses to be included are deal with arson (laboratory analysis and crime scene investigation), chemistry and instrumental analysis (chromatography, spectro-analysis of paints, explosives, and plastics), crime scene (collection and preservation of physical evidence, bombing crime scene), documents (general

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22/ Ibid.

23/ U.S. Department of Justice. Federal Bureau of Investigation. Forensic Science Training Program. FBI Academy, Quantico, Virginia. Washington [1981] 29 p.

24/ Ibid. p. 3.

examination and specialized topics), fingerprints (classification, identification, latent fingerprint photography, and crime scene to courtroom, fingerprint identification and identification officers development), firearms identification (gunshot and primer residues), gambling (gambling technology), glass (survey of glass), management (principles for the crime laboratory), microscopy (examination of hairs, textiles, and other fibers), photography (forensic photography, crime scene photography), serology (general forensic serology and biochemical blood-stain analysis), and other courses in forensic science. 25/

3. Work Load

The number of FBI laboratory examinations has continued to grow in the past few years. While the total number of requests may not show a dramatic increase, the number of examinations due to sophisticated techniques has continued to grow. Figure 2, FBI Laboratory Examinations (Fiscal Years) highlights the total number of examinations in the past five years. The FBI laboratory reported that its support to Federal law enforcement agencies included over 370,000 examinations in 1980 and the FBI estimates that the number for 1981 will be just over 400,000. (See figure 2.)

Recent FBI imposed restrictions on the acceptance of requests from non-Federal laboratories should contribute to lowering the number of requests but the complexity of modern forensic science may contribute towards increasing the number of examinations for State and local laboratories. Support to State and local governments is reflected in figure 3, FBI Laboratory: Assistance to Non-Federal Law Enforcement Agencies.

25/ Ibid. p. 11 and 12.

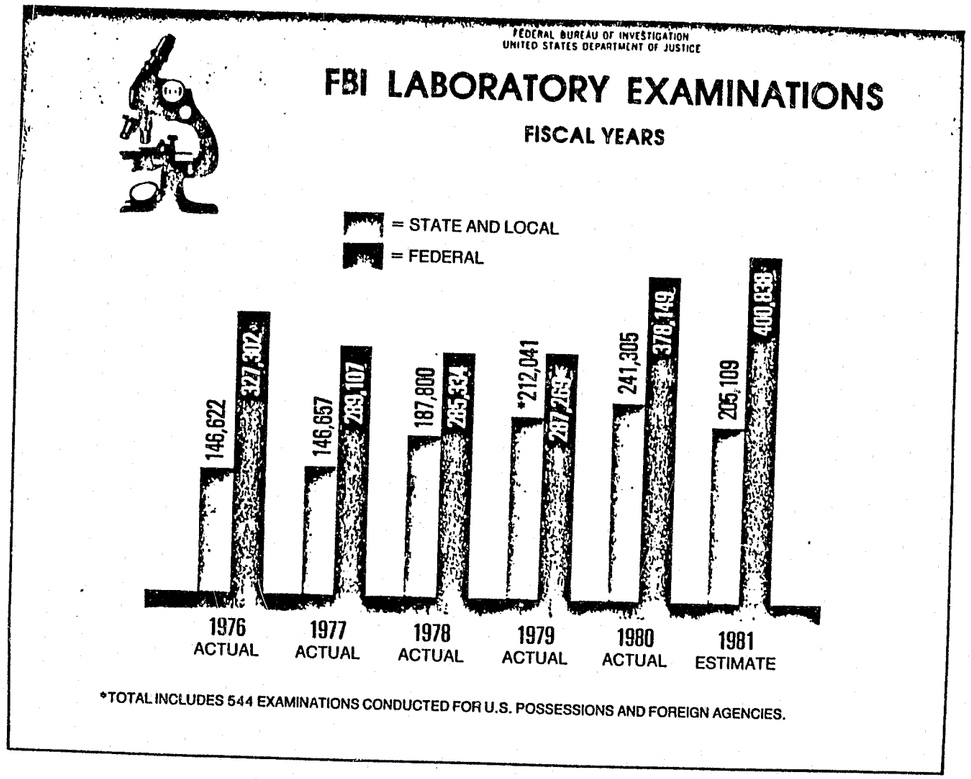

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE
FBI LABORATORY EXAMINATIONS
FISCAL YEARS
= STATE AND LOCAL
= FEDERAL
146,622
327,302*
146,657
289,107
187,800
285,534
*212,041
267,269*
241,305
378,149
205,109
400,889
1976 ACTUAL
1977 ACTUAL
1978 ACTUAL
1979 ACTUAL
1980 ACTUAL
1981 ESTIMATE
*TOTAL INCLUDES 544 EXAMINATIONS CONDUCTED FOR U.S. POSSESSIONS AND FOREIGN AGENCIES.

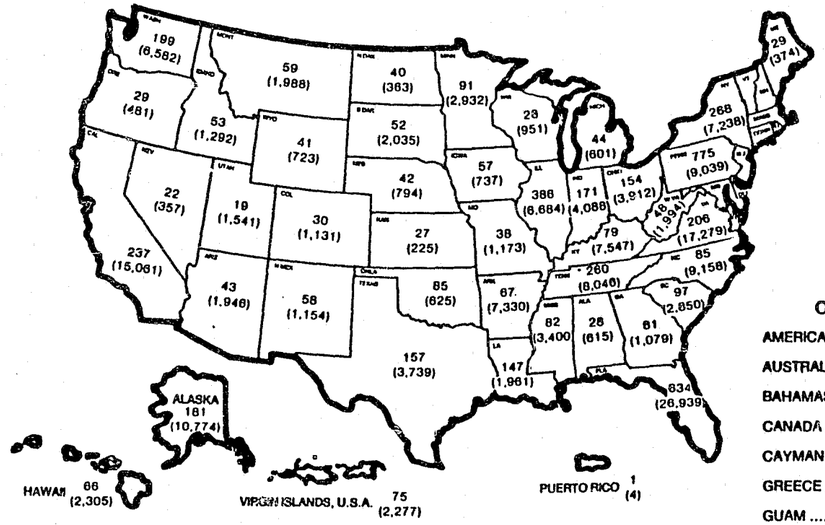
FIGURE 2

FBI LABORATORY

Assistance To Non-Federal Law Enforcement Agencies

REQUESTS RECEIVED 7,054
EXAMINATIONS CONDUCTED (241,305)

FISCAL YEAR 1980



VT. 58 (887)
N.H. 76 (1,346)
MASS. ...92 (2,546)
CONN. ..190 (2,817)
R.I. 58 (2,625)
N.J. 282 (7,563)
DEL. 226 (12,242)
MD. 390 (14,401)
D.C. 314 (13,795)

OTHER

AMERICAN SAMOA 1 (5)
AUSTRALIA 1 (40)
BAHAMAS 3 (12)
CANADA 3 (1,157)
CAYMAN ISLANDS 1 (10)
GREECE 1 (63)
GUAM 7 (472)

FBI/DOJ

FIGURE 3

Faced with budgetary and manpower reductions, the Laboratory Division has recently instituted some changes involving examination priorities and its policy of accepting evidence from other crime laboratories. Priorities have been arranged as follows: 26/

Case Prioritization

Category I

1. FBI cases in subdivided classifications (A) and (B).
2. Any State or local case having notoriety or national implications; a trial that is in progress or is to begin in the immediate future.

Category II

All other FBI cases and State and local cases involving violent crimes such as murder and rape.

Category III

All other matters.

(Note: All FBI cases handled by the Scientific Analysis Section will be treated as Category I regardless of the priority assigned.)

The limitation on the acceptance of cases was undertaken to eliminate the FBI laboratory from being inundated with the backlog of other laboratories. With the limited resources available, it was believed to be most useful to adhere to this policy whenever possible. 27/

26/ Source: Federal Bureau of Investigation.

27/ Ibid.

4. Other Activities

a. Crime Laboratory Digest

The FBI in "association and cooperation with crime laboratories throughout the United States" 28/ publishes the Crime Laboratory Digest. The Digest is meant to provide an informal forum for the exchange of ideas and concepts of interest to the criminal laboratory community. The Digest also serves to alert crime laboratories to new FBI policies and guidelines. In addition it provides information on technical aspects of examinations and current guidelines on the handling of specimans and tests. It also provides a forum for surveys and policy-related activities of non-Federal laboratories.

b. Forums and Meetings

Periodically the FBI has conducted forums and encouraged meetings of professionals in forensic sciences. The FBI has made a contribution by providing encouragement to the formation of the American Society of Crime Laboratory Directors (ASCLD). This group of professionals meet annually at the FBI Academy to discuss crime laboratory developments. (See section IV.)

B. DRUG ENFORCEMENT ADMINISTRATION LABORATORY PROGRAM

The Drug Enforcement Administration in the Department of Justice is responsible for enforcing Title II (Controlled Substance Act) of the Comprehensive Drug Abuse Prevention and Control Act (P.L. 91-513). As the primary agency for overall Federal drug enforcement strategy and programs, DEA is divided into

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28/ U.S. Department of Justice. Federal Bureau of Investigation Crime Laboratory Digest. [Washington')A bi-monthly publication under the auscpices of the FBI)

three operations programs: enforcement, intelligence, and compliance, and regulatory affairs. The Forensic Science program consists of a system of seven regional laboratories system (see figure 4). These laboratories are located in Washington, D.C., New York, Miami, Dallas, Chicago, San Diego, and San Francisco with a Special Testing and Research Laboratory in McLean, Virginia.

The DEA laboratories perform forensic drug analysis as well as provide support by related forensic techniques. The laboratories perform analysis on controlled substances and their production identification, provide input into optimum time of seizure, and provide a wide range of technical assistance to prosecutors in this highly technical area. The DEA law enforcement operations have been in close collaboration with State and local officials. Special task forces have been established to assist in tracking and identification of illicit drug dealers. 29/

The cooperative nature of the DEA effort has included a comprehensive laboratory support program to supplement State and local laboratory capabilities. DEA laboratories provide analysis, expert testimony, and assistance and training. In addition to on-the-job training and special forums and seminars, information is provided through a monthly newsletter Microgram. DEA also provides analytical drug reference standards and encourages participation of DEA forensic scientists in professional societies. 30/

29/ Frank, Richard S. Federal Drug Law Enforcement in the Role of Forensic Sciences. Presented at the Eleventh Seminar of The Western Conference on Criminal and Civil Problems. Wichita, Kansas, May 16-17, 1979.

30/ Ibid., p. 13.

FIGURE 4

DEA has three regional and 57 district office overseas as part of its integrated worldwide system. International and foreign cooperative programs are therefore an integral part of the DEA law enforcement effort.

The Forensic support of the compliance and regulation program the following activities: 31/

1. conducting ballistics (tool mark examination) to determine manufacturing origin of tablets and capsules,
2. identifying legitimately manufactured controlled substances which appear in illicit channels
3. identifying abused substances which are not presently under control and alerting officials to their abuse potential, and
4. assisting investigators in conducting compliance investigations of manufacturers.

The DEA intelligence function also is supported by the forensic laboratory efforts. A cooperative DEA-managed El Paso Intelligence Center (EPIC) continues to depend on laboratory analysis to determine the extent of illicit drug traffic.

C. BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS

The Department of the Treasury's Bureau of Alcohol, Tobacco, and Firearms (ATF) has responsibility for law enforcement, industrial regulation, tax collection, and State assistance. The ATF laboratory system consists of a National Laboratory Center which includes a chemical and forensic laboratory. In addition, four regional laboratories operated by the ATF are located in Atlanta, Cincinnati, Philadelphia, and San Francisco.

31/ Ibid. p. 17.

1. ATF Laboratories Scope and Responsibilities

ATF laboratories have the responsibility of analyzing chemical content of alcohol beverages marketed in the United States. Industrial or denatured alcohol included in a wide range of foods, drugs, and other products are subject to ATF controls. The Chemical Laboratory also distinquishes different types of tobacco utilized in cigarettes and cigars. In addition, the Chemical Laboratory is responsible for the calibration of alcohol gauging instruments.

The Forensic Science Laboratory examines evidence submitted in connection with criminal cases. This includes documentation examinations, fingerprint identification, firearms and toolmark identifications, voice print methods, and ink identification. This laboratory contains one of the Nation's largest ink libraries, consisting of ink samples, chemicals analysis, and date of production.

The Forensic Science Laboratory is responsible in assisting in the identification of arson, incendiaries, bombs, and other explosive devices. The identification of types of explosives or materials used in arson cases and gunshot residue testing also are performed by the Forensic Science Laboratory.

2. ATF Training Programs

In a desire to reduce the dependency of State and local officials on the ATF laboratory system, a training program was established in early 1980. The program was directed at increasing the proficiency of local law enforcement agencies in "laboratory detection and identification of accelerants commonly encountered in arson cases." 32/

32/ U.S. Bureau of Alcohol, Tobacco, and Firearms. Office of Technical and Scientific Services. The National Laboratory Center. Report on Training State and Local Arson Chemists. Washington, 1980. p. 1.
At the head of title: For Official Use Only.

The training course is one week in length, consisting of three days of laboratory exercise and two days of lectures and discussions. The program focuses on "theoretical and practical aspects of gas-liquid chromotography as applied to accelerants and separation of accelerants from arson debris." 33/ ATF has acknowledged the need for additional communication and professional exchange forums to acquaint the arson chemist with recent developments in arson evidence handling and analysis. 34/ Budgetary limitations on State assistance may eliminate or curtail this communication avenue.

3. Limitations on State and Local Assistance

In light of budget restrictions, the ATF Laboratory system recently has developed a policy to cope with the phased reduction of Federal crime laboratories assistance to State and local officials as suggested by the General Accounting Office.

The ATF policy is directed at improving the capability at the local level, especially in dealing with arson chemistry and identification of accelerants. The aim is to provide training as requested to the arson chemists and to support only laboratories which do not have the capability of performing specific tests. The plan is to eventually limit most testing as the training and experience of the State and local laboratories are improved. 35/ Another important element of this policy is that ATF plans to coordination with the FBI regarding all training and research and development to eliminate duplication.

33/ Ibid.

34/ Ibid.

35/ Based on the ATF policy announcement in the Crime Laboratory Digest. February 1981. p. 3. (A publication of the U.S. Department of Justice Federal Bureau of Investigation.)

IV. FORENSIC SCIENCE COMMUNITY RELEVANT ACTIVITIES

The forensic science community has a continuing interest in improving the management and operation of crime laboratories. The wide range of activities in support of improving crime laboratory operations and performance cannot be adequately addressed in this cursory overview. The contributions of professional societies, academia, industry, and related groups have been on such a broad scale that it is not possible to summarize many of the activities in this report. This section reviews some of the activities concerned with management and quality assurance. Selected for discussion are just three of the key activities that have special implications for the improvement of crime laboratory performance. It should be understood that this is just a small part of the total contribution made by this community of professionals.

A. AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS

In 1973, with support from the Law Enforcement Assistance Administration and hosted by the Federal Bureau of Investigations, the First National Symposium on Crime Laboratory Development was held at the FBI's Academy in Quantico, Virginia. The participants of that symposium identified a need to improve communications and to increase cooperation among crime laboratory managers. Consequently, the American Society of Crime Laboratory Directors (ASCLD) was established. 36/

36/ U.S. Department of Justice. Federal Bureau of Investigation. Report - Second Annual Symposium on Crime Laboratory Development. FBI Academy, Quantico, Virginia, September 23-27, 1974.

CRS-33

A major objective of ASCLD is identifying and understanding the wide range of managerial concerns of the crime laboratory director. It was stated that, while the American Academy of Forensic Sciences and its regional associations provide an important communication link in "specific criminalistics and the forensic sciences," 37/ there was a growing need for an opportunity to provide directors of the crime laboratories with an organization for the exchange of ideas concerning operative, processes and other administration problems. 38/ ASCLD is aimed at: 39/

- improving communications regarding management planning, implementation, and control of crime laboratory functions;
- assisting members to improve management of crime laboratory facilities; and
- aiding in assessment of the state-of-the-art and appraising physical and manpower resources.

ASCLD meets annually at the FBI Academy facility concurrently with the FBI's annual crime laboratory development symposium.

ASCLD has recently assisted in developing a program for creditation of the laboratories. Individual laboratories would contract for a review and oversight examination of their operations. Plans are being formulated for a private corporation to be established to do the review and creditation examination. While the creditation will be performed by the independent corporation, ASCLD members have been the stimulus and champions of this voluntary program.

37/ Ibid. p. 15.

38/ Ibid.

39/ Constitution of the American Society of Crime Laboratory Directors.

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B. AAFS CRIMINALISTICS CERTIFICATION STUDY

In the late 1970s the American Academy of Forensic Sciences (AAFS) formed the Criminalistics Certification Study Committee (CCSC). The committee conducted an investigation, a survey, and held meetings on the merits and disadvantages of criminalistics certification. As part of the fifth annual symposium on criminal Laboratory Development held in 1977, the Criminalistics Certification Study Committee reported on a limited survey 40/ it has undertaken. CCSC reported that questionnaire respondents supported in principle the concept of national, voluntary, peer group certification. 41/

The survey respondents also indicated that there was a need for further study of the certification process. Subsequently the committee announced the formation of peer groups. These groups--firearms and toolmarks peer group; serology (blood and other physiological fluids) peer group; drugs/toxicology peer group; trace evidence peer group development--were constituted to "define acceptable levels of professional competence in the various disciplines of criminalistics and to design a national certification program to determine if candidate practitioners meet...accepted minimum requirements." 42/

40/ Representatives of the following regional and professional associations were polled: Association of Firearms and Toolmark Examiners, California Association of criminalists, Mid-Atlantic Association of Forensic Scientists, Mid-Western Association of Forensic Scientists, Northeastern Association of Forensic Scientists, Northwestern Association of Forensic Scientists, and Southern Association of Forensic Scientists.

41/ U.S. Department of Justice. Federal Bureau of Investigation. Fifth Annual Symposium Report on Crime Laboratory Development. FBI Academy, Quantico, Virginia, October 16-20, 1977. [Washington] 1977. p. 8.

42/U.S. Deport of Justice. Federal Bureau of Investigation. Sixth Annual Symposium on Crime Laboratory Development. Quantico, Virginia, October 15-19, 1978. p. 38.

The CCSC report included figures on certification cost and provided a detailed listing of services. The committee outlined a list of potential meetings and provided insight into the possible options to implement at the certification program being considered at that time. 43/

Ultimately these plans were overwhelmingly rejected at the meeting of the American Academy of Forensic Sciences in New Orleans. To date very little progress has been made on the concept as proposed by the CCSC.

C. FORENSIC SCIENCES FOUNDATION, INC.

The Forensic Sciences Foundation, Inc. a private corporation funded by research grants and affiliated with the American Academy of Forensic Sciences, conducts research. To assist the criminal justice official the Foundation develops educational and training programs. It also supports research in the forensic sciences. In addition, it promotes public education on matters of public concern.

The Foundation receives some of its funds from the National Institute for Justice Forensic Science Research Program and was instrumental in conducting the NIJ proficiency testing project. (See section II for additional details.) Subsequently the Foundation has developed a proficiency testing program available by subscription to criminal laboratories. This voluntary program assists the crime laboratory manager in evaluating processes and assessing the capability of the laboratory facility. The results of the proficiency test are confidential and enable crime laboratory decisionmakers to spot problems and make necessary changes.

43/ Ibid. p. 44.

D. INTERNATIONAL

There has been a continuing interest in forensic science throughout the world. The range of systems, from the prosecutiorial inquiry system based on Roman law to the coroner system dating back to Anglo-Saxon law, provides considerable variation in approach. Attention to detail varies greatly among nations conducting extensive research into forensic science. There is also a variety of requirements regarding manpower training and skills in this area. Various international groups (for example, Interpol) have been concerned with the progress and opportunities which forensic science brings to the investigative process. Some nations continue to improve their forensic capabilities through extensively supported programs.

1. Home Office Central Research Establishment

The Great Britain Home Office Central Research Establishment (HOCRI) laboratory at Aldermaston provides services and guidance to forensic scientists and others. As part of the Home Office Forensic Science Service under the Director of Central Research, the laboratory performs the following functions: 44/

(1) Research and Development, including a wide range of experimental studies in biology, chemistry and toxicology;

(2) Information services dealing with inquiries from operational laboratories, the design and setting up of data collections, and computer services.

44/ Great Britain Home Office. Central Research Establishment. Home Office Forensic Science Service. Annual Report of the Director of Central Research Establishment. England, 1978. 141 p. Abstract from the U.S. Department of Justice. National Institute of Justice. National Criminal Justice Reference Service. (File accession number 09900.00.062624) Rockville, Maryland.

(3) Evaluation services concerning new techniques and equipment in the context of forensic needs;

(4) Analytical services concerning testing, usually done in operational laboratories, but in a given instance better carried out at HOCRE; and

(5) Educational services consisting of teach-ins, attachments, visits, and colloquia.

V. TECHNOLOGY AND QUALITY ASSURANCE PROGRAMS

The increased use of technology in forensic sciences has contributed to innovative approaches for management and analysis in the crime laboratory. In recent years instrumentation and computer-supported equipment have expanded the horizon of the forensic scientists. Complex and sophisticated equipment has improved laboratory efficiency and the effectiveness of laboratory preocedures and made relevant analysis more reliable.

New devices and techniques also have improved the management and administration of the crime laboratory. Computers are being used to provide management with new analytical tools by providing quick access to information on work load, types of examinations and inquiries, and inventories of evidence or materials required for processing. In addition, computer-supported information systems to provide crime analysis are being given some consideration. While it is not possible to provide an in-depth review of the wide range of computer-supported instrumentation or computer information systems in this brief report, this section highlights some of the issues concerning modernization of the crime laboratory. Some of the automation laboratory equipment as well as computers in support laboratory management are discussed below.

A. AUTOMATION IN THE LABORATORY

One of the most significant improvements can be attributed to computer-supported instrumentation, specifically enhancement of certain types of crime laboratory equipment with minicomputers or microprocessors. Raymond Dessy, Professor of Chemistry at Virginia Polytechnical Institute, summarized the impact of computer-supported instrumentation in laboratories in general

as follows: 45/

> There is little doubt that microprocessors are going to change the way instruments in research laboratories and analytical services areas are designed and operate and how they will interact with their operators. Within 5 years most new equipment will be using microprocessors to acquire analytical data, perform small manipulations on the data base and report the results.

He goes on to warn that: 46/

> . . . it is important that microprocessors be placed in a proper perspective, especially since there is an inclination to view them as the focal point of an entirely new capability.

Computerization of crime laboratory equipment continues to be an important aspect of forensic science. In the past decade advances in computer-supported instrumentation in spectrometry, identification of chemicals, and toxicological analysis has aided in bringing about an important evolution to the forensic sciences. Laboratories which make good use of such instrumentation should improve the quality of their analysis.

In a paper given at the Instrumental Applications in Forensic Drug Chemistry International Symposium in 1978 it was pointed out that 47/

> . . . there is promise of broadened laboratory capability; improved analytical sensitivity, creation of a wide uniform data base from which to draw reliable inferences, specific identification (perhaps the final touch stone of the analyst), speed and control of high-volume routine work; but all within the context of clear-minded understanding.

Dr. Finkle goes on to explain that 48/

> The benefits of saved time, staff management, cost-effectiveness, and quality of analytical results make the acquisition of computers and the laboratory they control very attractive.

The paper also notes the need for a more cautious approach in investing in the new "magic" and bring about an awareness that there is a need to manage technology on a human scale. 49/ Dr. Finkle acknowledges the challenge of appropriately utilizing the new technology and expresses both optimism and caution regarding the tremendous importance of technology to forensic sciences. 50/

B. SELECTED COMPUTERIZED INFORMATION SYSTEMS

The application of computer systems in the crime laboratory to assist in administration or operations seems to parallel, to some extent, developments in other industries and activities. Computers currently are used to support management and operational aspects of the crime laboratory. Automation of crime laboratory files, including inventories and materials, represents one aspect of computer support. In addition, work load tracking, scheduling and personnel records may be automated. The spectrum of activities reflects the desire to better contol the management and operation of the crime laboratory. A few of the existing crime laboratory information systems are discussed below. Some of these systems are in direct support of the laboratory analyst

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45/ Dessy Raymond. Microprocessors? — An End User's View. In American Association for the Advancement of Science. Electronics: the Continuing Revolution. Edited by Philip H. Abelson and Allen L. Hammond. Washington, 1977. p. 138.

46/ Ibid.

47/ Finkle, Bryan S. Indistinguished from Magic—the Threat and the Promise of the Laboratory Utopia. U.S. Department of Justice. Drug Enforcement Administration. Office of Science and Technology. Forensic Sciences Division. Special Testing and Research Laboratory. Instrumental Applications in Forensic Drug Chemistry. Proceedings of the International Symposium May 29-30, 1978. Washington, U.S. Govt. Print. Off., 1978. p. 274.

48/ Ibid., p. 275.

49/ Ibid., p. 276.

50/ Ibid.

and others provide managers with controls needed to improve the operation of the laboratory.

1. FBI Criminalistics Laboratory Information System (CLIS)

In the mid 1970s consideration was given to the development and implementation of a national criminalistics laboratory information system. The FBI was directed by the Attorney General to assist in the development of a system to support the Nation's criminal laboratories. Subsequently, the Computerized Laboratory Information System (CLIS), a file within the FBI National Crime Information Center (NCIC), 51/ was developed. This file, not completely operational at this time, is planned to contain forensic data, such as general rifling characteristics (GRC) (data includes information on bullets and cartridge cases of over 19,000 firearms). In mid-1978 the prototype CLIS was made available to 43 criminal laboratories and by October 20, 1980, all criminal laboratories in the United States were given access.

The CLIS Operating Committee (consisting of representative groups from the forensic community) decided to survey the needs of the crime laboratories and to identify the types of information files to be developed. The FBI, in conjunction with the CLIS Operating Committee, came to the conclusion that, because of new techniques and instrumentation developments, there had been a considerable change in priorities. A survey of the forensic community is being planned through the Crime Laboratory Digest published by the FBI. Some of the representative files that may be considered include: bibliographic information, literature abstract information, as well as data and information from the x-ray diffractometer, the infrared spectrometer, and gas chromotography-mass spectrograph. Until the results of the survey responses are assessed, no future additions are planned for CLIS.

51/ Source: FBI.

2. DEA Automated Laboratory System

In support of the Drug Enforcement Administration laboratory system, two information systems have been developed. The System to Retrieve Information from Drug Evidence (STRIDE) consists of a labortory analysis system, "ballistics," 52/ manpower utilization, and evidence inventory. These data are used to suppport both laboratory operations and management functions as well as to support intelligence analysis. 53/

STRIDE provides reports of drugs analyzed and the manhours expended by DEA. The system also provides information by drug and by geographical location. Utilizing the data contained in STRIDE, it is possible to obtain a profile for a specific drug. Therefore, it has been possible for example, to obtain a heroin profile for the United States which will provide the type and potency as well as the geographic spread of the drug. 54/

DEA has explored the possibility of expanding its data collections to include input from State and local laboratories. 55/

C. QUALITY ASSURANCE PROGRAMS

One of the key areas of concern of crime laboratory management has been improving the capability of the analytical function to assure that research results are valid, consistent, and reliable. The Federal crime laboratories

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52/ Ballistics in this context concerns the content, shape, and size of drug tablets as well as tool mark comparisons. The tool die compressing the tablet often leaves a unique identifiable mark.

53/ Source: Drug Enforcement Administration.

54/ Johnson, D.W. and J.W. Gunn, Jr. The Computer's Role in the Laboratories of the Drug Enforcement Administration. Journal of Forensic Sciences, v. 20, n. 3, 1975. p. 566.

55/ Ibid.

have taken a variety of approaches to ensure that the testing and analytical function meets certain criteria. Providing the appropriate level of quality assurance has been met by attracting well qualified personnel and continuing training programs, improving personnel performance, periodical testing and blind testing, placing appropriate controls, and developing formal quality assurance programs. Some States and local laboratories have quality assurance programs.

In a presentation before the American Academy of Forensic Sciences annual meeting in February 1981, Howard Schlesinger of DEA commented on the lack of quality assurance programs in crime laboratories. 56/ He goes on to note that, although quality assurance programs are found in regulatory and testing laboratories, they are notably absent from crime laboratories. Mr. Schlesinger also stated that the lack of standards or accepted methods "has been a significant problem" as there is considerable difficulty in achieving "consistent analytical results without standard methods." 57/

1. ATF Quality Assurance Program

The Department of the Treasury's Bureau of Alcohol, Tobacco, and Firearms has formulated a quality assurance program for explosives and arson. The objective of this program is to provide and maintain the "overall quality

56/ Schlessinger, Howard L. History of a Quality Assurance Program for the Identification and Quantification of Controlled Substances. Presented at American Academy of Forensic Sciences. Annual meeting in Los Angeles, California, February 17-20, 1981. Unpaged.

57/ Ibid.

of service." 58/ This involves the evaluation and inspection of cases and a special collaborative testing scheme. 59/ The program is directed at ensuring that: 60/

(1) proper tests and techniques are employed;
(2) maximum information is obtained from the examination on the basis of evidence received;
(3) the results and conclusions are technically correct; and
(4) the presentation of the information is of high quality.

ATF has outlined the following means to achieve its quality assurance objectives: 61/

-- Selection of cases to be examined will be determined by the number of total explosive or arson cases and these will be selected on a random basis,

-- Reviews will be conducted by a panel of four senior chemists in the ATF laboratory system, and

-- Establishment of evaluation criteria.

Classification of the cases, determination of the usefulness of the services and a survey of end users as well as a final report will be completed for each of the cases reviewed. 62/

58/ U.S. Department of Treasury. Bureau of Alcoho. Tobacco, and Firearms Quality Assurance Program for Explosives and Arson Examinations. (Order: ATF O 7100) DRAFT. Undated. p. 1.

59/ Ibid.

60/ Ibid.

61/ Ibid., p. 2-3.

62/ Ibid.

VI. SUMMARY AND CONCLUSIONS

The crime laboratory manager today is faced with a myriad of problems associated with increased demands for services, meeting the requirements for high quality performance, and successfully meeting the challenges of new technological advances--all in a time of limited resources. The dilemma faced by Federal crime laboratories in limiting support to State and local jurisdictions is partially being resolved through new policies. It is in this environment that the setting of performance standards and promoting quality assurance programs have become critical elements in the successful operation and administration of the crime laboratory.

A. NEW CHALLANGES

Technological advances present a new challenge to managers of crime laboratories. The Federal crime laboratories are beginning to utilize computers and automation to enhance their capabilities. In the next few years, if a parallel may be drawn with other technological applications, some of the costs of computer-supported laboratory equipment should decrease. With the lower-cost and more dependable microprocessors, as well as the advent of crime laboratory management information systems, laboratory capabilities should increase. There is ample evidence that there will be a continuing reliance on new technologies as well as a development of quality assurance programs. As greater experience is gained with quality assurance programs, a more concise body of knowledge on quality assurance programs may be developed and crime laboratory management techniques should improve.

The integration of existing Federal capabilities to assist the crime laboratory community has been a continuing issue. Most recently, questions have emerged regarding the new FBI Forensic Research and Training Center. The role of the Center in the criminal justice community, and more specifically in forensic sciences, must be assessed on a continuing basis. For example, consideration of the type and kind of research and training support to be rendered by the Center must be evaluated. The role that key professionals will have in an advisory capacity has been a question in the forensic community. In brief, questions have arisen as to the nature of the Center's advisory review function.

The direction of this new Center most likely will have an influence on crime laboratory management, including techniques and methodologies. The exploration of new subjects and the research and development effort should make a valuable contribution to the forensic community.

A critical aspect of managing the new Center will be the role that the forensic community will have in determining the direction of both its training and research programs. The FBI is considering the implications of the advisory committee or supervisory board concept. The advisory committee approach might have some problems as it may require a public review that may present difficulty in dealing with sensitive topics. The supervisory board approach may present a reasonable alternative to bringing a continuing review by the forensic community.

Some members of the forensic science community have expressed the view that, ideally, the Center's proposed supervisory or advisory function have a continuing influence on the direction of the Center's programs. It has been argued that the proposed supervisory or advisory board might be enhanced by having a small independent staff to aid the advisory or supervisory board. The proper organization of the Center is essential to both the community and the FBI.

CRS-47

B. MANAGEMENT OF THE CRIME LABORATORIES

Planning and controlling operations remain serious problems in many crime laboratories. Some of the problems stem from the fact that the crime laboratories may be located organizationally so that planning and management functions are not adequately supported.

For example, when a crime laboratory is institutionally in a police department, there is a continuing problem in balancing resources between what is considered direct operations (for example, buying patrol cars, equipment, meeting personnel costs) and related services (such as laboratories, libraries, and police academies). The laboratory in such an institutional setting may lack the autonomy to plan appropriately and, in fact, may be directed from a department-level planning office.

Some critics have expressed the view that management of the non-Federal crime laboratory remains one of its major problems. A key factor has been the lack of experience with new techniques and equipment. Educational and training programs directed toward assisting in crime laboratory management have not always been adequately addressed. Therefore, the management of these crime laboratories remains a difficult problem both from the individual and institutional perspective. The formation of the American Society of Crime Laboratory Directors is indicative of the concern of managers at all levels with the problems of control and planning.

The managers of Federal crime laboratories face similar problems. There is some parallel with the non-Federal crime laboratories in that often a lack of autonomy renders consideration of alternative approaches academic. Limited budgets and the overburden of increased demand for analysis have placed a special set of problems on the Federal crime laboratory manager.

CRS-48

1. Centralization Versus Decentralization

Determining an optimum organizational structure remains a problem for the crime laboratory. Decentralization versus centralization of laboratory facilities often is an issue of debate. In an era of limited resources and high cost of equipment, centralization has a great appeal in that it eliminates the need for duplication of resources. On the other hand, the need to be close to the scene of action and the frequent need for rapid laboratory results have prompted some crime laboratories to decentralize. To meet this challenge the regional laboratory concept has become a possible alternative for some States and certain Federal agencies.

2. Utilization of Information Systems

Crime laboratories continue to utilize many informal channels to obtain information on new methods, data collections, and scientific references. However, national automated networks, such as the FBI Computerized Laboratory Information System (CLIS), remain limited in scope and require additional conceptual planning to make a significant contribution.

The National Criminal Justice Reference Service provides automated information searches (annotated bibliographies) and full text copies of citations included in the system on a wide range of subjects, including forensic sciences. Professional journals, proceedings of forums and seminars, and technical magazines also contribute to the crime laboratories information resources. In addition, publications by the FBI, such as Crime Laboratory Digest, and the DEA's publication Microgram serve to provide information on a wide range of technical subjects of interest to the crime laboratory community.

Crime laboratory information systems, such as DEA's STRIDE (discussed in section III), contain data tracking systems. While data tracking systems have not been widely instituted, the possibility of controlling evidential material and findings in the criminal justice system has considerable merit. Several systems which seem to have potential application in the crime laboratory environment include: 63/

PROMIS (Prosecutor's Management Information System): Capable of including use of physical evidence on cases from crime to conviction/prison/probation/parole; and

URSD (Uniform Data Recording System): May be utilized to track data pertinent to the crime laboratory.

If the laboratories are to function effectively, more crime laboratory management information systems research may be required. Inventory, case tracking systems, analytical matching programs, and reference systems in support of the laboratory function deserve more attention. National information systems related to crime laboratories should be coordinated in a more comprehensive fashion. On the Federal level there is a need to explore and perhaps develop systems that have mutual benefits for national and local laboratories.

3. Quality Assurance Programs

More information is needed on the merits and limits of quality assurance programs. Quality assurance programs may require assessment. There is a need to evaluate various approaches and ouline new directions if needed in obtaining optimum use of national facilities.

63/ As suggested by the Executive Director of the American Academy of Forensic Science, Kenneth S. Field, in a letter to Louise Becker, March 11, 1981.

4. Education and Training

The need for continuing education in forensic sciences places a special strain on resources. The consequences of limiting training affects the quality of work of the crime laboratory. Laboratory managers have expressed the fact that the national laboratories perform an important educational function. Both formal training programs and informal consultations provide information to Federal and non-Federal crime laboratories. The sharing of information, via Federal-sponsored training and exchange programs, in the highly specialized and technical areas of forensic science contributes to quality assurance.

C. FUTURE CONSIDERATIONS

The continuing demand for accurate and reliable crime laboratory analysis, coupled with diminishing resources, provides a special dilemma for the crime laboratory manager and other ciminal justice decisionmakers.

Harnessing new technology remains a continuing challenge. Utilization of modern management techniques to improve laboratory operations also requires understanding and commitment on the part of the high-level decisionmakers involved with the criminal justice system. Ultimately this requires sharing of information at all levels of Government so that efforts will be appropriately channeled. While the goal of obtaining efficient and effective laboratory operations may be clear, there is concern regarding the approach that must be undertaken.

Another factor which is not entirely clear is the role of the Federal laboratories as a national resource. Limiting forensic support to State and local jurisdictions, as suggested in the GAO report discussed above in section II, may have consequences not fully realized at this time. Other

curtailments of services by the Federal crime laboratories also may have the effect of limiting this national capability.

Questions for Congress

Recognition of the Federal crime laboratory operations as an important national resource is an important element for congressional consideration. The scope and nature of the crime laboratory in the criminal justice system may require establishing more comprehensive policies. Federal laboratories represent a special management challenge if they are to serve the needs of the individual agencies and also provide support to others in the crime laboratory community.

Quality assurance also is a critical issue involved in an effective criminal laboratory system. The problem of instituting proper controls and standards remains a debated issue. Promoting creativity and innovation in laboratory analysis while also maintaining quality remains a sensitive issue and one that is not easily measured. Therefore, the need to provide a reasonable program to ensure high quality analysis remains a challenge.

Several questions emerge which may requrie additional consideration:

— What should the role of the Federal agencies be in providing support to the crime laboratory community?

— Should Federal agencies establish a formal exchange mechanism to promote more effective management of the national crime laboratory resource? Would it be advisable to establish a Federal interagency task force at an operational level to encourage a continuing dialogue among the Federal crime laboratory managers?

— What research programs or priorities should the new FBI Forensic Research and Training Center address? Should the new Center have an independent advisory or supervisory board, with a small permanent staff to provide support to the board chairman?

— Is supervisory control of laboratory analysis sufficient or is there a need to develop more formal quality assurance programs? Should support be given to promote research on quality assurance techniques? What support does the forensic sciences community require to assist in developing appropriate standards and controls of laboratory quality?

— Can assistance from Federal laboratories to States and localities be instituted on a reimbursable basis? What are some possible disadvantages of such a system?

The projected increased demands on the Nation's crime laboratories and the harnessing of technology and management techniques to improve the quality of laboratory analysis present a challenge to Federal decisionmakers. The emphasis for the future may well be in the promotion of research to obtain optimum results with limited resources.

FBI AUTHORIZATION/CAREER DEVELOPMENT PROGRAM

WEDNESDAY, MARCH 25, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:33 a.m. in room 2237 of the Rayburn House Office Building; Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Schroeder, and Sensenbrenner.

Staff present: Catherine A. Leroy, chief counsel; Janice S. Cooper, and Michael Tucevich, assistant counsel; Thomas M. Boyd, associate counsel.

Mr. EDWARDS. Good morning.

The focus of the subcommittee's hearing today is the Bureau's career development program. That program was instituted to foster training of the FBI's top executives. Based on the premise that effective management and leadership requires a solid working background in all the major divisions of the Bureau, the program of necessity requires participants to move from one geographic location to another with some frequency.

In today's inflationary times, transfers are a hardship on all employees. For Federal workers, it is usually an inadequately compensated hardship. For FBI agents in the career development program—forced to undertake repeated transfers—it can be a financial and emotional disaster.

We hope today to learn more about the career development program, whether it is serving its intended purpose, or whether it is, in fact, discouraging capable men and women from seeking or continuing a career in the FBI. If there are problems, we hope we can be of some assistance in helping to solve them.

I am pleased to welcome as our witness today Mr. John E. Otto, Executive Assistant Director for Law Enforcement Services for the Federal Bureau of Investigation.

TESTIMONY OF JOHN E. OTTO, EXECUTIVE ASSISTANT DIRECTOR, LAW ENFORCEMENT SERVICES, FEDERAL BUREAU OF INVESTIGATION

Mr. OTTO. Mr. Chairman, I am the Executive Assistant Director for Law Enforcement Services for the Federal Bureau of Investigation. I am also the chairman of the FBI career board. In that capacity, I make recommendations to the Director of the FBI on all

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promotions to positions up to and including the position of Assistant Director.

An integral part of the FBI's career development program involves transfers as a part of appointments to position of increasing responsibility. In reaching my present capacity, I have made 10 transfers in my 16 years of FBI service.

I am very familiar with both the financial and emotional hardships which are a part of any move as a Government employee. I, therefore, appreciate, on behalf of myself and the approximately 7,750 special agents, the opportunity to share with you some of the financial problems which our agents face when they are transferred in order to accept promotional advancement.

This morning, I would like to focus my remarks on the transfers which we make through our career development program; however, the problems that I will highlight are evident in any transfer which we make.

Our career development program governs the promotion and administrative advancement procedures for special agents. We have 59 field offices and 438 resident agencies, suboffices under the field offices, throughout the Nation in addition to FBI headquarters here in Washington which must be staffed.

Although we are promoting agents in place when possible in the interest of efficiency and relieving some of the hardships on our agents, the filling of most of our supervisory vacancies involves a transfer because of our considered desire to nationalize rather than regionalize the management of the FBI.

Before I address the hardships associated with the transfers, I will take a few minutes to explain the FBI's career development program.

The career development program is a significant cause of transfers, but as you will see, eliminating the career development transfers is not a realistic option for the FBI.

The FBI operates a system which fills management vacancies as they occur. We do not make transfers for the sole purpose of moving a manager after he has served for a specified period of time in one assignment. In filling vacancies this way, we give developmental experience to our managers and insure that our headquarters is staffed by agents both with recent field experience and with the special expertise that we need here at headquarters.

We also insure that our field offices are managed by managers who have a broad background of experience including headquarters assignments.

Entry into the career development program is voluntary. This chart illustrates a typical advancement pattern for an agent who has entered the career advancement path and performed well. An agent starts his career as a street agent, conducting investigations in a field office. He may move one or more times as the needs of the Bureau dictate.

After several years of field experience, a street agent, who demonstrates management aptitude, is eligible to become a relief supervisor on one of the squads in the field office where he or she is assigned. A relief supervisor gains management experience by assisting the squad supervisor, and by acting as the supervisor when the designated supervisor is absent.

We do have a system of evaluating the management potential of participants in the career development program. The supervisory level management aptitude program evaluates persons prior to their becoming field supervisors. The executive level management aptitude program is used to identify those persons who have the aptitude to serve as an assistant special agent in charge.

After the relief supervisor has successfully completed MAP I, he is eligible for either promotion to fill an existing squad supervisory vacancy in the field or to fill a headquarters vacancy.

In order to limit transfers, we are promoting in place where possible. In order to simplify our discussion, I will, however, limit my comments to the agent who is transferred to headquarters prior to serving as a field supervisor. Although the investigative work of the FBI is done in our field offices and resident agencies, FBI headquarters in Washington also has an important role: It coordinates the investigative and administrative efforts of the local offices and sets policy.

The relief supervisor moves to a position at headquarters as a headquarters supervisor. This experience, generally lasting 2 to 4 years, will provide the agent the national perspective in preparation for his later assignment as a supervisor in a field office or resident agency, what we call the "field."

We fill many field supervisory vacancies with headquarters supervisors. After serving as a field supervisor, this individual is eligible for promotion as an ASAC opening in the field or back to headquarters as a unit chief.

The agent who returned to headquarters as a unit chief would next move back to the field as an ASAC. The agent may then be returned to the headquarters either as a section chief or a full inspector. And finally, he may be reassigned to the field as a special agent in charge. Although in the past it has taken an agent as many as seven moves to reach this pinacle, we are making every effort to limit the transfers necessary to reach this position to three to five transfers.

In late 1979, a survey of special agents in charge of seven of our major field offices elicited responses from all seven on the deleterious event of transfers to the career development program. These SAC's estimated that only about one third of the FBI special agents with management aptitude were participating in the career development program, largely because of the financial hardships associated with transfers.

Due to the costs involved, many of our agents, including many who are involved in the career development program, view moves which are a necessary part of the program as being financially punitive and at times, ruinous.

As I noted before, our agents are finding that it is becoming more difficult financially for them to move, especially when they make a lateral move at no increase in salary and in the process must buy a home with a higher interest rate and absorb many of the costs associated with the move. Monthly mortgage payments in excess of $1,200 are no longer uncommon for these agents.

Before addressing the taxation of reimbursement for expenses incurred in connection with a move, I would like to discuss with some specificity our experiences with respect to the current level of

reimbursement in connection with a transfer, specifically the level of reimbursement for temporary quarters expenses, expenses incurred in connection with the sale and purchase of a residence, and the weight limit of 11,000 pounds in connection with the movement of household goods.

Presently, there is an $8,000 limit on reimbursement in connection with the sale of a house, especially from your home State of California. Some of these homes are selling for $300,000 and $400,000. That would not be a typical example and I don't wish to use it. But, $115,000 to $120,000.

Mr. EDWARDS. There are houses in California that sell for $300,000 or $400,000 and some of them aren't as big as that table.

Mr. OTTO. That's true.

Mr. EDWARDS. People built these houses for $23,000 in Santa Monica someplace and are selling them for over a million. The rich get richer.

Mr. OTTO. Yes.

Mr. EDWARDS. Go ahead.

Mr. OTTO. I'm on the other side of that issue.

Mr. EDWARDS. I know you are. [Laughter.]

Mr. OTTO. Ordinarily, there is a 6- or 7-percent mortgage interest rate, so if you see your average houses selling for more than $80,000, that $8,000 is quickly eaten up. That doesn't cover such things as loan origination fees, points, what have you. The average agent transferred in connection with the FBI's career development program last year spent out of pocket, where he wasn't reimbursed from any sources, including a deduction in his Federal income tax and State income tax, because these are not deductible items, $8,450. That includes the tax losses.

Beginning with the reimbursements, they are not adequate. They are not dollar-for-dollar reimbursements. We are paying for having this fun out of our own pockets. It is, by the way, a very rewarding, very challenging, in my case a totally satisfying career.

There is a sense of commitment to the country. I feel rewarded for the positive results that we achieve for the country with the FBI. We have a grand group of professionals, support and agent professionals.

And so, when I say we are in a sense paying for the fun and I don't mean to be sarcastic or cynical, it is definitely that.

The second item that we are looking at perhaps getting some assistance with would be the increasing of the 11,000-pound weight restriction. I know in our family, and I think it's a shared experience among transferees, not only career development people, but investigators, that you have a great big garage sale before you embark upon a transfer because the cost of shipping things over 11,000 pounds is pretty substantial.

In that last move from Chicago to Washington, D.C., I was assessed at 12,700 pounds and they charged me almost $600 out of my own pocket for the excess weight between 11,000 and 12,700 pounds. My wife did try to sell as much as she could. The average excess to agents in terms of expense out of their own pocket, a transfer in connection with the weight limit is between $500 to $3,000 out of pocket.

The third item we would be looking for some kind of assistance is reimbursement for a maximum of 30 days temporary quarters. That would be adequate. Presently, we are given reimbursement for temporary quarters while perhaps we are waiting to get into new housing at a new location on a declining scale, 10 days at a time.

In other words, for 10 days, we would get a certain portion and the second 10 days, a lesser portion and the third 10 days, even less. Even the maximum allowance for the first 10 days does not cover the costs incurred in most communities today where we transfer our people, at least the headquarters city.

The fourth area that perhaps would give some assistance is the taxation of reimbursements which are made in connection with the transfers being alleviated somehow. Presently——

Mr. EDWARDS. Getting back to that $37.50 a day, you can't even get a hotel room for $37.50 in San Jose, Calif.

Mr. OTTO. This comes out of our pocket.

Mr. EDWARDS. That doesn't provide for transportation, for food.

Mr. OTTO. No, sir.

Mr. EDWARDS. Go ahead.

Mr. OTTO. In connection with the taxation of the reimbursements, we have got some figures here. It's important to understand that the first $3,000 worth of reimbursements on a transfer essentially are protected from being taxed.

Then, after that, everything that you get is taxed, although it's nondisposable income. In other words, you have spent the money yourself, paid for this, written a check out of your own funds for it. There are occasions when you can receive advances and spend the Government's money. But then, when you get around to paying your income tax and I recently finished figuring up my taxes, it is—the reimbursed portion of $3,000 is lumped on to the top of your gross earnings as reportable income to be taxed.

Mr. EDWARDS. Doesn't that put you into a higher bracket?

Mr. OTTO. In my case, over a certain amount was taxed 49 percent. Had I not been in a position to have that lumped on to, everything over a certain amount would have been taxed at 43 percent. So, there was an additional financial loss there at that point.

So, we are hoping that perhaps there are remedies. Maybe raising the protected area from $3,000 to a higher figure would help.

A recent survey of our top level managers indicated that a high percentage of them incurred a large loss of $6,450 on their last transfer, including a tax loss which averaged $4,000. So, we have more specific information in that area.

Although I have not been able to discuss all the financial problems incurred by a transferred agent, I have been able to highlight the major problems.

Before I close, I want you to know that we are very aware of the fact that our transferred employees and their families also experience emotional hardships when they are transferred. Although it would be difficult and perhaps impossible for us to alleviate these hardships, we can reduce the financial hardships and in so doing, reduce the emotional strain on our families.

The problems that I have detailed this morning do more than injure individual agents and their families. They are damaging our career development program and depriving the FBI and our country of valuable leadership because many agents with management aptitude are choosing not to participate in the program.

The numbers are probably one-third of those qualified to participate are not choosing to do so. It is a voluntary program. Frankly, in light of these costs, these agents may have made a reasonable choice. We have done everything we can to reduce these hardships and are continuing to do so.

Specifically, we have reduced the number of transfers to the minimum consistent with our goal of maintaining a national management and are working hard to give earlier notice of transfers. We are permitting more time now to effect the transfer.

We have also increased the period in which the employees can go to a new post. We know that these measures are within our power and we are taking them and looking for more and better ways of doing these things.

But, there are some things which go beyond our control. We hope, this morning, to give you further information not already mentioned in that.

Mr. EDWARDS. Well, thank you, Mr. Otto. Without objection, your entire testimony will be made a part of the record.

[The complete statement follows:]

PREPARED STATEMENT OF JOHN E. OTTO, EXECUTIVE ASSISTANT DIRECTOR, FEDEDRAL BUREAU OF INVESTIGATION

Mr. Chairman, I am the Executive Assistant Director for Law Enforcement Services for the Federal Bureau of Investigation (FBI). I am also the Chairman of the FBI Career Board. In that capacity, I make recommendations to the Director of the FBI on all promotions to positions up to and including the position of Assistant Director. An integral part of the FBI's Career Development Program involves transfers as a part of appointments to positions of increasing responsibility. In reaching my present capacity, I have made ten transfers in my 16 years of FBI service; I am very familiar with both the financial and emotional hardships which are a part of any move as a Government employee. I therefore appreciate, on behalf of myself and the approximately 7,750 Special Agents, the opportunity to share with you some of the financial problems which our Agents face when they are transferred in order to accept promotional advancement.

This morning I would like to focus my remarks on the transfers which we make through our Career Development Program; however, the problems that I will highlight are evident in any transfer which we make. Our Career Developmemt Program governs the promotion and administrative advancement procedures for Special Agents. We have 59 Field Offices and 438 Resident Agencies (sub-offices under the Field Offices) throughout the Nation, in addition to FBI Headquarters here in Washington which must be staffed. Although we are promoting Agents in place when possible in the interest of efficiency and relieving some of the hardships on our Agents, the filling of most of our supervisory vacancies involves a transfer because of our considered desire to nationalize rather than regionalize the management of the FBI.

Before I address the hardships associated with the transfers, I will take a few minutes to explain the FBI's Career Development Program. The Career Development Program is a signifcant cause of transfers, but as you will see, eliminating career development transfers is not a realistic option for the FBI.

The FBI operates a system which fills management vacancies as they occur. We do not make transfers for the sole purpose of moving a manager after he has served for a specified period of time in one assignment. In filling vacancies this way we give developmental experience to our managers and insure that our Headquarters is staffed by Agents both with recent Field experience and with the special expertise that we need here at Headquarters. We also insure that our Field Offices are

managed by managers who have a broad background of experience including Headquarters assignments.

Entry into the Career Development Program is voluntary. This chart illustrates a typical advancement pattern for an Agent who has entered the career advancement path and performed well. An Agent starts his career as a "street Agent" conducting investigations in a Field Office. He may move one or more times as the needs of the Bureau dictate.

After several years of Field experience, a street Agent, who demonstrates management aptitude, is eligible to become a relief supervisor on one of the squads in the Field Office where he or she is assigned. A relief supervisor gains management experience by assisting the squad supervisor, and by acting as the supervisor when the designated supervisor is absent.

We do have a system of evaluating the management potential of participants in the Career Development Program. The supervisory Level Management Aptitude Program (MAP I) evaluates persons prior their becoming Field supervisors. The Executive Level Management Aptitude Program (MAP II) is used to identify those persons who have the aptitude to serve as an Assistant Special Agent in Charge (ASAC).

After the relief supervisor has successfully completed MAP I, he is eligible for either promotion to fill an existing squad supervisory vacancy in the Field or to fill a Headquarters vacancy. In order to limit transfers we are promoting in place where possible. In order to simplify our discussion I will, however, limit my comments to the Agent who is transferred to Headquarters prior to serving as a Field supervisor.

Although the investigative work of the FBI is done in our Field Offices and Resident Agencies, FBI Headquarters in Washington also has an important role: It coordinates the investigative and administrative efforts of the local offices and sets policy. The relief supervisor moves to a position at Headquarters as a Headquarters supervisor. This experience, generally lasting two to four years, will provide the Agent the national perspective in preparation for his later assignment as a supervisor in a Field Office or Resident Agency—what we call the "Field."

We fill many Field supervisory vacancies with Headquarters supervisors. After serving as a Field supervisor this individual is eligible for promotion to an ASAC opening in the Field or back to Headquarters as a Unit Chief. The Agent who returned to Headquarters as a Unit Chief would next move back to the Field as an ASAC. The Agency may then be returned to Headquarters either as a Section Chief or a full Inspector. And, finally, he may be reassigned to the Field as a Special Agent in Charge (SAC).

Although in the past it has taken an Agent as many as seven moves to reach this pinnacle, we are making every effort to limit the transfers necessary to reach this position to three to five transfers.

In late 1979 a survey of Special Agents in Charge of seven of our major Field Offices elicited responses from all seven on the deleterious effect of transfers on the Career Development Program. These SAC's estimated that only about one-third of the FBI Special Agents with management aptitude were participating in the Career Development Program, largely because of the financial hardships associated with transfers. Due to the costs involved, many of our Agents, including many who are involved in the Career Development Program, view moves which are a necessary part of the program as being financially punitive and at times ruinous. As I noted above, our Agents are finding that it is becoming more difficult financially for them to move especially when they make a lateral move at no increase in salary and in the process must buy a home with a higher interest rate and absorb many of the costs associated with the move. Monthly mortgage payments in excess of $1,200 are no longer uncommon for these Agents.

Before addressing the taxation of reimbursement for expenses incurred in connection with a move, I would like to discuss with some specificity our experiences with respect to the current level of reimbursements in connection with a transfer, specifically the level of reimbursements for temporary quarters expenses, expenses incurred in connection with the sale and purchase of a residence, and the weight limit of 11,000 pounds in connection with the movement of household goods.

Currently, there is an $8,000 limit on reimbursements in connection with the sale of a house which does create some financial problems for some of our Agents. A survey of real estate purchase vouchers which we processed during fiscal year 1979 indicated that approximately 12 percent of the employees submitting such vouchers exceed the $8,000 reimbursement limit related to the sale of a residence by an average of approximately $800. This survey included transfers of our support personnel and single Agents whose expenses are monetarily less than those of the typical married Agent. We are currently reviewing the data on household goods

which were moved pursuant to career development transfers during fiscal year 1980. We will make this data available to you when the survey is completed. In an area where the real estate commission is 6 percent an Agent would exceed the $8,000 limit on the basis of the real estate commission paid on any home selling for more than $133,333. Where the commission is 7 percent he would exceed the limit with a home selling for $114,285 or more. In addition to the excess commission the Agent would be required to pay all other expenses above $8,000 such as the cost of the seller's title policy, transfer taxes, etc. In our major metropolitan areas it is not unusual to find modest houses in the $115,000 to $135,000 range and above. These figures are based on exceeding the $8,000 limit on the basis of the commission alone. Considering other reimbursable expenses, in many geographic areas an Agent will exceed the limit anytime he sells his home in excess of $100,000.

We have also noticed that weight allowances for the movement of household goods no longer accommodate the full needs of our personnel. For instance, an Agent with dependents is reimbursed only for the movement of household goods up to 11,000 pounds. Yet a sampling of our Government Bill of Lading method vouchers showed that approximately 20 percent of such shipments exceeded the 11,000-pound limit. I want to emphasize that this study does not take into account the fact that many employees sell some of their household goods prior to the move so as to come within the weight limitations. We have reviewed vouchers in which our Agents have been personally billed $500 to $3,000 for the transportation of excess weight. Our Agents therefore face the choice between selling their possessions or paying transportation charges each time they move.

Another significant expense involves the temporary quarters allowance. Government employees are reimbursed for a maximum of only 30 days of temporary quarters. Even under optimum conditions few people are able to execute a move without being in temporary quarters for in excess of 30 days. It is not uncommon for our Agents to be on duty at their new office of assignment for up to a year before they are able to sell their homes and move their families. Therefore, they find themselves in the position of maintaining two households during this period and bearing any transportation costs for periodic visits with their families. Most Agents indicate that these costs run them a minimum of $400 to $600 per month while the family is separated and they are only able to meet such expenses by dipping into savings.

This problem has been further aggravated by statutory provisions which reduce these per diem payments to a level which is below those which are authorized in connection with Government travel on official business. Currently, an Agent who is in temporary quarters is allowed $37.50 per day for the first 10 days of temporary quarters, $25 per day for the second 10 days and $18.75 per day for the third 10 days. In most large cities these payments will not cover the expenses which are incurred for meals and lodging at a motel or other quarters available on a short term basis.

The area that we are most concerned with is the taxation of reimbursements which are made in connection with transfers. I would point out at the outset that the administration does not favor making numerous perfecting changes to the tax code but rather has proposed a three-year program of across-the-board reductions. Specific proposals for modifying indiviudal sections of the tax code will be considered if a separate comprehensive bill. Unless so noted, the data on this problem is not limited to our career development transfers. We find that 100 percent of our transferred Agents exceed the $3,000 tax deduction limit for expenses incurred in connection with a move. These figures were based upon a random survey of 50 FBI Special Agent transfers. All of these Agents exceeded the $3,000 limit with one Agent exceeding it by $19,330. The average cost of these 50 transfers was $9,026. Therefore, the average Agent in this group of transfers faced an increased tax liability of over $6,000 in income in addition to certain non-reimbursable expenses. During fiscal year 1980 the Bureau transferred 1,131 employees at a total cost of $8,396,000. Although we know that the average transfer during fiscal year 1980 cost $8,468 and that the taxable income of the average transferred Agent was increased as a result of the transfer by $5,468, we know that many of our Agents incurred larger, additional tax liabilities as a result of these moves. We know that we have a number of single or younger, married Agents who move from rental property to rental property and thus incur few expenses. These moves hold down the average costs. Our average cost of a career development transfer for fiscal year 1980 was $10,146; increasing the taxable income of Agents by as much as $7,146. Our Budget and Accounting Section recently sampled 100 transfers which occurred during fiscal year 1979. When inflation factors were applied it was estimated that in fiscal year 1982 the average career development transfer will cost $12,933. After taking a $3,000 deduction this Agent will find that his taxable income has been increased by

as much as $9,933 which is not disposable income. He will further find that he is paying taxes on his total income at a higher tax rate due to this increase. Because these Agents are taxed on these reimbursements, the net effect is that their reimbursement is reduced by the amount of the additional tax liability which theey incur. We are convinced that this tax liability will continue to increase.

We recently conducted a survey of all of our managers at the GS–16, 17, and 18 level. The purpose of this survey was to obtain information on their progression through the administrative ranks and to discover the effect that this advancement has had on their financial situation, their family life, and their perceptions of career advancement. In assessing the impact of moves on their financial situations a large number of the survey respondents mentioned the additional tax liability which occurs when Government reimbursements exceed the $3,000 deduction. The additional tax liability burden on each of these respondents averaged $3,860. This resulted in a reduction of already inadequate reimbursements and invariably in the individual being pushed into an artificially higher tax bracket. The survey also revealed that 42 percent of the respondents incurred an average loss of $6,450 per transfer including tax losses.

Although I have not been able to discuss all of the problems which we have identified, I have been able to highlight the major financial problems associated with a transfer. Before I close I want to focus for a moment on the emotional costs, because our Agents have found that moving is both an emotional and financial hardship on both them and their families. The emotional costs are self-evident. A transfer takes the Agent, the Agent's spouse and children away from familiar surroundings in which they feel secure and where they have developed a circle of friends. They must then begin anew to develop this security and the human relationships that they had. After several of these moves, some children tend to avoid establishing close relationships with other children since they anticipate the pain of having to leave. Working spouses must begin the stressful task of job hunting. Many nonworking spouses feel the loss of familiarity and security to an even larger extent. Much of the responsibility for finding new doctors, dentists, places to shop, churches and areas of recreation falls upon them. The financial hardships that result from a good percentage of our Agents' moves also add to the emotional strain on these families.

The problems that I have detailed this morning do more than injure individual Agents. They are damaging our Career Development Program. As I have noted we know that many Agents with management aptitude are choosing not to participate in the program, largely because of the financial hardships associated with transfers. Frankly, in light of these costs, such Agents may have made a reasonable choice.

The Bureau is doing what it can. We plan to reduce the number of transfers to the minimum consistent with the goal of maintaining a well-trained management group to direct a national organization. In addition to reducing the number of transfers, we are working hard to give earlier notice of transfers. We recently increased the period within which the employee may report to the new assignment. The additional time to make arrangements should reduce the costs associated with moves.

In closing my remarks, I want to thank you for your interest in these matters which are of such great concern to us.

I will now be happy to answer any questions which you have on this matter.

Mr. EDWARDS. It seems to me that this is a very serious problem. We have an increasing crime problem in this country that is really very serious. The Chief Justice the other day called it totally out of control.

Although most of the responsibility to deal with street crime rests with the State and local police, the FBI's responsibility is also terribly important. It also seems to me that in this era of increasing tensions and perhaps even a warming up of the cold war, where we are concerned about what our adversaries have in mind for espionage and counterespionage in the United States handicapping the FBI in this way is exactly the wrong thing to do. This is especially true since it is going to cost a lot of money to lose agents, isn't it?

Mr. OTTO. Yes, sir.

Mr. EDWARDS. How can you get people with special skills? We were talking about your crime lab yesterday. They need technicians and scientists in the crime lab. Well, they are not going to go into that kind of work if their careers outside the FBI can be more fulfilling.

So, it really is a very serious situation. You are not only losing people, but you are getting people who are turning down this particular program?

Mr. OTTO. Yes, sir. We have a voluntary program. We are in the process of making significant changes to it in response to these challenges that I have outlined this morning.

Recently, and I have been the chairman of the career board since approximately November, and during that time, those who are at the threshold or initial entry level on our career path over here coming from the field to headquarters, either as a relief supervisor or coming as a field supervisor, about half of those are opting out of the program.

A vast majority of them do so very reluctantly. They want to have the career challenge. They want to try to go ahead and advance administratively in the FBI. But, through careful analysis and examination of some of the things that we have discussed this morning, plus a very difficult home sale market these days, they just decided financially they can't handle it. They step voluntarily out of the program which naturally, we permit them to do.

Mr. EDWARDS. Doesn't this problem apply to a lesser degree to the street agents who are not in the program?

Mr. OTTO. By all means, sir.

Mr. EDWARDS. Is it still the policy of the FBI not to leave agents at one location almost indefinitely? What is your policy on that?

Mr. OTTO. The present policy, because of the times, the economic conditions that prevail, are to try to minimize the number of transfers among our investigators, too. So, it is possible that an average investigator could go through an entire career with one or two transfers. It's economically very difficult for them and for the FBI.

Mr. EDWARDS. I believe that I will yield to counsel at this time.

Ms. COOPER. I would like to ask you more about the career development program itself. When did this program get instituted?

Mr. OTTO. The current program began in the early seventies. The present career development program had its beginnings at the time of former Director Clarence Kelley and has gone through several revisions and modifications, trying to meet the needs of the times.

Ms. COOPER. What kind of system did it replace? The program for training top executives of the Bureau prior to this particular change was what?

Mr. OTTO. The program that existed prior to this one was less structured, less formalized. But ordinarily, what would occur would be more transfers of field supervisors back to headquarters, then relief supervisors. Ordinarily, that was the beginning step in this whole progression of administrative advance. Then, it would follow along generally the lines that we have here.

Perhaps the most dramatic departure to it that we have today are the frequent number of transfers in a condensed period of time. We do have mandatory retirement at age 55 and as always, you're

eligible to go after 20 years of service as an agent, once you have reached age 50. Because of the economic times, agents are electing to retire at an early age, which condenses the years of service.

The average entry age now for a special agent is 28½ years and they are retiring at about age 50.8 months. So, you have a 21½- to 22-year career. The average number of transfers that we have had in the career development program—we are modifying it—would take something like 7½ transfers during that period of time.

Ordinarily, you don't get started with administrative advancement until you have had 4 or 5 years as an investigator.

Ms. COOPER. Is an element of the career development program that the participant be exposed to a wide variety of divisions? Does participation involve some direct involvement in the general property crimes, laboratory work, et cetera?

Mr. OTTO. Yes. That's a good observation We want them exposed to a variety of experiences, not only the operational division, such as the Criminal Investigation Division, or the Intelligence Division that handles foreign counterintelligence.

Those, of course, are the main areas of the FBI. But also in a support capacity, we believe that it's important for them to understand how inspections are conducted and why and how our personnel policies are administered, and why, the legal side of things. We try to get them a broad exposure. But this also is important for our managers in the field, if you will, that is, throughout the country where we are operationally engaged. For a manager to have a nationalized perspective, we like for him to have been exposed in a work environment to a variety of field assignments. We are minimizing these, and we are trying to do so, but it's still available to avoid a parochial viewpoint. It's good, when you have a national organization, to have the management thinking in national terms.

Ms. COOPER. How high can an agent rise in terms of that path if he or she is not a participant in the career development program?

Mr. OTTO. We have some recent changes that way. For field operations we want each one of the bases touched, especially the field supervisory position. We feel that's so fundamental, such an important basis for further advancement for field operations. But, headquarters assignments, we recogize that these are, many of them, staff positions where a lot of the exposure or experiences for field operations aren't that absolutely essential.

So, for advancement at headquarters, it is possible for somebody to come back to headquarters and without ever again returning to the field, to advance up to—well, I'm sure the position of Assistant Executive Director. That is not currently the case with the three of us, but it is possible.

Ms. COOPER. By opting out of career development program what caps are there on an agent's career progression?

Mr. OTTO. In the field, he would have to stay as an investigator. He could now choose to stay as a field administrator at the present time in any capacity, agent in charge, assistant agent in charge, or the field supervisor.

At headquarters, they could remain in their present position, conceivably if a case could be made for that, and they weren't clogging up opportunities for others who are willing to continue to progress.

Ms. COOPER. What percentage of the total number of agents are participating in the program?

Mr. OTTO. The total number of career development participants is 2,300 out of 7,800. There are a number of relief supervisors who are tentatively in at the first step. They are not going to have to sell their souls to the program at this stage. They are trying to get a feel for the program, trying it out, and we are trying them out.

So, a large number of the 2,300—but, if we get to the nub of this, we are talking about 1,400 people who are field supervisors, unit chiefs, staff people at headquarters, assistant agents in charge, special agents in charge.

Ms. COOPER. How does the average number of transfers for participants in the program compare with the average number of transfers for nonparticipants?

Mr. OTTO. It's generally—at the present time, about three times as many at a minimum. That would be a conservative estimate. I had 10 transfers in 16 years. The average investigator could do his whole 22-year career and have two transfers.

Ms. COOPER. Do all the agents get hired at the same entry level grade?

Mr. OTTO. Yes, they do.

Ms. COOPER. Has that always been the Bureau's policy?

Mr. OTTO. Yes.

Ms. COOPER. Has there been any rethinking of that?

Mr. OTTO. I am unaware of any rethinking of that. That doesn't mean there hasn't been any.

Ms. COOPER. Has there been any consideration or rethinking about the policy of hiring nonagent personnel in areas like laboratory areas?

Mr. OTTO. The assistant director in charge of our services divisions did not come up through the ranks, but did have tremendous capability in computers and so forth. He shares equal rank with the rest of our assistant directors here at headquarters.

We have gone especially in that area to nonagent personnel. In terms of the laboratory, that's another issue. I believe just as long as it was mentioned that it's important that our people testifying have been special agents.

Ms. COOPER. Have been?

Mr. OTTO. Yes.

Ms. COOPER. What percentage of the participants in the career development program are women or minorities?

Mr. OTTO. The numbers are increasing in terms of the women and minority participation. We have still more to do, but in the last 3 years, since Judge Webster has been our Director, there has been a dramatic increase in the agent ranks and the support and professional people ranks of female and minority participation and our interest in selection, recruiting, if you will. A good 50 percent of the agents classes over the last 2 years or better have been filled with women agents, women agent trainees, and then another quarter to better of those classes are filled with minority hirees as agents.

Ms. COOPER. If you could, I think the subcommittee would like to know both what the percentage of women and minorities in the

entire agent rank is now, and what the percentage of women and minorities in the career development program is.

Mr. OTTO. I don't have that right here at the moment, but I will get that for you.

Mr. EDWARDS. Mr. Boyd?

Mr. BOYD. Thank you, Mr. Chairman.

Mr. OTTO. That's 7.2 minorities and 4.5 women in the agent ranks. The breakdown into the career development progam, we will have to get for you.

Mr. BOYD. We would also like to know how those statistics compare with earlier figures in recent years.

You indicated that the average entry age for agents is 28½ years old. How does that compare nationwide or governmentwide.

Mr. OTTO. I don't know.

Mr. BOYD. High or low?

Mr. OTTO. I would think it would be relatively high.

Mr. BOYD. If that's the case, wouldn't it be a good cost-saving device to raise the minimum retirement age?

Mr. OTTO. This is a young man's job.

Mr. BOYD. Even at the supervisory, assistant director level?

Mr. OTTO. It's all-consuming. I don't want to overdramatize the issue here. It is a job that requires all of your energies and skills, and we demand that from everybody, especially our managers. We expect them to perform on a consistently high level.

People that I have known quite well in the career development program, which I have been a participant in since 1969, have been drained at the time they have become eligible for retirement. We expect a lot. We give the taxpayer an awful lot of return on his dollar.

Mr. BOYD. What would you see as a good ceiling, a fair ceiling, for the amount of pounds, or weight, that you can have moved by the Government?

Mr. OTTO. I would think 18,000 pounds, sir, would be reasonable.

Mr. BOYD. How does that compare with what the military has?

Mr. OTTO. I don't know what their maximum is presently. I'm sorry.

Mr. BOYD. There is an $8,000 reimbursement figure you indicated for sales. Do you know whether the military has any such reimbursement?

Mr. OTTO. I am confident they do, because I have had professional career military people as neighbors who have sold their homes. I am sure they are reimbursed for that. I have never inquired of them what their benefits are compared to ours.

Mr. BOYD. Would a cost-of-living increase for more expensive areas of the country, such as Washington, be useful as a compromise to deal with some of the problems that you have?

Mr. OTTO. It would be useful, yes. Implementation of it would be something we would want to discuss further, I'm sure. But yes, it would.

Mr. BOYD. Simply, would an official place of residence be of assistance to you?

Mr. OTTO. Absolutely.

Mr. BOYD. I wonder if it would be possible for you to compare for the subcommittee how the problems which you have, those prob-

lems including such items as the amount of weight that you can have moved free of charge, reimbursement, the $8,000 ceiling, per diem for temporary assignment (TDY) compare with the military. If you could submit to us a comparison to show what benefits are derived by military personnel which are not derived by Bureau personnel, or the reverse, if that's the case.

I think when we talked some weeks ago, you made reference to certain emotional and personal problems, interfamily problems and erosion of bank accounts. Would you wish to comment on that?

Mr. OTTO. Yes. I appreciate the opportunity. In this day and age, with the mobility in this country, we are all conversant with what it means to move, and the attendant trauma. Sometimes moves are better than others, just as in anything.

Recently, though, and the point I'm finding myself having to make with our folks in the FBI, not because they are insensitive, but just because—if they have not been transferred within the last 2 years, they are inexperienced in the changes that have occurred in terms of additional hardships upon families and the professional person.

My own situation, and mine is not uncommon, it took us nearly a year to be reunited as a family after being transferred from Chicago, because we could not sell our house. It was at a fair market price. In fact, the realtor when he came out to set the price, you know, they always want to go high. And, as soon as he told me what a fair price was, and I knew from other houses that it was a fair price, I told him, "Well, set our price $10,000 less than that."

We argued over that. He wanted to make more money and I wanted to sell quickly. After 60 days without an offer, we went down another $5,000 and we continued to go down until we finally sold it. We were reunited as a family some 6 months later. With the kids, it was 12 months later. Experience has a cumulative effect on them.

I think in terms of what the country gets back from an executive who is living and trying to work under those conditions, the family in one place in the country on an extended basis and the manager in another place, trying to keep a household functioning and together, emotionally and what have you, and then taking on a new and demanding responsibility, ends up being counterproductive after a period of time.

But in addition, the times being financially difficult, this causes understandable questions to arise in the minds of your family when they see what each succeeding promotion is accompanied by, a reduction in your standard of living. It's a bone of contention. They are making sacrifices. They hear this is an advancement occurring with the professional person. But what the payoff on the street is, is a reduced standard of living for them.

So, instead of rewards, there is punishment for this. After a while, I think a reasonable person, irregardless of how committed and dedicated and remaining so, begins to wonders how much more of this transfer program they can endure. I think it has a cumulative effect, especially at home.

Mr. BOYD. I wondered also if you could tell us what the status of your Career Board recommendations are.

Mr. OTTO. The modifications that we discussed when you were kind enough to come by and talk about this whole program are going to be submitted to the director of the Bureau after I leave here today. I thought it was wise to have the benefit of our morning together before submitting the final recommendations to him.

But, in effect, what we're going to try to do is eliminate as many of these promotional tranfers as we can and look toward vertical promotions with as much experience, broadening experience being afforded while a person is in place.

I have some specific examples of that. While I was over at the Planning and Inspection Division, traditionally, we always had the inspector transferred back to headquarters. Most of the time, they left their families where they were in the previous assignment because they knew they would be traveling all the time and then would get promoted to an agent in charge of an office, and then have one move for their family. But while they're on the road as inspectors, very seldom do they get a chance to be with their family.

In my case, my family was in Portland, Oreg., and I was traveling out of Washington, D.C., on inspections around the country. The office was not benefiting from my service and the inspection process was not because I was thinking in terms of when am I going to get back to see my wife and children again.

So now what we've done is we've created an inspector-in-place program where an assistant agent in charge will travel from there and do his inspections and when he's done, he comes back to his assignment and back to his residence, his family. Those are the kind of things we're going to try to apply also to the inspectors' aid assignment where we can.

We have an idea of developing a corp of stationary field supervisors. There has been excessive turnover among our field supervisors. We would like to stabilize that position because increasingly, we're becoming involved in long term, complex type investigations against organized crime and foreign counterintelligence matters and what have you.

The turnover on these squads where those long-term cases are going has an eroding, a negative effect on their success. We might have two or three supervisors supervising one major case at a time and investigators and agents have trouble following the new directions. We're going to try to get a corp of solid stationary supervisors.

Mr. EDWARDS. Why would you lose a supervisor in that case if a supervisor could stay at one place and supervise a particular argued crime matter. Why would—why would he or she—would they be leaving the service?

Mr. OTTO. Because of the needs that we have experienced in the last 5-year period to fill vacancies and positions above the field supervisor level. They've been stepping promotions.

We've tried wherever possible to leave those supervisors in place for as long as we can on these complex, long-term investigations. But some of them never get to be complex, long-term investigations because the supervisor who got them started wasn't there to see that they went that far.

Mr. BOYD. I have no further questions. Thank you.

Mr. EDWARDS. Well, this career development program is very important. Certainly, we're entitled to a sophisticated, informed national organization. You are national. It's ridiculous to think that people who are going to be running the FBI in high positions are going to be stuck in one place, Fresno, Calif., or Tuskegee or something for years and years and years. It doesn't make sense.

Have you written this out as to how it could best be handled at the lowest possible cost?

Mr. OTTO. Yes, sir. We feel we have analyzed it very carefully and are continuing to do so. We're implementing additional systems that ought to help us monitor it even better.

Mr. EDWARDS. Did you present this to the Attorney General?

Mr. OTTO. There have been presentations to the Attorney General in terms of how we may be helped and I understand that some of these have not yet gone to the OMB. So I'm in the position of just being able to report what has gone to the Justice Department at this point.

Some of the things we mentioned this morning are included in terms of increasing the weight limitation and reimbursements.

Mr. EDWARDS. You might suggest that also there is some money that can be saved over at the FBI. We've had a dialog going with the Bureau and the Department of Justice in this subcommittee for more than 10 years on crime recordkeeping and the need for decentralization. There isn't anybody, any expert that we've run into who does not think that it's appropriate to decentralize the crime records of the 50 States, to have it back home and have the FBI as a coordinating outfit with an index or something like that.

It's moving like a mountain, the program to decentralize. There is a lot of foot dragging. We're talking about 2,700 people doing work that shouldn't be done in Washington.

I would love, and I'm sure you would and everybody sitting here would love to see that money spent in FBI work. It's a form of revenue sharing that's not really necessary.

I know this is not your particular area of expertise.

Mr. OTTO. No, sir.

Mr. EDWARDS. But I do want to send the message. Other members of the committee feel the same way, that this is a very important change that really should be made in the work of the Bureau.

Mr. OTTO. I'll take the message.

Ms. COOPER. How might these problems associated with the frequent transfers be remedied short of changing the tax code and short of changes in Governmentwide regulations?

Mr. OTTO. The Bureau must look very carefully at what it's doing and examine the career development program to identify the promotions that have—and transfers that are only essential and cut out any of the others. Perhaps in more prosperous times, these might have been worthwhile. But now they would not be justifiable, surely, and cost-effective terms. And we're doing that.

We have a modification, I think a significant modification package ready to go to our director this afternoon, after I leave here, as I mentioned previously. That should substantially reduce the number of transfers involved in our career development program. That's one thing we can do.

Something else that we've already done is delay the time of reporting after transfer. It was previously somewhere between 30 and 45 days for the needs of the service. Once you were notified, you went.

On all transfers it was within 30 days. Now, the Bureau changed the policy. It permits as a minimum of 90 days to get to a new assignment. That helps because of the delay in and difficulties in selling homes that we have now. We'll seek remedies along those lines.

We're working hard at it and we're looking hard at it. I have a commitment to improve this program.

Ms. COOPER. Is there anything you want this committee to do?

Mr. OTTO. The procedure we must follow is going through legislative terms, the Justice Department and OMB. Our concern is that a factual record exists of the situation. Beyond that, I'm just not equipped by experience, training, what have you, to know just what it might be specifically that this committee could do.

Ms. COOPER. If the Government, either the Justice Department itself or some Government-wide program were instituted to increase the reimbursement to employees, what is your estimate the additional cost to the Bureau for FBI transfers per year?

Mr. OTTO. Over the fiscal year 1981 funds that we're looking at, we're talking in terms of maybe another $2,800,000 that might be necessary to make some of these financial improvements we have discussed this morning.

Ms. COOPER. Is it your opinion that there is sufficient flexibility in the FBI's budget to permit reprograming of funds such as to cover all or some of the additional reimbursement?

Mr. OTTO. It is out of my area of responsibility and I just couldn't give you an informed answer.

Ms. COOPER. Just to get back to the series of questions I was asking you before, does the mandatory retirement age, 55, apply to nonagent personnel within the Bureau?

Mr. OTTO. No, it does not.

Ms. COOPER. And likewise, is participation in the career development program open to nonagents?

Mr. OTTO. They have a career development program of their own. It is not the same as the agent career development program.

Ms. COOPER. Has there been a significant growth in the number of positions in headquarters that are either supervisory level or inspection staff or unit chief?

Mr. OTTO. Not a significant growth. There has been a small growth. We guard against that. We believe as an overall approach to our work that a majority of our resources, especially the human resgurces, should be in the field making cases.

Ms. LEROY. The problem that you've been describing today is Government-wide. Would you agree with that?

Mr. OTTO. Yes.

Ms. LEROY. How do you or do you have any reason to justify treating the FBI differently in terms of proposing some of the solutions that you've proposed either at this hearing or privately, to Mr. Boyd and myself?

Mr. OTTO. The problem of transfers or relocation of Government employees is a common or shared problem. We share it with all other Government employees. The solutions are not easy.

I would think that the FBI can help itself to a certain extent, as I said. We're doing that and we'll continue to do so.

I think other Government agencies that we've talked about, although not in specific terms, but other similar law enforcement agencies are approaching it the same way we are, trying to reduce the number of transfers and so forth, doing what we can without really affecting the quality of services that is expected to be provided in areas of significant responsibility.

But to set the FBI above and apart from everyone else and say that we ought to get something that, you know, nobody else should get, I'm not prepared to say that.

Ms. LEROY. Well, in the proposal that you've talked about here today with the Attorney General, does that just affect the FBI, or is it Government-wide or does it affect the other departments?

Mr. OTTO. By their nature, it would be Government-wide. When you talk in terms of raising weight limits and raising reimbursements, I believe these are regulations that, to be changed, would necessarily be Government-wide changes.

Ms. LEROY. You mentioned a survey of supergrades. Would you describe that survey in more detail?

Mr. OTTO. We wanted to get an assessment of the full impact of what is happening in terms of financial and emotional hardships on our executive corp. We did survey grade 16's and above. The result of the survey is presented not only in statistical terms, financial losses and so forth, but we used the case study method as well and asked for descriptions of what had happened in terms of emotional strain, trauma, and what have you.

It is replete with one experience after another of financial hardship, emotional hardship, families having to seek professional psychological care and guidance, families being broken apart as a result of sustained separations, and so forth.

Ms. LEROY. How many people did that survey involve?

Mr. OTTO. Well, for grade 16 and above, and I—we're talking, I suppose, in the neighborhood of—let me be more specific. There is the 140 supergrades, I am told, so we would have touched base with most of them.

Ms. LEROY. Would you be willing to make the results of that survey available to the subcommittee?

Mr. OTTO. Gladly.

Ms. LEROY. Do you have that with you?

Mr. OTTO. No, I don't.

Ms. LEROY. Do you have any statistics on how many participants in the career development program have dropped out over the last few years?

Mr. OTTO. We can make these available. Since I've been participating, since November, approximately half of those have come back to start the career development program themselves and have operated out of the program for financial hardship reasons, primarily.

Ms. LEROY. How do you know the reasons? Are they required to give the reasons?

Mr. OTTO. They're not required to. But when an agent responds and says that a person has voluntarily stepped out of the program for the most part, in our experience lately, it has been the fact that they have sampled the housing market here and sampled the housing market there and they've computed the raise that they've gotten in connection with the transfer, if there is one, and the mortgage interest rates and so forth and have decided that they just can't do it.

Ms. LEROY. Do you think the number that have dropped out has increased over the last couple of years?

Mr. OTTO. I would expect it has, yes, because of the dramatic changes in our economy over that time.

Ms. LEROY. You think it's a problem with Washington as opposed to other areas?

Mr. OTTO. There are areas around the country that are more difficult to move to and purchase housing in, notably California, which is a prime example of that. I hear people telling me that they're looking at homes out there, you're going out 65, 70 miles and looking at homes that are $250,000 out that far. We just can't afford them.

Ms. LEROY. Thank you. I have no further questions.

Mr. EDWARDS. Ms. Cooper?

Ms. COOPER. Thank you, Mr. Chairman.

Other than the military, Mr. Otto, does any other Government agency require as many career moves as does the Bureau?

Mr. OTTO. I don't know the answer to that. My experience, though, with other organizations would lead me to believe that the answer is probably not.

Ms. COOPER. I was thinking in terms of the State Department or the CIA and the Secret Service. But I wonder if when you submit your comparisons to the military, you might explore how your circumstances compare with other agencies of the Government which require its employees to move as a matter of career professionals.

Mr. OTTO. Yes.

Ms. COOPER. I have no further questions. Thank you.

Mr. EDWARDS. Mr. Otto, the members of this subcommittee and certainly I think the entire House Judiciary Committee and a majority of the Members of Congress and the majority of American people, think that it is in the public interest that the morale of the FBI be very high. We consider it a rather special case.

Certainly, the responsibilities that Congress and the Executive Department have assigned to the FBI make it a special case. You have not been a part of the civil service system for that reason and other reasons.

At times, I've observed the operation of Government agencies and have seen what can happen to an agency if it is not treated with respect and its people are not looked upon as human beings with families and who need assistance in maintaining adequate support and have appropriate family lives. That attitude is certainly penny-wise and pound-foolish.

We'll be looking forward to the information that you'll be discussing with the Attorney General. It doesn't bother me at all to

have a separate rule here. I don't know why it should be—does anybody know why it has to be Government wide?

Ms. COOPER. The feeling within this administration and the previous administration was that the problems are similar in other parts of the Government and therefore, relief ought to be Government wide, if any.

Mr. EDWARDS. Well, I disagree.

There are no further questions. We'll adjourn. But we'll look forward to whatever additional information that you can deliver to any of the lawyers on the stand.

Mr. OTTO. Thank you.

Mr. EDWARDS. Thank you very much. We'll adjourn.

[Whereupon, at 11:40 a.m., the hearing was adjourned.]

ADDITIONAL MATERIAL

A SURVEY OF FEDERAL BUREAU OF INVESTIGATION SUPERGRADES REGARDING EXECUTIVE SALARY, FINANCIAL PROBLEMS, AND ADMINISTRATIVE ADVANCEMENT

SUMMARY

The following report is the result of a survey which was provided to all Federal Bureau of Investigation (FBI) managers at the GS-16, 17, and 18 levels. The purpose of this survey was to obtain information on their progression through the administrative ranks and to discover the effect that this advancement has had on their financial situations, their family lives, and their perceptions of career advancement. While soliciting major items of concern to each individual, the survey also requested suggestions as to possible solutions to these problems.

The survey was sent to 135 individuals. One hundred five responses were received, for a return rate of 79 percent. The largest single group of respondents was 41 and 42 years old and had 16 to 18 years of Bureau service. Nearly 50 percent had been in high level management positions for one to three years.

The following specific topics were addressed in this survey:

Transfers:

Three survey questions dealt with the number of relocations required during the respondents' Bureau careers. On the average, each individual has moved at least 6.9 times since joining the organization, with 3.3 of these moves occurring within the last ten years. It is significant to note that in the past three years, the average respondent has moved 1.5 times.

Promotions:

It was evident from the responses received that promotions closely parallelled the number of transfers. The average respondent has received 3.9 promotions within the last ten years, with 1.5 occurring within the last three years.

Salary Increases:

The survey presented this question from two different aspects - one dealing with actual dollar increases, and one dealing with increases which appear only on paper and do not result in any real salary increase. The data received indicates that the average individual received less than one (.7) actual salary increase. Respondents received twice as many "on-paper" salary increases (1.4) as actual salary increases (.7).

Financial Burdens:

Of the 105 individuals responding, 88 indicated some form of financial loss occasioned by the numerous transfers and the lack of sufficient remuneration for same.

Sixty-nine of the respondents offered specific examples of financial losses due to increased mortgage rates and mortgage payments far outstripping any salary increases brought about by promotions. Fifty-four of these individuals cited specific dollar

increases in mortgage payments. The difference between their old mortgage payments and their new mortgage payments averaged $573 a month. The fifteen others spoke in terms of percentage increases. The difference between their old mortgage payments and their new mortgage payments amounted to an average of 68 percent per person. Nineteen others cited hardships in this area but were nonspecific as to dollar amounts or percentages.

These figures contrast sharply with the real salary increases experienced by those surveyed. Of the 27 individuals who cited changes in take-home pay resulting from their promotions, twelve indicated increases in take-home pay averaging $92 per month; ten cited decreases in take-home pay averaging $84 per month; four indicated no difference in take-home pay; and one cited a decrease in take-home pay but gave no specific dollar amount.

There were 37 respondents who chose to assign a dollar value to the total losses incurred as a result of their administrative advancement. These amounts refer specifically to nonreimbursable out-of-pocket expenses. The total losses incurred was $238,610 or an average of $6,450 per respondent.

Twenty-two respondents cited the additional tax liability which occurs when Government reimbursement for closing costs and moving expenses exceeds the amount allowed by Federal regulations. The additional tax burden on each respondent averaged $3,860. Invariably, this resulted in the individual being pushed into an artificially higher tax bracket.

Other areas specifically addressed by the respondents were costs of temporary quarters, transportation of household goods, increased property taxes, and increased tuition fees for dependents. Eight individuals quoted dollar amounts spent on temporary quarters beyond the reimbursable figure which averaged $2,600 per person. Ten respondents cited specific outlays of funds in excess of the amount allowed for transportation of household goods which averaged $622 each. Five respondents indicated a significant increase in annual property taxes resulting from their moves, which averaged $1,364 per respondent. Four respondents cited increased costs in college tuition fees for their children. These occurred in states which require a one-year residency before students are eligible for regular resident tuition fees. The additional costs involved averaged $3,825 per person.

It should be further noted that 91 individuals indicated that the foregoing hardships have caused long-term separations from their families. It was determined that they had been separated from their families an average of 5.3 months during their last moves. Such separations created not only financial burdens but psychological and emotional ones as well.

PROPOSED REMEDIES:

In setting forth solutions to the problems noted in the preceding sections, the respondents concerned themselves with two major areas - transfer and relocation expenses, and adequate salary.

All the responses indicated the need for more direct financial assistance from the Government upon transfer to a new location. As one individual commented,

> "Whether an employee is a support services employee or a top-level executive, the FBI transfers him/her because of the need for that individual's talents in a different geographical location. It is incumbent upon the Government to insure that the transfer, which is for the benefit of the Government, causes the least disruption to the employee and his/her family and that there is no financial disincentive to the transfer. Family separation and financial loss due to a transfer are considered the primary disincentives."

The following suggestions were frequently mentioned:

1. Government reimbursement should be free from taxation. Failing this, the maximum allowable amounts not subject to taxation should be increased.

2. The Government should provide temporary quarters at a constant rate in keeping with current prices for meals and accommodations, and the length of time allowable for temporary quarters should be extended to at least 60 days.

3. The Government should drastically increase the allowance for miscellaneous expenses. The present $200 is miniscule in comparison with current costs. Most respondents felt that this amount should be increased to at least $1,000.

4. The Government should pay all costs associated with a transfer. This would include all closing costs for both sale of old residence and purchase of new one.

5. The Government should increase present weight limit of 11,000 pounds on household goods.

6. The Government should assist in the sale of a home once a suitable period of time has elapsed (90 days quoted most frequently).

The respondents dwelt extensively on the need for just and adequate compensation for the increased responsibility they

are asked to assume with each new promotion. Under the present system, increasing authority and responsibility fails to bring with it a concomitant increase in financial remuneration. Top-level managers see inflation increasing at a tremendous rate while buying power is continually decreasing. To offset such a situation, they suggested the following:

1. Remove the pay "cap" and allow all executives who have "topped out" to continue to receive cost-of-living increases similar to all other Government employees. Of all those responding, 62 (61 percent) favored raising the ceiling "cap" to $70,000.

2. Pay an annual bonus to all supergrades. Such a bonus might be determined by comparing mortgage rates between old and new duty stations and by paying employees the difference.

Some other suggestions offered, but with less frequency, are as follows:

1. Expand storage period for household goods from the current 60 days.

2. Explore the "home of record" concept currently in effect for the military service and the CIA. This would enable

an individual to be sent to his home area at Government expense upon retirement.

3. Give Soldiers and Sailors Act benefits to families with college students who lose residence status when forced to relocate.

In summarizing the various proposals set forth, one respondent noted,

> "All aspects of the plan should be designed to cause the employee to believe the Government appreciates the personal inconveniences that transfer causes and is sincerely interested in making it as smooth as possible rather than the current perception employees have - I am going to get hurt again. It is a financial and emotional punishment and does nothing but cause the employee to feel the Government has no real interest in his situation."

Career Motivation Factors:

One section of the survey asked for specific factors which motivated each of the respondents to become involved in the Career Development Program and to seek advancement within the organization.

Of the 104 respondents who addressed this topic, 99 (95 percent) mentioned increased responsibility, while 80 (77 percent) mentioned salary. Where responsibility and salary were mentioned together, 63 (83 percent) ranked responsibility as being

more important than salary, while 13 (17 percent) reversed the order. Five (five percent) mentioned salary or salary-related items such as retirement as the only thing of personal importance. Sixteen (15 percent) mentioned responsibility or responsibility-related items as being of sole importance.

The respondents were also asked to comment on what effect their financial hardships have had on their career expectations. In responding to this question, the majority of respondents indicated that their expectations concerning administrative advancement have not altered appreciably. They entered into the Career Development Program knowing that it would entail personal sacrifice and that a certain amount of movement would be required. Being willing to accept these conditions, however, they also expected that they would be compensated in keeping with their ever-increasing responsibilities. What they did not expect was ever-increasing financial hardships and burdens on their family lives.

Perhaps the most important question in the survey was that which addressed the impact on the organization if no financial relief is forthcoming in the near future. Of the 105 respondents, 44 indicated they planned to retire as soon as they are

eligible, 6 said they planned to quit immediately if they are given a better offer, 43 did not mention early retirement but did express concern over the pay "cap," and only 12 voiced a firm commitment to the Bureau regardless of financial losses.

An even more serious concern expressed by these individuals is the future organizational stability of the Bureau. With increasing frequency, individuals are opting out of the Career Development Program out of a basic concern for the emotional and financial stability of their families. Those young Agents who have demonstrated their capabilities are reluctant to become involved in administrative advancement and, thus, the organization will be deprived of potential, quality managers.

INTRODUCTION:

In October, 1980, an Executive Salary Ceiling Questionnaire was sent to all Grade 16, 17, and 18 executives of the FBI. The following is a report of that survey:

The Survey was partially the result of a need to gather supporting data for the Commission on Executive, Legislative, and Judicial Salaries (Quadrennial Commission). Beginning in 1968, and every four years thereafter, four special Quadrennial Commissions have been created to review rates of pay for top officials in the Executive, Legislative, and Judicial branches of the Federal Government. Under existing statutes, Commission suggestions go directly to the President who, in turn, makes recommendations in his annual budget message to the Congress. Within 60 days of the President's message, each House votes separately on each of the recommendations for the top officials in the three branches of Government.

By letter dated September 30, 1980, the Department of Justice (DOJ) requested comments of five questions concerning executive salaries. The subject matter was of extreme interest, but the time frame inadequate.

C. R. McKinnon, former Assistant Director, Administrative Services Division, and J. E. Otto, former Assistant Director, Planning and Inspection Division, adopted a suggestion that an interim response be provided and a survey be conducted for additional data. The determination was made to include the entire population of supergrades due to the highly subjective nature of the needed information.

A response to the Quadrennial Commission, dated October 7, 1980, (J. L. Williamson, Personnel Officer, to Director, Personnel and Training Staff, Justice Management Division, DOJ) contained substantive information relative to the request. The response to the Quadrennial Commission was the result of contributions by ADIC New York, Planning and Inspection Division, Technical Services Division and FBIHQ Career Board.

William L. Tafoya, FBI Academy, Quantico, Virginia, was consulted concerning question coverage and format. It became apparent from discussions with SA Tafoya that the salary question was only part of the FBI's problem. Financial considerations encompassed a number of areas. Therefore, the content of the 21 questions was designed to obtain data as well as to provide organizational recommendations. A number of suggestions made by the contributors to the response to the Quadrennial Commission were incorporated to enhance coverage of the survey.

At the time this survey was conducted, there were 140 supergrade positions in the FBI of which 133 were filled by Special Agents, 2 by non-Special Agent personnel and 5 were unfilled. The two non-Special Agent supergrades responded to the survey but are not included in the following report due to the fact that they are not subject to the same career development progression as Agent personnel; i.e., they were recruited for their particular positions from outside agencies based on a need for specific technical expertise.

The survey data base for purposes of this report is 105 Special Agent supergrades of which 85 opted to identify themselves.

SURVEY QUESTION 1

"My current pay grade is:

( ) GS 16
( ) GS 17
( ) GS 18"

	RESPONSES RECEIVED	RESPONSES POSSIBLE	PERCENT RESPONDING
GS 16	64	82	78
GS 17	35	39	90
GS 18	6	12	50
	105	133	

Of 133 Special Agent supergrades surveyed 105 (79 percent) responded.

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SURVEY QUESTION 2

"My age group is:

( ) 35-36 ( ) 43-44 ( ) 51-52
( ) 37-38 ( ) 45-46 ( ) 53-54
( ) 39-40 ( ) 47-48 ( ) 55"
( ) 41-42 ( ) 49-50

AGE OF RESPONDENTS	RESPONSES	PERCENT OF TOTAL RESPONSES
35-36	0	0
37-38	4	4
39-40	10	10
41-42	21	20
43-44	10	10
45-46	16	15
47-48	16	15
49-50	13	12
51-52	8	8
53-54	5	5
55	1	1
No age given	1	1
	105	101 (due to rounding)

SURVEY QUESTION 3

"My length of service with the FBI as an Agent has been:"

YEARS OF SERVICE	RESPONSES	PERCENT OF TOTAL RESPONSES
10-12	2	2
13-15	19	18
16-18	40	38
19-21	25	24
22-24	7	7
25-27	9	9
28-30	3	3
31 and up	0	0
	105	101 (due to rounding)

SURVEY QUESTION 4

"My length of service as a supergrade (GS 16, GS 17, GS 18):"

YEARS OF SERVICE	RESPONSES	PERCENT OF TOTAL RESPONSES
less than 1	25	24
1 to 3	50	48
4 to 6	26	25
7 to 9	1	1
10 to 12	1	1
no response given	2	2
	105	101 (due to rounding)

SURVEY QUESTION 5

"Number of transfers as an Agent that resulted in a move (physical location)."

NUMBER OF MOVES	RESPONSES	PERCENT OF TOTAL RESPONSES
1	0	0
2	1	1
3	3	3
4	13	12
5	14	13
6	20	19
7	14	13
8	18	17
9	10	10
10	4	4
11	5	5
12	1	1
13	1	1
14	1	1
	105	100

The preceding table reveals that the average respondent has moved 6.9 times in his Bureau career.

SURVEY QUESTION 6

"Number of transfers in the last ten years (1971-1980) that resulted in a move (physical location)."

NUMBER OF MOVES	RESPONSES	PERCENT OF TOTAL RESPONSES
0	8	8
1	11	11
2	12	11
3	21	20
4	30	29
5	12	11
6	9	9
7	1	1
8	1	1
	105	101 (due to rounding)

The preceding table reveals that the average respondent has moved 3.3 times in the last ten years.

SURVEY QUESTION 7

"Number of transfers in the last three years (1978-1980) that resulted in a move (physical location)."

NUMBER OF MOVES	RESPONSES	PERCENT OF TOTAL RESPONSES
0	23	22
1	22	21
2	44	42
3	12	11
4	2	2
no response given	2	2
	105	100

The preceding table reveals that the average respondent moved 1.5 times in the last three years. Twenty-three respondents remained in place in the last three years. The remaining respondents moved 1.9 times in the last three years.

SURVEY QUESTION 8

"Number of promotions in the last ten years (1971-1980)."

PROMOTIONS RECEIVED BY RESPONDENTS	RESPONSES	PERCENT OF TOTAL RESPONSES
2	6	6
3	38	36
4	37	35
5	15	14
6	8	8
7	1	1
	105	100

The preceding table reveals that the average respondent received 3.9 promotions in the last ten years.

SURVEY QUESTION 9

"Number of promotions in the last three years (1978-1980)."

PROMOTIONS RECEIVED BY RESPONDENTS	RESPONSES	PERCENT OF TOTAL RESPONSES
0	13	12
1	46	44
2	29	28
3	15	14
4	2	2
	105	100

The preceding table reveals that the average respondent received 1.5 promotions in the last three years.

SURVEY QUESTION 10

"Number of salary increases (actual dollar increase) as a result of promotion in the last three years (1978-1980) (not including Cost of Living Increase (COL) or Within Grade Increase (WIGI))."

NUMBER OF ACTUAL SALARY INCREASES	RESPONSES	PERCENT OF TOTAL RESPONSES
0	42	40
1	44	42
2	11	11
3	4	4
no response given	4	4
	105	101 (due to rounding)

The preceding table reveals that the average respondent received less than one (.7) actual salary increase in the last three years.

SURVEY QUESTION 11

"Number of salary increases (paper only) in the last three years (1978-1980)."

NUMBER OF THEORETICAL SALARY INCREASES	RESPONSES	PERCENT OF TOTAL RESPONSES
0	13	12
1	46	44
2	29	28
3	14	13
no response given	3	3
	105	100

The preceding table reveals that the average respondent received 1.4 theoretical salary increases in the last three years due to restrictions on executive compensation as provided for in Title V of the Executive Schedule.

SURVEY QUESTION 12

"A most critical area is loss of disposable income (lower standard of living) by increased mortgage rates, higher cost of living in new location, increased tax bracket or tax jurisdiction. Give examples of situations where additional monies, such as higher salary, could compensate for financial loss. (Indicate year(s) of transfer(s), previous mortgage rate and/or new mortgage payment amount versus new mortgage rate and/or new mortgage payment amount. Compare these to take-home pay during same period. Include any other financial hardships incurred such as real estate commissions over allowable amount and additional income tax burden due to limit on reimbursement (exact amounts of loss if possible)."

The responses given in this particular survey question highlight the significant financial burdens which have been experienced by our top-level managers as they progress along the career path. Of the 105 individuals surveyed, 11 indicated that there has been no undue economic hardship on them because they were promoted in place with no resultant transfer, 6 other individuals failed to respond to this particular question. Of the remaining 88 respondents, all indicated some form of adverse impact occasioned by the numerous transfers incurred and the lack of sufficient remuneration for same.

Sixty-nine of the respondents offered specific examples of how increased mortgage rates and mortgage payments have far outstripped any salary increases brought about by promotion: Fifty-four of these individuals cited a specific dollar increase in mortgage payments which averaged $573 a month per respondent.

Fifteen others spoke in terms of percentage increases which amounted to an average of 68 percent increase per person. Nineteen others cited hardships in this area but were nonspecific as to dollar amounts or percentage rates.

These figures contrast sharply with the real salary increases experienced by those surveyed. Of the 27 individuals who cited changes in take-home pay resulting from their promotion, 12 indicated an increase in take-home pay averaging $92 per month; 10 cited a decrease in take-home pay averaging $84 per month; 4 indicated no difference in take-home pay; and one cited a decrease in real salary but cited no specific dollar amount.

There were 37 respondents who chose to assign a specific dollar value to the total losses incurred as a result of their administrative advancement. These amounts refer specifically to out-of-pocket expenses of a nonreimbursable nature. The total losses incurred were $238,610 or an average of $6,449 per respondent.

Twenty-two respondents cited the additional tax liability which occurs when Government reimbursement for closing costs and moving expenses exceeds the amount allowed by Federal regulation. The additional tax burden on each respondent amounted to an average of $3,860. Invariably this resulted in the individual being pushed into an artificially higher tax bracket.

The other areas addressed with some specificity by the respondents encompassed the questions of temporary quarters, transportation of household goods, increased property taxes, and increased tuition fees for dependents. Eight individuals quoted dollar amounts spent on temporary quarters beyond the allowable figure which averaged $2,600 per person. Ten respondents cited specific outlays of funds in excess of the amount allowed for transportation of household goods which averaged $622 each. Five officials indicated a significant increase in property taxes resulting from their moves which averaged $1,364 per respondent. Four respondents cited specific costs incurred in college tuition fees for their children. This occurred in states which require a one-year residency before students are eligible for regular resident tuition fees. The additional costs involved averaged $3,825 per person.

Set forth below are some specific examples amplifying the foregoing statistics:

Respondent 1.

"In May of 1972, I was a GS 14, Supervisor. On 5/1/72, I was transferred to FBIHQ as a Headquarters Supervisor in the Organized Crime Section, which transfer was generally billed as a 'promotion.' I am now 45 and have had one job or another throughout most of my life and share the general belief that the phrase 'promotion' brings with it, not only additional responsibilitites of a greater magnitude, but also salary increases. Had I remained in a Field Office (FO) as a GS 14 Supervisor, I would now be earning the exact same salary as I now make as the SAC. While assigned in FO, I was frequently the recipient of

monetary incentive awards for superior work, and if I were still there I would probably receive one or more incentive awards a year, which would mean, in effect, that I would be making more money as a Supervisor than I now make as SAC. Continually, as SAC, I am attending dinners and retirement parties associated with the law enforcement community at considerable personal expense, which expense I would not be incurring if I were assigned as a GS 14 Supervisor.

In 1972, my family lived in a beautiful house in one of the best suburbs. My monthly mortgage payment was $74.13. Today, after significant upward mobility and many promotions, my mortgage payment is $1280.00. The mortgage rate has gone form 5¼% to 7% to 9% to the contemporary bargain rate of 11 3/4%. My personal records from 1972 to 1979 are in storage as a result of my most recent transfer; however, I do have on hand records relating to the nine months I was separated from my family as a result of the transfer at a time when the housing market was depressed. The following figures were put together in a very conservative manner, and the actual amount was probably between 5% and 10% greater than indicated below.

Lodging for me while my family was away	$2,249.86
Airplane tickets, purchased in order that I might visit my family:	$1,006.00
Food expenses for me alone	$3,075.00
Laundry (coin-ops & dry cleaners):	$ 162.00
1979 Federal Tax liability arising from reimbursable transfer expenses:	$2,860.31
State Tax liability, supra:	$ 498.86
Nonreimbursable real estate sales fee	$3,200.00
Movement of household goods from temporary house:	$ 550.00

Real estate commission on sale of temporary house:	$5,600.00
Paper loss on long held common stock sale in order to raise cash:	$7,800.00
TOTAL:	$27,002.03

In terms of my personal finances, the 'bottom line' of my 'promotion' was that the U. S. Savings Bonds and common stocks I had accumulated in recent years for my son's college education have been substantially depleted. To add insult to injury, the increased tax rates reduced my biweekly paycheck take home amount by $91.96."

Respondent 2.

"In November, 1976, as a GS 15 Unit Chief, FBIHQ, I was transferred as ASAC with no change in Grade. Our home mortgage rate in Virginia, which had been established for six years was at 7¼ percent. Our new home was purchased with an interest rate of 10 percent and for approximately three months I was paying double payments inasmuch as our home did not sell quickly in Virginia. After an 18-month assignment, I was transferred to the Inspection Staff as an Inspector and spent approximately 9 months in that assignment. In March of 1979, I was reassigned as SAC, GS 16. Our new home was not purchased until June, 1979, due to the high school graduation of my son. Our mortgage interest rate was 12 percent. After 15 months I was transferred with a paper grade promotion to GS 17 without benefit of a salary increase. Our mortgage rate is 12 3/4 percent with the payment of 2 percent points which are nonreimbursable by either the Bureau or deductible as income tax deductions.

On each of the above four house closings, I lost a substantial amount of money due to the financial limit placed on reimbursement by the Government. Although there was a favorable tax decline in state income taxes and real estate taxes during two of the transfers, the resulting transfer has been a financial burden,

if not a disaster, without any hope of recouping any amount from the Government. Had it not been for income outside of my Bureau pay, it would be most difficult to make ends meet. In this regard, I point out my real estate taxes, for example, are approximately $3,000 versus $600, a $2,000 loss or points paid to obtain a loan which are not reimbursable, and state income taxes of approximately $2,500 as versus no income tax. In addition, an excise tax of $60 per $1,000 evaluation on automobiles in new FO. Estimated loss is over $700. On each transfer, I lost a substantial amount of money on household goods. The last transfer I was charged $700 for excess weight after my wife and I packed everything ourselves. This has to be the height of ludicrousness since there is no way of reimbursement here - not even in income tax deduction.

Some additional areas of losses during these transfers that should be brought to light are in the reregistration and retitling of automobiles and pleasure boats, lost money in giving away substantial amounts of food in the freezer, having to pay for season tickets to sports events that have to be given up, maintenance of a home recently purchased which would not have to be done had I not been transferred, substantial financial loss in not being able to transport plants, increase in cost of tax preparation which is required through multistate tax returns, having furniture go through wear and tear prematurely, loss of opportunity for normal investments that one would enter into with a normal stay in one place. Also, increases in insurance premiums for automobiles (twice as much) and home owners insurance ($200 more) should be taken into account.

Further complications of the above problems are compounded by the fact that all monies which are refunded to the transferee by the Bureau for the convenience of the Government is taxable income on a Federal income tax as well as most state income tax returns.

These are some of the items that I consider should be taken into consideration when any legislation is introduced so that some relief can be afforded a transferee, at least bring him to parity."

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CONTINUED

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Respondent 3.

"Set forth below is a chart containing data for the last five positions I have held:

Date	Position & Area	Grade	Take Home Pay	Mortgage Pay-Interest Rate
1/27/77	ASAC/Inspector & FBIHQ	15	$980.93	$446.00 8%
10/20/77	SAC	16	$1207.34 includes COLA	$800.00 Rental
10/19/78	SAC	17	$994.58	$904.0 8½%
10/18/79	SAC	17	$1103.51	$880.00 10 3/4%
10/16/80	AD	18	$1064.50	$1023.00 12%

An analysis of the figures set forth indicates that in spite of the fact that I have been promoted from ASAC/Inspector in 1977, through various positions to AD in 1980, GS 15 to GS 18, my take-home paycheck has increased only from $980.93 to $1,064.50, an increase of $83.57 per check.

Further analysis indicates that my take-home paycheck buying power, considering only my home mortgage payment and excluding all other inflationary factors such as food, gasoline, clothing, etc., has decreased from approximately $466.00 (8% interest rate) to $1,023.00 (12% interest rate) monthly. In other words even though I make $83.57 more per check or $167.14 monthly, my house payment has gone up by $577.00 for a net loss of take-home pay of $409.86 monthly. Needless to say the house I owned in 1977 was a nicer home than the one I now own even though I paid twice as much for my current residence.

Other financial Factors

a. The 30-day limitation for temporary quarters and the allowance for temporary quarters.

Even though an Agent buys a home on his first day in a new assignment, the chances of closing his loan within the 30-day temporary quarters period is highly remote. Ordinarily, it will be several days before he is able to satisfy himself he is making the proper purchase. In my current area, the average time from sales contract to closing is 8-10 weeks. Therefore, 30-days temporary quarters is ludicrous. In my individual situation where only the wife and I were involved, the allowance for my 30-day temporary quarters was $43.75 for the first 10 days; $29.17 for the second 10 days; and $21.87 for the third 10 days. Out of those figures my wife and I were expected to pay a motel bill and eat six meals a day. Again, it is ludicrous to expect these allowances to even cover the hotel bill. It forces an Agent to seek substandard temporary quarters.

Set forth below is a chart indicating losses of disposable income concerning my experience with temporary quarters for my last three moves:

Days Temp. Quarters Necessary	Days Temp. Quarters Allowed by Govt	Actual Cost	Amount Paid By Govt	Amount Paid Out Of Pocket (Me)
April, 1978				
75	60	$4369	$1448.45	$2920.55
May, 1979				
77	30	$2452	$ 947.90	$1504.1\
June, 1980				
72	30	$2650	$ 908.31	$1741.69

b. Closing Costs

In addition to problems surrounding temporary quarters, the maximum for closing costs in selling a home is $8,000.00. The closing costs of my move were approximately $8,500.00 for an approximate loss of $500.00.

I have been unable to sell my home to date but the realty fee will be 7% of the approximate selling price or $9,100.00, realizing a loss of at least $1,100 plus other anticipated closing costs for a nonreimbursable loss of $1,500.00.

c. Miscellaneous

1. Although I have not computed what it means to me in exact loss, it goes without saying that the expenses reimbursed by the Government are taxable income when they exceed $3,000.00. This is again money out of pocket for the Agent.

2. Frequently Agents and their families must return to 'close' the sale and transportation expenses must be borne. To date, I have been able to avoid that problem.

3. Frequently Agents must run two households although on these moves I have avoided that problem.

4. Frequently Agents must obtain 'bridge loans' and bear the interest amounts personally. My loss is $1,500 interest on my bridge loan every three months until my house is sold. The house is not sold to date even though I have reduced the price on two occasions and now find it impossible to sell the house without suffering a loss.

5. Two moves have resulted in considerable less take-home pay because of state income and property tax difference and COLA even though each move was a grade raise. For example, in my latest move, the state deducts over $100 per paycheck in excess of that deducted

by previous state. In addition, my real estate taxes are $100 per month higher so I am making $300.00 less take-home even though I was promoted to GS 18 and moved into a higher cost area.

6. The majority of FBI wives must now work to make ends meet for their household and must work not because they want to but because they must. To quote my wife, it has been necessary to gain employment to 'support my Assistant Directorship'."

Respondent 4.

"In 1977, I was transferred to a new location which required a new mortgage at a higher rate (7⅛% to 9⅛%) and a larger amount with an increase in payment of about $100 per month. My salary did not increase since I was already a GS 15. I had to borrow an extra $5,000 for the down payment (personal family loan) and am still paying it off. The move also included such purchases as carpets, lighting fixtures, new draperies, etc. in the amount of $3,450 which I had to remove from savings. Other incidental expenses (raise in car insurance, car tags, licenses, orthodontist contract, etc.) in the amount of $1,130 which came out of disposable income. The Government reimbursed only $200.

The entire transfer cost me a loss in disposable income of approximately $150 per pay period, a net loss in savings of almost $4,500 and a debt of $5,000.

The costs reimbursed by the Government were pitifully small compared to the price of the transfer and in no way compensated for the out-of-hand expenses incurred by me. To make matters worse - the reimbursement costs, of which I received only 71 percent because of income tax deduction, pushed me into a higher tax bracket and cut another 8 percent from my reimbursement. This was also a direct out-of-pocket loss of several thousand dollars.

That transfer caused severe economic hardship to my family, and the Government could easily alleviate any future horror stories by making several constructive changes such as I have outlined below:

1. Reimburse all moving, real estate and incidental expenses in connection with an employee's transfer.

2. Pay the difference between the old mortgage payment and the new one.

3. Buy homes that have been on the market for more than two months and where there is a double mortgage payment involved.

a. Transfer an employee in temporary duty status for at least six months so that he/she will not suffer economic hardship.

4. Treat all expenses that are reimbursed in connection with a transfer as necessary expenses for the U. S. Government and eliminate any tax levies, either state or Federal; and do not treat the reimbursement as income.

5. Increase temporary quarters to a period of time not to exceed 6 months where there is a sufficient reason. (School consideration, family illness, or other humanistic reason.)

6. Since each move results in higher costs in real income (after tax dollars and the incursion of larger debts), increase the pay cap to $70 to $90,000.

7. Do not move an executive in a GS 16 and above category unless there is an increase (real dollars) in salary.

8. Provide for at least three round trips for executives to their homes where they are separated from their spouse and family. Set a six to eight month time limit on the use of these trips.

In 1980, I was transfered back to FBIHQ and received a promotion from a GS 15 to GS 16. I received no increase in salary and my take-home pay decreased by $100 per month. Since I had a child who is a senior in high school the family remained behind and I had

to obtain separate lodging in the D. C. area. The current cost is approximately $450 per month exclusive of several pieces of furniture that I purchased for $435 to last me the year. I also had to purchase a secondhand car for $1500, since ground transportation was approximately $4.00 per day and almost nonexistent on Saturdays and Sundays. Also, in most areas of the country free parking or access to on-street, no-fee parking is the rule; however, at FBIHQ the added cost is $32.50 per month.

This is only one case of an SA going from a medium-priced area to a high-cost area; but, after many talks with other SAs I don't think I am the exception.

To put all of this in perspective and in trying to be constructive I can only conclude that:

1. The pay cap must be moved to at least $70,000 per year to keep pace with the costs of executive development.

2. Benefits on all transfers must be increased greatly and not be subject to taxation.

3. No promotions be made unless it means a real-dollar take-home increase for the career executive.

Respondent 5.

"The following sets forth the loss in disposable income that I have realized in connection with three transfers over the last seven years and also a comparison of the increased cost due to interest rates and inflation:

Transfer	Date	"Take-Home Pay" Two biweekly Periods	House Cost	Interest Rate	Mortgage Payment
At FO	---	$ 1200	$26,000	7½%	$ 243
To FBIHQ	6/73	1200	61,000	7-7/8%	400
To ASAC	9/77	1880	76,000	8-3/4%	750
To SAC	7/80	2480	144,000	11½%	1300

Based upon the above, the following conclusions can be drawn regarding increase in costs from 1973 to 1980, as follows:

Interest rate increased from 7½% to 11½%, which equals a 53% increase in interest rates.

Housing cost in 1973 was $61,000, compared to $144,000 in 1980, or an increase of 225%.

Salary increase for the same period of time, i.e., $1,200 in 1973 vs. $2,480 in 1980, equals a 106% increase.

Further, in 1973, the mortgage cost represented 33% of my 'take-home' pay for a 4-week period. In 1980, my mortgage cost represents 52% of my 'take-home' pay for a 4-week period. This is an increase of 59% or a loss of 19% of my disposable income due to inflation in the housing market and increased interest rates. It should be further noted that there has been only a slight increase in my standard of living as it relates to home purchases, as all of the homes (four) which I have owned are comparable.

In addition to the above losses in useable income due to inflation and increased mortgage rates, additional expenses have been borne which have not been reimbursed by the Government.

On my move from FO to FBIHQ, I incurred approximately $3,000 in out-of-pocket expenses which were not reimbursable by the Government: in the move from FBIHQ in 1977, $4,000; and in the move July, 1980, approximately $6,000. In addition, those expenses which were reimbursed are subject to an additional tax burden. In the move to FBIHQ in 1973, taxable expenses amounted to approximately $3,000, or an additional tax burden of $600. In the move in 1977, it was $3,900, or a tax burden of approximately $780.00, and in the move in July, 1980, it was $7,000, or a tax burden of $1,400.

In addition to these factors, there has also been the burden of establishing a residency to allow my college-aged children to attend in-state universities, and the cost of their education has doubled. I currently

have one child in college whose expenses, due to out-of-state tuitions, will cost me approximately $5,000 over and above what would be normally charged for an in-state student. A second child will enter college in 1981, but due to the uncertainty of my continued assignment to any specific office her attendance at an in-state university is also uncertain. Therefore, the cost of college educations will approximately double the current cost, and in 1982, I will have a third child facing the same dilemma."

Respondent 6.

It is apparent that there is a loss of disposable income occasioned by the mere fact that despite double digit inflation supergrades are required to absorb that and get no raise. The theory seems to be that erosion of your purchasing power is OK because you make so much and probably have too many 'luxuries' anyway. Level of responsibility and nature of work are totally ignored. The result is that a GS 13 in Step 10 with AUO earns only $3335.75/year less than Executive Assistant Directors and Assistant Directors. Staying in his OP over a number of years would more than offset the difference. The disparity is ludicrous."

Respondent 7.

"In February, 1975, when I was 'promoted' laterally to SAC, I experienced an actual loss of some $7,000 per year. My mortgage payments, $230 per month to $540 per month, more than doubled - I was introduced to Virginia State Tax, also personal property taxes, county taxes, etc., and a much higher cost of living area.

It's an interesting phenomenon, although quite disturbing, that we award our top managers with additional responsibilities and at the same time penalize them by effecting a net decrease in their take-home pay."

Respondent 8.

"1980 Transfer

Previous Mortgage Rate/Payment (P&I)
9% $315

New Mortgage Rate/Payment (P&I)
11-3/4% $848

Take-home pay less because of increase in new state taxes - a reduction of $90 each paycheck. Cost of college education for two children increased (because of one-year nonresidence status) from $2,000 to $6,000. Cost of one child in private school increased from $850 to $1,750.

Total loss on move for one year -

$50,000. It will take a hefty raise and three to five years without another move to break even."

Respondent 9.

"I experienced three moves in 26 months and was 'promoted' from a state without income tax to Washington, D. C. The difference in take-home pay between my promotion and the addition of state taxes amounted to approximately $100 per pay day. At the same time my mortgage payment increased from $740 to $940 resulting in $400 a month less spending money. In addition this transfer cost me $2,000 in real estate fees above the reimbursable amount; approximately 30 days in a motel, 15 of which reimbursement was not enough to cover expenses and 15 of which reimbursement was received. This cost me somewhere between $1,500 and $2,000. The automobile that I was required to drive in my field assignment was relinquished. On moving to Washington, D. C., without my family I stayed in Washington for two months at my own expense and purchased a vehicle for $400 for temporary transportation and until I could find a reasonable mode of transportation. My second car was purchased for $3,000. At the end of the year, for the third year in a row, I paid taxes on all money reimbursed me for my transfer at the convenience of the Government. These funds range from taxes on $3,000 to $7,000 'additional income.' The costs of getting the students settled in school, climatized for clothing; furbishing my house, wallpaper, paint, shrubs and grass to make a home are too numerous to tally. You must multiply them three times in 26 months to find out exactly what these transfers cost me financially and my family in stress from the social adjustments."

Respondent 10.

"Year	Old Mortgage Rate	New Mortgage Rate	Old Payment	New Payment
1973 to FBIHQ	6¼%	8½%	$240	$525
1978 fm FBIHQ	8½%	9½%	$525	$675
1980 to FBIHQ	9½%n	11½%	$675	$1250

Each transfer has resulted in a financial loss of at least $3,000 to $5,000 in direct expenses. With college-aged children the impact is worse since all states require at least one-year residency to qualify for in-state tuitions. This element alone cost a difference of approximately $3,000 this year and last year. If my son transfers with me the higher cost continues to reach a total of almost $10,000 for four-college years."

Respondent 11.

"In two years I sold two houses, bought two and was progressively placed in a higher cost-of-living area, all houses purchased were comparable, except for price tag, and the gains on all sales had to be reinvested in the new houses to buy the mortgage payments as low as possible.

January, 1979, GS 15 take-home was $1,154.08. Mortgage rate was 9½%. Monthly mortgage payment was $425.00.

GS 16 take-home pay was $1,146.51. Mortgage rate was 10½% with monthly payments of $564.32.

October, 1979, promoted GS 17 effective 1/29/80. Take-home pay $1,233.35. Mortgage rate is 12%, payment $1,151.46. Property tax increase of 350%.

Another hardship is the increased tax burden of claiming moving expenses as income. Doing this places the employee in a higher income tax bracket; thus, making him pay a higher percent of taxes on his total net income for the year. All moves are made to benefit the agency not the employee but the employee gets the financial loss."

Respondent 12.

"Year	House Payment	Interest Rate	Grade Take Home
1975	$220	6-3/4%	$700 biweekly
1976-77	$435	8%	$690 biweekly
1977-80	$540	8-3/4%	$846-$1000 biweekly
1980	$1200	12-1/2%	$1200 biweekly

1980 move to Washington, D. C., resulted in following losses:

a. $1,500 in VA points nonreimbursable
b. Sellers closing costs exceeded $8,000 limit by approximately $1,000 (Realtors Commission was $7,990)
c. Temporary housing in excess of 30 days totaled $3,000 in rent while builder finished house.
d. Two months extra storage for household goods and extra insurance = $320."

Respondent 13.

"A. Increased taxes in jurisdictions into which I have moved (as compared with some states that have no state income tax, for example, Texas, Florida, Tennessee, etc.)

B. Increases in house mortgage interest rates - 5¼% (1972); 7½% (1977); 8¾% (1979); 10-1/8% (present).

C. High cost of living areas(New York, Los Angeles) cause obvious inequities in the administrative advancement relocation procedures.

D. Increase in real estate commissions has caused greater financial hardship because the Bureau does not reimburse for the full amounts at the present. As a result thereof and in a related matter, there is a substantial increase in the individual Federal tax burden as a result of present reimbursements. For example, in my last two transfers, I have had approximately $7,500 to $9,000 over and above that allowed by IRS which resulted in an increased tax liability of approximately $3,000 to $3,500.

My last few transfers have resulted in grade raises which superficially have camouflaged actual financial loss as a result of these promotions. I have personally not 'felt' a financial loss as a result of these transfers; however, it has only been because I have been maintained at the 'status quo' as a result of these promotions. The bottom line of this is that although I have been transfered several times and received other promotions, there has been no observable increase in my standard of living and 'take-home' pay. If anything, there has been a decrease in the overall standard of living and savings as a result of these administrative advancement transfers when compared with those Agents not in the program who remain in place as street Agents.

One of the most decimating aspects of relocating (or any relocation) centers around the sale of one's personal residence. In the past few years, the market has been extremely 'volatile' and unpredictable in the various areas of our country. I personally have been fortunate to this point in selling my residences; however, I consider myself to be an exception and am aware of numerous horror stories of my fellow Agents and Bureau executives who have had extremely difficult times selling their homes. When this situation is compared to private industry which, in various ways, assists in the sale of residences for their executives, it is an extremely horrendous burden to place on our Bureau executives. I personally have been on the purchase end of two residences I bought from individuals whose corporations would have taken over their residences and paid them their equity if they had not been able to sell their house within 30 days of the time it was placed on the market. Obviously, this places the corporate seller in an extremely advantageous position and the purchaser in a much less desirable one. Presently, Government personnel are in no way able to compete in this type of real estate market. This results, many times, in an extremely lengthy time necessary in order to sell a residence and of times an individual having to accept less than he should have to for the residence."

Respondent 14.

"Every single transfer can automatically be expected to result in an increase in mortgage rates. My most recent transfer resulted in an approximately four percent increase in mortgage rates. This mortgage rate increase, of course, resulted in significant less take-home pay, as well as a substantially decreased family standard of living. Due to the continual pay ceiling on executive salaries, any transfer of an executive, without even considering mortgage rates, will result in a decreased family style of living. (If this were true in private industry, what you would in fact have, would be total stagnation in the executive ranks as well as economic disaster in the private business sector.)

My most recent transfer, for example, in addition to the economic deficiencies required that I obtain a bridge loan in order to be able to purchase a home in the new locality prior to mortgage rates becoming astronomical and potentially unobtainable. The bridge loan, therefore, resulted in two mortgage payments over a seven-month period, which in turn, resulted in a severly reduced family standard of living at a time when college tuition payments are out of sight. A continued freeze of supergrade pay will without question, result in both short term and long term reductions in mission goals of the FBI. The decrease in incentives for individuals seeking supergrade levels has now reached the point, because of hardships connected with frequent transfers and continued freeze on salary levels, that there are absolutely no incentives whatsoever in obtaining these positions. It has also resulted in a universal opinion among Agent personnel of the FBI that anyone seeking to advance under these conditions simply could not do so if the hardships connected with advancement were logically considered."

Respondent 15.

"Had resided in Washington, D. C. suburb for twelve years prior to 1979 transfer/relocation. Mortgage rate prior to transfer - 6¼% - $255.00 per month compared to 11¼% - $972.00 per month currently. Received paper salary increase only, in promotion resulting from transfer so take-home pay is the same as prior to relocation. Mortgage rate/payment almost four times previous payment but no salary increase.

Personally absorbed loss of $8,000 on closing costs because Government reimburses minimal costs."

Respondent 16.

"During my last transfer, the real estate broker's fee for selling my home was $2,000 more than the Government reimbursed, a loss which I had to absorb out of pocket and, later on, paid taxes on the portion that was reimbursed. No promotion or increase in salary accompanied this transfer.

If I were to be transferred today (at no salary increase), the real estate broker's fee would be approximately $12,000 of which only $8,500 would be reimbursed, leaving me with a $3,500 immediate loss in that one area alone.

Further, the movers' expense for my last move was over $500 more than I was reimbursed. The 11,000-pound maximum is ridiculously low and should be increased."

Respondent 17.

"Transfer from FBIHQ 1975. Got 8-3/4% mortgage with payment of $409.10 per month on $52,000 loan. Take-home pay at that time $928.96. During assignment withholding for state income tax varied but always under $70 per pay period.

Transfer to FBIHQ 1978. Got 9% mortgage loan with mortgage payment of $683.30 on loan of $70,000. Take home pay at $1148.79 and Virginia State withholding at $88.53. Interesting to note that first house sold for $90,000 and house purchased in Virginia cost $102,000 and was far less house for the money.

Transfer from FBIHQ 1980. Got 12-3/4% loan after narrowly missing a mandatory 18% loan. Mortgage amount $85,000 and monthly payment $1,060. Take-home pay $1123.87 and state tax withheld $124.96 per pay period. Personal property tax also to be levied but not yet determined. Should be noted that to purchase a residence equivalent to that in Virginia purchase price was $135,000.

Family has determined that standard of living in new FO equal to and in some areas (i.e. groceries, clothing) higher than that of Washington Metropolitan area.

As result of transfer 1975, additional income tax burden of $2555.20 considered due to reimbursement

for moving expenses causing loss in real income due to the fact that income was, in fact, taxed twice. Unable to determine exact loss resulting therefrom. Same situation occurred in 1978, when as result of transfer additional $5528.95 added to income and subject to income tax. As result of transfer during 1980, same result will occur with amount as yet unknown. Other financial aspects to be considered include $85 paid during moves in 1978, and 1980, as result of insurance for movement of household goods and not reimbursed. As result of transfer in 1975, two daughters of kindergarten age were unable to attend public kindergarten due to an absence of such. As result costs incurred of $30 for each of two daughters per month. In addition, prior to moves in 1975, 1978, and 1980, it was necessary to sell at a loss or give away a number of items that would otherwise have been of continuing value to the family, i.e., picnic table (sold for $25), Ping-Pong table (valued at nearly $100 and sold at $50), two automobiles good for commuting, one sold in 1975, and the other during February, 1980, as result of transfer and inability to transport long distances.

During relocations and waiting period for sale of residences it has been necessary during the last three moves to pay, in addition to mortgage payment at principal residence, rent for a second residence (apartment at new duty station). During 1980 move, apartment was rented at cost of $290 per month plus utilities and extra expenses, including food, laundry, etc. Unfortunately, the length of wait (4 months) for sale of house and relocation of family necessitated expenses far in excess of the allowed per diem expenses for 30 days of temporary quarters. For just the initial 30 days, the first 10 days' expenses amounting to $322.54 were incurred with reimbursement of only $262.50; second 10 days' actual expenses $313.01 with reimbursement $175; and third 10 days' actual expenses $320.74 with actual reimbursement $131.20. Of course, the actual reimbursement was less 20% withheld for Federal income tax.

In addition, the cost of travel between new duty station and old to visit family is considerable whether by car or commercial transportation and telephone calls add additional expense to the moves which are again not reimbursed. Prior to each move, in addition to those items which are available for giveaway or sale at reduced price, there are significant amounts of materials which cannot be transported nor sold. These include various paints and other flammables, curtains,

drapes and in some cases flowers and plants. These all represent loss to employee not reimbursed. In addition, my wife, who is a qualified German instructor with the Adult Education Program of the Fairfax County Public Schools, upon transfer no longer had an opportunity to serve in that capacity and as a result, minimal but actual real income is lost to her and ultimately to my family."

Respondent 18.

"As a GS 15, ASAC, in early 1979, my take-home pay was $2,326.48 or $1,163.24 per payday. Today, as a GS 17, my take-home pay is $1,189.77 per pay period, an increase in two years of $8.26 a week. As a result of my promotion to SAC, followed by my promotion, I have had to sell two homes, pay points to banks in refinancing different residences, and my interest rate has gone from 8-3/4% with a house payment of less than $500.00 a month to 12-1/4%, with a house payment of over $1,000 a month. Try that with an increase of $8.26 a week.

The sale of my residence netted the realtor a fee of $4,693.00, which was added to my tax placing me in a higher bracket. Because of this factor, I was forced to sell my house myself. The real estate fee if I used a realtor would have been over $8,000.00 alone. As a result, it took me ten months to sell the house, and the concomitant separation from my family."

Respondent 19.

"A scenario of the situation concerning my last transfer will highlight how the ceiling cap adversely affects a standard of living. To begin with, the salary stayed the same because of the cap. The take-home pay was drastically reduced because of a doubling of the state income tax for the new area. In addition, a new mortgage had to be obtained and because of economic conditions, this increased my monthly mortgage payment per month by $121.00. All of this at a time when goods and services were increasing at an annual rate of over 13%. To add insult to injury, various expenses were reimbursed as a result of the transfer ($10,100), which will be taxed as ordinary income. This will have the effect of forcing me into an artifically

high tax bracket, all because of an official transfer and at no increase in pay, in fact a decrease in pay. Even with all these reimbursements, there was approximately $1,310 not reimbursed because of ceilings placed on same. These items taxed, in effect, are reductions of equity from real estate. To summarize, with no pay raise for the last three years, I have taken several steps backward financially while going forward within the FBI."

Respondent 20.

	"Year	Mtg Pymt	GS Level
Prior to	1973	$300	15
Transfer	1973	$500	15
*Transfer	1974	$300	15
Transfer	1976	$500	17
Transfer	1977	$650	17
Transfer	1979	$950	17

*The reason the mortgage payment reduced from $500 to $300 was because I was fortunate enough to move back into my old house. That is not normally the situation.

Also, it should be noted that the house I am presently buying is not substantially larger than the one I left in 1973 and, as a matter of fact it is substantially smaller than the one I moved from in 1974.

Interest rate in 1973 was 7⅛% - current rate is 9-3/4%."

Respondent 21.

"A most vivid example of a financial hardship, although an unusual one, exists in my case. I was separated and divorced in 1978 with the financial settlement calling for a set amount of support ($1300) to be paid by me every month. In addition this amount is subject to COL adjustments every six months. The total increases to date amount to about 25% which

is the additional amount necessary to support in a modest manner my ex-wife and children.

Without the prospects of a salary increase (including the denial of COL adjustments) my standard of living will continue to decrease dramatically."

Respondent 22.

"1971 - To Washington, D. C. House payment for comparable home increased from $117.00 per month to $370.00 per month, plus increased state income tax to $80.00 per month, real estate tax from $180.00 per year to $900.00 per year, plus personal property tax to $200.00 per year. Fixed expenses increased $5,245.00 per year. Had to pay $3,000.00 taxes on moving expenses reimbursement received from Bureau. Separated from family five months. Separate maintenance cost $3,600.00. Increased mortgage rate from 5½% to 7%.

1975 - Transfer from Washington, D. C. No pay raise involved. Had to sell down on house and had to pay tax of $19,000.00 on capital gain (55-year advantage then not law on U. S. Tax Code). Had to pay state income tax on moving expense reimbursement in both Virginia and Alabama, as well as U. S. tax. Total taxes amounted to $4,800.00. Without family for six months. Paid about $4,000 temporary quarters not reimbursed by Bureau. Paid double mortgage payments for four months amounting to loss of $1,600.00. Move increased mortgage interest rate from 7% to 9⅛%.

1976 - Transfer to Washington, D. C. Mortgage rate increased from 9⅛% to 10¼%. Comparable housing, house payment increased from $400.00 per month to $659.00 per month. Property tax increased $1,300.00. Federal tax on reimbursement for transfer allowance $3,600.00. Had to buy second car for transportation to work. Loss on temporary quarters $1,200.00.

1978 - Transfer from Washington, D. C. Increase of $159.00 per month in state income tax. Paid $4,000 in tax on transfer funds. Increased real property tax by $1,500.00 per year.

1979 - Transfer Mortgage rate increased from 10⅛% to 11%. Temporary quarters cost $2,400 in excess of allowance. Five months double house payments cost, $3,500.00."

Respondent 23.

"In 1976, I had a mortgage at 7-3/8% and a monthly payment of approximately $375.00.

I was transferred February, 1977, with no increase in salary. My mortgage rate increased to 9-3/4% with a monthly payment of approximately $475.00, with all capital gain on sale of residence reinvested in new residence.

In July of 1978, I was transferred and promoted with a salary increase. My mortgage rate increased to 10% and the monthly payment to $550.00. All capital gains reinvested in new residence.

In September, 1980, I was promoted with no salary increase, transferred and invested in mortgage rate at 10-7/8% with a monthly payment of $1350.00 (due to increased housing costs).

Each transfer cost me money to move household goods. The most recent transfer cost approximately $1000.00 above that allowed for household goods alone. The allowance for real estate transactions was approximately $1000.00 less than costs and, since taxable, makes my tax bracket higher (exact costs yet to be determined).

In 1976, my salary was $35,480 gross with housing payments of $4500, leaving $30,980, gross disposable.

In 1980, after three moves and two promotions, my salary is $50,112 gross. Annual housing costs are now $16,200, leaving me $33,912 gross disposable. Had I remained in position in 1976, with no promotion or transfers, my salary would be $49,797 gross disposable. In four years, after three transfers and two promotions, my disposable income is $11,000 less per year than had I remained in place for four years without transfer or promotion."

Respondent 24.

	"Mortgage Payment
1st Home (1966-68)	$225 month
2nd Home (1968-75)	$350 month
3rd Home (1975-77)	$670 month

4th Home (1977-79)	$990 month
5th Home (1979-80)	$1,600 month

Each move has resulted in higher cost for housing resulting in a larger mortgage at a higher interest rate. This increase has outstripped many times over the increase gained by promotion. Each move has resulted in enormous out-of-pocket expenses which were unreimbursable (example: overweight household goods, house-hunting trips, separate quarters etc.) and which were offset by equity augmentation. However, the cash-flow squeeze was not offset by the equity increase."

Respondent 25.

"Every one of my eight transfers has resulted in a higher interest rate for me on my home mortgage.

My last transfer resulted in me personally paying about $5,000 of the realtors fees which the Government couldn't pay. And I had to pay about $500 for excess weight on my household move.

I have almost always had to pay tax on certain moves that reimbursed my expenses incurred on a move.

One is never completely reimbursed for all the incidentals involved in a move. My wife and I and family always have to pack and unpack ourselves (household) to avoid excessive losses.

There is never sufficient reimbursement for all the inconveniences associated with a move. (Address changes, school changes, wife's loss of job/etc., etc.)"

Respondent 26.

"My present salary is $50,112.50 per annum as an SAC. If I had remained a street Agent and not pursued administrative advancement, my present base salary would be GS 13, Step 7, or $38,456 plus AUO of $5,116.75, or a total of $43,572.75. Thus, I receive only $6,539.75 in additional salary per annum.

Set forth below is a comparison chart since 1969, when I was transferred to FBI Headquarters as a Bureau supervisor, until the present:

Year	Assignment Location	Mortgage	Interest Rate	Monthly Payment
1969	FO	$20,000	6%	$165.00
1969	FBIHQ	$35,000	6-3/4%-8%	$335.00
1976	FO	$44,000	8%	$440.00
1978	FO	$85,000	9-3/4%	$885.00
1980	FO	$60,000	7%(Assumption)	$575.00
			11% (Second trust)	

I paid capital gain taxes for calendar year 1976, because of sale of residence and lower purchase price of new home. I will also pay capital gain taxes for calendar year 1980, because of sale of residence and lower purchase price of new home.

It is also noted that every time a transfer is accomplished, the individual is liable for higher income tax due to those monies received for transfer allowances.

My move this year resulted in real estate commission on sale of former residence to be $1,450.00 over allowable amount. It should be noted that while my monthly house payment has declined by $300.00, this is offset by the fact that the state income tax withholding amounts to $200 per month. In order to assume a very favorable 7% loan, it was necessary for me to pay $50,000 down and then obligate myself to a second trust at 11% per annum."

Respondent 27.

"Transfer from FBIHQ, March, 1977:

Transfer was from Unit Chief, GS 15, FBIHQ, to ASAC, GS 15. No change in pay. Disposable income affected as follows:

House payment - $468 to $1,092, reflecting mortgage rate increase from 7% to 9% and increased property taxes;

State income tax - increase of approximately 20%;

Utility costs - approximately $100 per month vs. $265 a month.

Other increases in almost every area but exact amounts unrecalled.

Out-of-pocket transfer costs: Unreimbursed real estate fee - $2,700. Unreimbursed household goods - $800.

Transfer, July, 1980:

This transfer involved a grade increase from GS 15 to GS 16, amounting to approximately $3,000. Disposable income was affected as follows:

Mortgage rate increased from 9% to 10-3/4%, but house payment decreased by approximately $200 due to decrease in real estate taxes;

State income tax decreased slightly;

Utility costs also decreased slightly;

Out-of-pocket transfer costs included $3,500 unreimbursed real estate fee; $2,800 unreimbursed household goods; attorneys' costs $850 unreimbursed; unreimbursed interest on a swing loan $920; unreimbursed assumption fee mortgage $100; unreimbursed trip to sign closing papers and various telephone calls for negotiation, approximately $600; temporary housing costs unreimbursed $800; unreimbursed subsistence at new duty station $980 - total unreimbursed costs - $10,550."

Respondent 28.

"The exact figures and amounts necessary to specifically reply to this questionnaire are not available inasmuch as those documents are located in my old duty station.

In 1976, prior to transfer from FBIHQ, where I was assigned as a Grade GS 15, to ASAC, also in a GS 15 position, my mortgage payment was $466 a month. The cost of purchase of the home resided in while assigned at FBIHQ in 1972, was slightly over $44,000. The home was sold in November, 1976, at a cost of approximately

$68,000. In January, 1977, I purchased a home associated with the above-mentioned transfer for $85,000. My mortgage rate increased from $466 a month to $652 a month, an increase of $186 a month, with no increase in salary. Also, the home purchased for $85,000 was no better than the one purchased in Virginia for $44,000 in 1972. Subsequent to my assignment as ASAC, I was administratively reassigned to the Inspection Staff, which transfer resulted in no change in residence. This promotion was affected with no change in grade or salary. After a 10-month assignment to the Inspection Staff, I was promoted to SAC. I sold my home for approximately $125,000 in March, 1979. In May, 1979, I purchased a home of lesser size and quality for $130,000. At that time my mortgage payment increased from $652 a month to $777, $125 a month more. I was in Grade GS 15, as previously mentioned, and upon reassignment and promotion I was in Grade GS 16. It should be noted that with the difference in state income taxes and having 'greater income' to tax, my take home salary decreased approximately $127 per pay period, or $252 a month.

Associated with the promotion and transfer was a long period of separation from my family. I reported in March, 1979, and my family did not join me until the first week in July, 1979. Additionally, costs attendant to operations of two households were necessary, causing financial strain on me and resulted in withdrawing several thousand dollars from my savings account.

Additionally, I approximate that the total transfer of my household goods, sale of residence, purchase of new residence, costs of temporary quarters for myself when living alone, and for my family after they joined me cost me personally in excess of $6,500.

In April, 1980, I was promoted and transferred again. My salary changed from a Grade GS 16 to a Grade GS 17; however, actually resulted in minimal increase in take-home pay due primarily to the difference between state income taxes. However, there was no appreciable increase in take-home pay."

Respondent 29.

"Year	Place	Percent Int.	Mtg Payment	Take Home Pay
1972	WDC	8%	$ 360.00	$1800 -
1977	FO	8¼%	450.00	2500 -
1979	WDC	11%	1150.00	2600- "

Respondent 30.

"In February, 1975, when I was 'promoted' to SAC (larger office from SAC smaller office), I experienced an actual loss of some $7000 per year. My mortgage payments more than doubled ($230 vs. $540) - I was introduced to a state income tax and higher cost of living area."

Respondent 31.

"Year	Mtg Int Rate	Mtg Payment
1976	6%	$270 month
1978	9¼%	570 month
1980	11¼%	900 month

During this period my take-home pay has increased approximately $400 per month. At the time of my last move, I was promoted from GS 15 to GS 16. Because of the difference in state tax structures, however, the net effect of the grade raise was a decrease of $40 per pay period in take-home pay. In order to sell my residence during this last transfer, I had to pay over $18,000 in 'points' to the lender."

Respondent 32.

"Transfer ASAC - 1979

From FBIHQ GS 15 Old mtg 8-3/4% new 10½%. Payment $450 to $1000 month

No pay increase

Transfer Section Chief - 1980

To FBIHQ GS 16 Old mtg 10½% new 13%. Payment $1000 to $1500 month

No pay increase

Real estate fee $10,500
loss $2,500
Overweight $2000
3 months extra TQ $550 month"

Respondent 33.

"Year	House Payment
Transfer 1977	Old $370
Transfer 1977	New $625
Transfer 1979	$950

Take-home pay remained same.

1977 Transfer cost $4,900 out-of-pocket

1979 Transfer cost $5,200 out-of-pocket

Above loss is result of 'points,' 'tax liability' 'moving expenses,' and expenses due to maintaining two households during 1977 transfer."

Respondent 34.

"Year	House Payment
1976 Unit Chief	$465
1976 ASAC	$625
1979 Section Chief	$840

Realtor fee $9,600 (8,000 max)"

Respondent 35.

"During the past three years I went from paying an 8½% mortgage to a current 13½% one, all the time receiving approximately the same salary."

Respondent 36.

"Lateral transfer 1978, 6% mortgage to 10% mortgage $550 per month to just over $1,000 per month."

Respondent 37.

"In 1977, while a GS 15 in FBIHQ, my mortgage payment was less than $400.

When transferred to the field as a GS 15, my salary remained unchanged and my mortgage payment rose to almost $800.

When transferred back to Washington, I became a GS 16

with a new mortgage payment of $1,200 monthly and since I was unable to sell my prior residence was responsible for that $800 monthly payment for over eight months in addition to new mortgage.

In each of these moves, I personally paid over $100 because of overweight and also paid $1,000 in temporary quarters extra."

Respondent 38.

"1977 Transfer 7% Mtg From GS 15 position to GS 15 position
to 9% Mtg Income Tax Burden $3,000

1979 Transfer 9% Mtg From GS 15 position to GS 15 position
to 11-3/4% Mtg Income Tax Burden $1,000

Unable to sell house - carrying two mortgages - negative cash flow on rental $1,500 per house plus loss of reimbursement for real estate commission after two years $8,000.

1977 Mtg prior to move from WDC $4,800 per year

1980 Mtg prior to WDC our house (smaller than '77 house) $10,800 $6,000 less to spend."

Respondent 39.

"Transfer 1977 - Bought house $74,000
3600 Sq. Ft.
9% Mtg - Payment $476 month

Transfer 1980 - Bought house $124,000
1700 Sq. Ft.
13½% Mtg - Payment $1,240 month

Salary increase $30 per check."

Respondent 40.

"In the last seven years my mortgage rates have climbed from $236 a month to $1500 a month."

Respondent 41.

"Transfer 1975 GS 14
to FBIHQ Old Mtg $220 New $525
Transfer 1978 GS 15
fm FBIHQ Old Mtg $525 New $777
Transfer 1978 GS 16
to FBIHQ Old Mtg $777 New $1,044

The advance to GS 16 made no financial difference and in truth, I would be financially better off as a GS 14 supervisor back in the FO, especially when counting hidden costs of transfer."

Respondent 42.

"Year	Position	Mtg Payment	Rate
1/72	GS 14 FO	$ 190	5½%
8/72	GS 14 HQ	430	7-3/4%
7/76	ASAC 15	580	8-3/4%
6/79	SAC 16	1250	13%
10/80	SAC 17	?"	

Respondent 43.

"Year	Position	Mtg Payment
1967-77	HQ	$ 400
1978	FO	800
1979	ASAC	1150"

Respondent 44.

"Income	Year	Int Rate	Payment
$1177.73	1979	9½%	$650
$1285.22	1979	11¼%	800

Loss due to move $15,500.00."

Respondent 45.

"Year	Mtg
1974 to HQ	Old $350 New $700
1980 fm HQ	Old $700 New $1,063"

Respondent 46.

"Year	
1975 fm HQ	Rent $550 per month
1977 FO to FO	Mtg $445 per month
1979 FO to FO	Mtg $1,103 per month"

Respondent 47.

"Year	Mtg
1/6/78	Old $475 New $705
2/26/79	Old $705 New $1,415

My take-home pay is about the same $2000 per month.

Between interest paid, living expenses while away from my family, real estate commissions, my 'expenses' for the transfer are approximately $25,000."

Respondent 48.

"Move	Take Home Pay	Mtg Rate	Payment
6/79	Old $1,244.60	7½%	$458
	New 1,273.51	10½%	864"

Respondent 49.

"SACs in larger field offices are given larger responsibility (without larger compensation) and can only assume these responsibilities by paying their 'dues' by handling lesser assignments first. In the last eight years, I have been transferred six times. I was financially better off six years ago than today."

Respondent 50.

"Year	Mtg
1975	Old $350 New $650
1979	Old $650 New $1,240"

Respondent 51.

"Year	Mtg
1977	$550
1980	$1,046"

Respondent 52.

"My real purchasing power (salary left after taxes, mortgage payments, etc.) has declined consistently since my transfer in 1975, as an ASAC. Each transfer after 1975, (3) has involved an increase in mortgage interest rates, 7%, 7-3/4%, to 8-3/4% to approximately 14%."

SURVEY QUESTION 13

"The high level of geographic relocation has a number of adverse effects. Indicate what conditions could be improved to help a supergrade financially."

SURVEY QUESTION 14

"If a comprehensive relocation plan is considered, what items should be included?"

The vast majority of respondents answered survey questions 13 and 14 in a similar manner. Since those surveyed treated these matters as being reflective of the same overall problems, the responses set forth below encompass both questions.

The major theme that runs through all the responses is the need for more direct financial assistance from the government upon transfer to a new location. As one individual commented:

> "Whether an employee is a support services employee or a top level executive, the FBI transfers him/her because of the need for that individual's talents in a different geographical location. It is incumbent upon the Government to insure that the transfer, which is for the benefit of the Government, causes the least disruption to the employee and his/her family and that there is no financial disincentive to the transfer. Family separation and financial loss due to a transfer are considered the primary disincentives.

To offset these disincentives there was a recurrent call for the following items:

1. The Government should assist in the sale of a home once a suitable period of time has elapsed (90 days being quoted most frequently).

2. The Government should pay all costs associated with a transfer. This would include all closing costs for both sale of old residence and purchase of new one.

3. The Government should raise the present weight limit of 11,000 pounds on household goods.

4. The Government should provide temporary quarters at a constant rate in keeping with current prices for meals and accommodations, and the length of time allowable for temporary quarters should be extended to at least 60 days.

5. The Government should drastically increase the allowance for miscellaneous expenses. The present $200 is minuscule in comparison with current costs. Most respondents felt this amount should be increased to at least $1,000.

6. The Government reimbursement should be free from taxation. Failing this, the maximum allowable amounts not subject to taxation should be increased.

The following items represent a specific comprehensive plan as set forth by one of the respondents:

"1. Within a certain time period (approximately one week) after the date of a transfer letter, the employee should have two realtors conduct a market analysis to determine the sales value of the employee's residence. The employee should be allowed 105 days to sell the residence after which the Government or a contracted third party would offer to purchase the residence at the average of the previously established fair market values. A 105-day period allows for fifteen days to get the residence in saleable order plus the traditional 90 day contract required by real estate firms for listing residence.

2. FBI policy requires the employee to report at the new duty station 30 days after the date of the transfer letter. From the date of arrival at the new duty station until the end of the 105-day period (as set out in number 1) the employee should receive regular per diem plus transportation costs to enable return to the family domicile for visitation every other weekend.

3. Travel to the new duty station should be at regular travel and per diem rates.

4. If the employee does not elect to allow the Government or contracted third party to purchase his/her residence at the end of the 105 days, living costs beyond this day should be borne by the employee until the residence is sold by the employee or he/she elects to allow the Government or contracted third party to purchase the residence.

5. Upon sale of the residence, costs of transporting the employee and his family to the new duty station should be at standard travel and per diem rates.

6. A house-hunting trip of 7 calendar days should be allowed at standard per diem rates for husband and wife plus baby-sitting costs for dependents left behind.

7. Upon relocation to new duty station, the employee and dependents should be allowed 90 days standard per diem rates for temporary quarters to effect location and purchase of a new residence.

8. Customary and reasonable real estate selling costs for the area should be paid by the Government.

9. Customary and reasonable real estate purchasing costs for the area should be paid by the Government.

10. The employee should be given the equivalent of one pay period salary for miscellaneous expenses.

11. The cost of transportation of household goods should be borne by the Government without regard to any limitations. The actual cost should be paid by the Government.

12. The Government should pay increased mortgage interest rates caused by relocating to a new area.

NO TRAVEL, PER DIEM, TRANSPORTATION OF GOODS, REAL ESTATE BUYING OR SELLING EXPENSES OR TEMPORARY QUARTERS EXPENSE REIMBURSED BY THE GOVERNMENT SHOULD BE TAXABLE. IF ANY OF THESE EXPENSES REMAIN TAXABLE, THE GOVERNMENT, LIKE BUSINESS, SHOULD OVERCOMPENSATE TO COVER THE TAXES WHICH MUST BE PAID."

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Aside from those areas relating directly to transfer and relocation, the respondents dwelt extensively on just and adequate compensation in keeping with the position and increased responsibility they are asked to assume with each new promotion. Under the present system increasing authority and responsibility fail to bring with it a concomitant increase in financial remuneration. Our top-level managers see inflation increasing at a tremendous rate while their buying power is continually decreasing. To offset such a situation, they suggested the following:

1. Remove the pay "cap" and allow all executives who have "topped out" to continue to receive cost-of-living increases similar to all other Government employees.

2. Government should consider paying an annual bonus to all supergrades. Such bonus might be determined by comparing mortgage rates between old and new duty stations and paying the employee the difference.

Some other suggestions which were offered, but with less frequency than those noted above, are set forth below:

1. "As you know cost of living conditions vary from state to state which includes some states with no income tax (i.e. Florida, Tennessee, Texas, Connecticut), low property taxes and overall lesser cost of living while metropolitan areas experience higher across-the-board costs. Consideration for higher salaries for these areas vs. areas of lesser costs."

2. "Pass legislation similar to the Soldiers and Sailors Relief Act to make it possible for the employee to avoid the tremendous cost of taxes, car registration, out-of-state college tuition, etc., that is incurred with each transfer. Active duty military personnel under the act maintain residency in one state and are not subject to income taxes where they are assigned yet their dependents are eligible for in-state tuition throughout the United States."

3. "Explore the 'home of record' concept as it may legally apply to the FBI. This concept is currently in effect in the Military service, CIA and the Postal Inspection Service, that I know of. Essentially it involves the movement, at Government expense, of a retiree from his place of last assignment to his 'home of record.' If this can be implemented in the FBI, it would most certainly relieve a lot of stress and pressure on officials who are in their early 50's, knowing that wherever they are sent in the waning years of their career, they would be sent to their home area at Government expense upon retirement."

4. "Insurance rates should be broadened to more just rates. During the last three transfers, I have had to pay an additional $100 beyond what the Government pays for insurance in order to properly insure my household goods."

5. "Storage period for household goods should be changed from a 60-day period to no specific time period or what is reasonable under the circumstances."

6. "The U. S. Government, for its management personnel who are subject to mandated transfers, should employ the same system that is widely

employed for management types in private industry. If there is a difference in the state taxes between the places of employment, the difference should be made up in the employee's check. The contrary would also be true if an employee was going from a high cost area to a low cost area - his salary should be reduced."

7. "Consideration for purchase or lease of apartment or condominium or some other suitable temporary quarters by the Bureau for use of Agents under transfer."

8. "Financial consideration for families with college students who lose residence status when forced to relocate."

9. "In some instances the move is not feasible and only the executive goes; consideration for an unlimited separate residence allowance - actual cost."

10. "It would seem appropriate that a relocation be completely underwritten by the agency regardless of the amount that relocation costs, which should include the purchase of the employee's residence at the old duty station after a reasonable time period. Certain other areas of compensation should be considered. For those who have reached the maximum, i.e., should be considered as extensions of base salary compensation."

In summarizing the various proposals set forth, one respondent noted:

"All aspects of the plan should be designed to cause the employee to believe the Government appreciates the personal inconveniences that transfer causes and is sincerely interested in making it as smooth as possible rather than the current perception employees have (I am going to get hurt again). It is a financial and emotional punishment and does nothing but cause the employee to feel the Government has no real interest in his situation."

SURVEY QUESTION 15

"How much time were you separated from your family last transfer? Comment on stress involved."

Of 105 respondents, 81 experienced family separation during their last transfer. The remainder experienced no family separation during their last transfer for a variety of reasons including a previous divorce and an insistence on avoiding family separation in spite of inordinate cost. The average family separation time for the 81 respondents who experienced family separation was 5.3 months.

Of 105 respondents, 23 indicated that stress was a minimal or nonexistent problem for them on their last transfer; however, many took the opportunity to recount stress-related problems on prior transfers. The remaining 82 respondents noted stress-related problems associated with their last transfers.

Set forth below are a number of case studies reflecting these problems:

1. "Twelve months - Since January, 1978, I have resided full time with my wife and three children continuously for eight months. A year on the Inspection Staff was tantamount to sustained separation. Two transfers and the delays associated with sale of houses have resulted in my wife being forced to raise

two teenagers and one other child alone for nearly three years. During the period my daughter was in a traffic accident and sustained a broken leg. I was 1500 miles away; one son broke his arm - I was 1000 miles away. I have not been available to serve as a husband and father during that period. As a result, my marriage is precarious and my relationship with my children can best be equated with that of a divorced father."

2. "Five months - The stress on a family with long periods of separation and financial worries are incalculable. My family has required professional help as a result."

3. "Six months and four months plus - At the time of my prior transfer I was separated for six months and the stress was almost intolerable. It came close to destroying my marriage. Only the telephone saved many small, bad situations from developing into one large crisis. At the present time, I have been separated for almost five months and anticipate another eight months without the family. Once again the stress is very strong; however, there are no adverse effects on our family life as of this date. The stress comes from a significant financial problem in that our resources are once again being drained and there seems to be no way to recoup our financial losses. Three children will enter college beginning August 1981 (thru 1984), and there is very little in savings to support three children in college at one time. This is what is causing a great amount of stress in our family life at this time. In conclusion - as a GS 16 in 1980, I am saving nothing with several debts. At the same time, my standard of living has not increased or been upgraded and the financial stress factor has risen considerably."

4. "Six months - This was the largest single factor that led to my divorce, although it

was not by any means the only one. My ex-wife and I never recovered financially or emotionally from this separation."

5. "Four months - Cross country separation which precluded more than one visit-three children (13, 12, 11). Wife had all three with her during the entire summer vacation period thus offering her virtually no let up from their presence, problems, demands, etc. While at the same time being obligated to keep the house clean and orderly in effort to sell.

6. "Nine months - While the separation from my family during the last transfer was not as long as many others in similar situations, with children who are contemplating the entrance into college my participation in discussions concerning the selection process were severly restricted. In addition, there was much consternation and contingency plans made due to the extremely unpredictable real estate market and tight money market at the time of my transfer."

7. "Four months - During these four months, my wife was uneasy at prospect of staying alone for an extended length of time. Son experienced learning disability and had psychological sessions to improve interaction socially with peers. Further, two elementary school daughters were extremely unhappy with prospect of losing friends and not seeing father for long periods at a time. Two residences being maintained for that time period caused worries and concerns about finances. Annual leave had to be used during move rather than for vacation or recreation purposes. Wife left to handle many details of the move, including coordination with moving company, packers, etc. Move in 1980, represented third school attended by children during past three years."

8. "Needless to say, there was tremendous stress and much lost time at work. Financial worries doubled and emotional concerns left scars with family that will be difficult to erase."

9. "Stress is tremendous, especially in the areas of financial management, physical maintenance of home, child discipline and other family-oriented matters."

10. "I would like to introduce in this question, my wife's impressions and feelings. The problems of having husbands away from family four months at a time, the financial strain of owning two homes, the loss of friends which were formed from four to six months, the strain of children to change schools once a year, the lack of continued community and school spirit, the tremendous sense of disorientation, the continuous strain of impending future moves, and the long working hours of Agents create a fantastic amount of strain. To experience all of the above and then the ultimate insult to have to pay for many of the expenses entailed in a move for the benefit of the Government without a raise in pay, places additional stress on the family. Without outside income, it would be impossible to keep your head above water financially in high cost areas."

SURVEY QUESTION 16

"Many things enter into a decision to seek administrative advancement and attain a supergrade position. Rank order the most important items to you personally:

i.e., location of assignment, salary,
post retirement job availability,
status, title, responsibility,
position, ego, retirement benefits,
career goals, fewer moves,
family stability."

Because of a multiplicity of answers given by respondents, which in most cases meant substantially the same thing, some liberty was taken by the surveyor to produce the following result.

Of 104 respondents who addressed this topic 99(95 percent) mentioned responsibility, while 80(77 percent) mentioned salary. Where responsibility and salary were mentioned together, 63(83percent) ranked responsibility more important than salary; 13(17 percent) reversed the order. Five(5 percent) mentioned salary or salary-related items such as retirement as the only thing of personal importance. Sixteen(15 percent) mentioned responsibility or responsibility-related items as being of sole importance.

SURVEY QUESTION 17

"In your opinion, which would be a more rational and equitable pay level - indicate what salary level the pay "CAP" should be raised to?

To 55,000 To 60,000 To 65,000 To 70,000"

Set forth below is a table illustrating the results of this survey.

PROPOSED "PAY "CAP"	RESPONSES	PERCENT OF TOTAL RESPONSES
$55,000	1	1
60,000	6	6
65,000	33	32
70,000	62	61
No response	3	
	105	100.00

As can be readily seen, the majority of respondents favored raising the ceiling cap to $70,000.

One respondent favoring such a move set forth the following table reflective of how the pay cap ought to be keeping pace with the Consumer Price Index. Such a chart assumes that the 1977 pay cap of 47,500 was equitable.

"YEAR	RATE	CONSUMER PRICE INDEX	NEW RATE AT END OF YEAR
1977	47,500	6.5%	50,587.50
1978	50,587	7.7%	54,482.20
1979	54,482	11.3%	60,638.47
1981	60,638	13.4% (est)	68,763.49
1981	68,763	10 % (est)	75,639.30

In other words, we will need the $70,000 just to stay even with the 77 cap. This pay cap should be adjusted for COL each year when lesser-grade employees receive their raises."

Survey Question 18

"Assume there are no changes in the salary situation (pay cap is not lifted). What would be the impact? Personally to you? How would the FBI be affected as an organization?"

Of 105 respondents, 44 said they planned to retire as soon as eligible because of the pay cap; 6 said they planned to quit immediately if they were given a better offer; 43 did not mention early retirement but commented unfavorably on the pay cap; and the remaining 12 said they were so committed to the Bureau they planned to stay with the Bureau no matter what happens vis-a-vis the pay cap.

Set forth below are some specific examples of responses received:

1. "If there are no changes in the salary situation, I will retire promptly when I reach 50. I just will not be able to afford to stay on as I will still have two children in college and I will not stand by and see my family continue to suffer.

   If all financial disincentive for striving to reach top management levels is not removed and if, in fact, one is penalized financially for having endured the hardships necessary to reach the upper levels, the quality of the top people in the future will surely decline."

2. "Failure to lift the pay cap will virtually insure my departure from the FBI at age 50 or shortly thereafter. Organizationally it would:

   1. Discourage many capable Agents from seeking a management position, thereby depriving the organization of potential quality managers.

   2. Cause many productive supergrade employees to leave as soon as possible, thereby depriving the organization of their skills and knowledge."

3. "In addition to the normal factors we have seen throughout the Government recently and understandably for different reasons, a mass exodus of those eligible for this is due undoubtedly, in part, to the fact those in the higher grades see little incentive to continue when they are, in fact, making no more money than those several grades lower.

   From the standpoint of those in the lower grades, there is no financial incentive to take on the added responsibilities and 'aggravation' of additional relocations in connection with administrative advancement. At the present time, I face a little over ten years under the present system with little prospect for financial involvement so long as there is such a low 'cap'. In the long haul, the FBI as a specific organization and the Government as a whole are not going to be able to attract the best personnel to accept positions of responsibility if there are no changes in the salary situation which presently exists."

4. " The impact to the FBI concerning the salary cap and lack of proper reimbursement for transfer expenses will in my opinion be disastrous for the FBI a few years from now. These problems are well known by all Agents throughout the FBI. We currently have a good group of supervisors. However, every office in the FBI is now experiencing problems encouraging qualified Agents to enter the Career Development Program and keeping those

in the program who are currently serving in supervisory positions. They are well aware from stories such as mine what faces them if we, in current leadership positions, are not able to reverse these procedures. It is my opinion that the impact will be felt most by the Bureau some three to five years from now when our potential candidates begin to run out. Insofar as to what it means to me personally, I will be eligible to retire in December, 1982, two years from now, even though under the current retirement system I could stay until 1987.

The current problems guarantee my retirement two years from now. That will be against my wishes as I thoroughly enjoy my position and have no desire to leave the FBI, but I have no choice. It is not possible in my individual circumstances to aid me materially for my past losses related to transfers and I do not anticipate that the salary cap will be raised sufficiently to overcome the salary which my wife now has from her employment.

5. "Another transfer without increased benefits and an increase in salary would be a financial catastrophe as related to my personal situation. Additionally, if the housing and money markets worsen, the prospect of maintaining two households is financially unworkable.

With the mandatory retirement, executives in the FBI are attaining high-level, responsible positions at an early age. Without an increase in financial benefits, both in salary and transfer benefits, I believe that we will see a loss of those who are already in the Career Development Program by taking advantage of lucrative job offers prior to reaching retirement age. There has been over the years an extremely tight bond of all FBI employees in their loyalty and dedication to the job. However, with worsening economic trends, I believe there will be a waning of this loyalty. Additionally, the impact can already be seen of many young, talented Agents with tremendous potential who are reluctant to subject themselves to transfers when

they can see that there is no financial benefit, and many even see it as financial suicide to engage in the Career Development Program."

6. "I have been fortunate to reach the supergrade status at a relatively young age and with a minimum of adverse impact on the stability of my family. However, the present salary cap is now the primary demotivator in my present position. Unless appropriate relief in the form of increased monetary compensation is received within the next year, I am convinced that our ability to replenish our executive ranks will be seriously impaired. If this monetary relief is not forthcoming, it will have the result of promoting employees who are either financially independent or employees bordering on advanced senility. If this situation remains static and is coupled with the financially disastrous transfers, we will have not only a massive 'bail out' from the supergrade structure, but a career development path which is pure folly."

7. "If the present salary structure of executive pay is not changed, I believe all incentive will be taken out of the Career Development Program. It is extremely difficult to attempt to persuade Agents who have demonstrated administrative advancement ability to get into the Career Development Program when they observe GS-13s being paid very closely to the level of a GS-17, especially when GS-13s are not transferred and do not go through all of the emotional stress and financial loss that higher executives are required to do with no measurable reimbursement for these inconveniences."

8. "Impact - fewer Agents will enter the program. As an ASAC, I had an Agent ask out of the program. I convinced him to stay. A week later he showed me a comparative financial statement of transfer vs. no transfer. He had called the D. C., area determined the tax structure, transportation cost, tuition for his parochial school children, mortgage rates, etc. The bottom line with a promotion from GS-13 to GS-14 was

a spendable income loss of $212 per paycheck. This was in addition to a year's wait to get his children into parochial school. Because of the seeming stupidity in advancing administratively, there is a lessening of respect shown by the brick Agent to the SAC."

9. "Since I am currently 44 years old and have at least six years to possible retirement, a change in the pay cap would have little immediate affect. At retirement time, however, it would well be the deciding factor between retiring and staying on. Should the pay cap remain in effect for a protracted period of time, it will have the effect of virtually everyone retiring at age 50. In my opinion, this would damage substantially the experience level of the Bureau."

10. "Most of our competent managers will retire at age 50. Many in their early 40's will have to consider taking positions in the private sector and leaving the Bureau prior to age 50 in order to cope with inflation, cost of college-age children, and desire to stop living like a gypsy.

The most qualified potential leaders are also the most astute. The hardships on one's family, emotionally and economically, will discourage the future leaders.

I feel all who will aspire to top positions, if given an option, will be those who are doing it strictly for ego or status seekers. This is not what an organization needs to be successful."

11. "I have had one 5½ percent raise in the past three years. During the same time, inflation has increased about 35 percent. My wife has gone back to work to make up the difference."

12. "The immediate impact would not be traumatic, as I have nearly 20 years with the FBI and will probably try to 'ride it out'. However, the financial impact would be severe and would require, as a result of the most recent transfer, a significant scaling down in my style of living. The psychological impact of 'no change' would be more difficult to measure or predict, and its effect on the performance, effectiveness and efficiency of the FBI leadership core over a long period would undoubtedly be detrimental. As those in the working levels and mid-level management observe the negative impact 'no change' would have on supergrades, the FBI would have to suffer as an organization."

Survey Question 19

"Consider your expectations about administrative advancement when you entered the current program. Commeht if those expectations have changed as a result of the financial hardship. Be specific as to those items that have caused a possible change in your expectations."

In responding to this question, the majority of respondents indicated that their expectations concerning administrative advancement have not altered appreciably. They entered into the Career Development Program knowing that it would entail personal sacrifice and that a certain amount of movement would be required. Being willing to accept these conditions, however, they also expected that they would be compensated in keeping with their ever-increasing responsibilities. What they did not expect was ever-increasing financial hardships, a reduced standard of living, an inflationary rate that has far exceeded any compensation received, and a burden on their family lives.

Set forth below are some specific examples of responses received:

1. "I believe that everyone in Grades 16, 17 and 18 must bear some resentment toward the present pay structure when they see persons with less responsibility, time in the service, fewer transfers and lower house payments making the same amount of money without having suffered the same hardships. I cannot help but

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believe that the expectations of all of us who have reached these levels have been dampened by the fact that we are not paid at a level commensurate with the responsibility. The lack of financial reward certainly has to have caused severe hardship to any number of very capable people and the lack of future salary increases must raise doubts about continuing in the Career Development Program. It is simply not equitable for a GS-14, Step 6 Special Agent supervisor or Supervisory Resident Agent, to receive the same salary as an Executive Assistant Director. Prestige, authority, job situation and other rewards cannot make up the total lack of financial balance of the Career Development program."

2. "My expectations have changed to the extent that on more than one occasion I have seriously considered options out of the program. The financial hardships incurred and trauma undergone by my family on relocation make one wonder if it is worth it."

3. "Administrative advancement is supposed to be a way to earn more money for assuming more responsibilities. As it now operates, the reverse is true. There is minimal initial, direct gain in reimbursement, offset by financial hardship in costs associated with transfer. In the latter stages there is no direct gain and more financial hardship from unreimbursed costs of moving and higher mortgage rates. My expectations have changed to the point of perceiving further participation in 'administrative advancement' as a prescription for financial ruin."

4. "Because of financial hardships experienced as a result of being in the administrative advancement program, along with family stresses, there is absolutely no way I would in retrospect reenter the administrative advancement program. If individuals in the career development path are not compensated for all the executive hardships they can be expected to endure, there is no use being in the program. It is well known that persons not in the Career Development Program, for example, have achieved much better financial status because of the state of permanence."

5. "I realized when entering administrative advancement that if successful to the point of attaining the position of SAC or ADIC, that a certain number of transfers would be necessary. I did not at all anticipate as many as have come my way. I realized that with transfers certain expenses would have to be met by me, and I anticipate that as I move through various GS levels that even though I am not taking home as much money in my current assignment as my counterpart in Kansas City of Albuquerque, etc., I would not be experiencing a loss to any degree. Consequently, my expectations on entering administrative advancement did not really contain the salary factor. I note that in answering Item 17, I now rank salary as the second most important item today and I expect it is equally rated with the first item. An Agent's salary, whether he is in a supervisory position or investigator, should be such so that he could at least view himself as 'comfortable.' He might have to budget and take normal precautions to plan expenditures of his income but at least he knows he has enough to meet normal expectations. This was the attraction to many people desiring to become Agents and always enabled us to interest qualified applicants. We have reached today the point where many police departments pay as much or more to their police officers as we pay to our Agents. To date, we have no problems in still attracting highly qualified applicants but as these problems spread through Government, they will be disastrous. It is my opinion we will lose applicants eventually. So in summary, my expectations about administrative advancement did not concern me except in a general way wherein I realized that I would probably be making a better retirement and, hopefully, would get grade raises. Currently, the salary problem is uppermost in the mind of every FBI Agent who might be interested in the Career Development Program. In truth, most of us would be satisfied if only we could be assured that in career development we would not lose money."

6. "Five years ago I believed promotion, transfer and increased standard of living were compatible. With inflation rampant in our economy, transfer and increased standard of living are virtually mutually exclusive

under current salary compensation schedules."

7. "I have always felt that financial remuneration would be commensurate with the degree of responsibility assumed."

8. "My financial expectations with regard to administrative advancement included reasonably inflation and educational obligations as they relate to my children. However, at the time I entered into the Career Development Program, I anticipated that the Federal Government would keep pace with the private sector within reason as far as salary increases and benefits to offset expenses incurred in connection with relocating at the request of the Government. It is becoming a shocking reality to me that this is not the case. There is currently no financial motivation for administrative advancement - in fact, it is a negative factor. This is further evidenced by the fact that many of our key executives are retiring at the earliest possible age in order to supplement their income with full-time post-retirement jobs."

9. "Pay compression has created a disincentive to be involved. More importantly, the eroding quality of living standard my family must accept with each additional transfer has forced me to reconsider my position and personal interest."

10. "Very simply, because transfers are so emotionally and financially devastating as they are now carried out, it is most difficult to find an advantage to administrative advancement. While I am in full agreement with rotation to and from the field to fill administrative slots, such should not and cannot be allowed to penalize those who advance."

11. "I shall do everything possible to keep from moving again. I have a difficult time explaining to my family how a 'big' promotion is going to substantially lower their standard of living."

12. "My expectations have changed very little but the stress on my family caused by moves and resulting

financial hardship cause me to more frequently ask the question, 'Is it worth it?' This is aggravated by exposure at FBIHQ to my peers who have been promoted without transfers and who appear to be financially sound."

13. 'When I entered a previously existing CDP, I expected several moves in connection with administrative advancement. The program has changed somewhat in the interim; however, my moves have been basically, in number, what I expected. I did not expect, however, the intervening high increase in inflation and high interest rates. Initially, my expectations were to seek administrative advancement for various reasons, one of which would have been to obtain a substantially higher salary than those individuals who chose to remain in their investigative capacity with less responsibility. I find now that those who have chosen to 'stay where they are' undoubtedly are better off financially then I undoubtedly ever will be."

14. "The expectations of administrative advancement have changed so radically since I first entered the program that, could I turn back the clock, knowing what I know now and perceiving no change in the immediate future, I would not enter the program. Transfers occur more frequently and with more financial hardship attached than was the case when I initially entered the program. Family solidarity is disturbed because of the severe economic conditions surrounding relocations today. As one's career advances, so do the ages of children involved and their needs become more critical. Stability in assignment and vertical promotion without transfer as much as possible are required to offset this."

15. "If I knew when I entered the program what I now know in terms of personal and financial hardships which have resulted from transfers and the pay lid, hardships which are in excess of what are normally encountered and which can reasonably be expected, I would in all probability not have entered the program."

U.S. GENERAL ACCOUNTING OFFICE,
Washington, D.C., September 24, 1981.

Subject: Fewer agent transfers should benefit the FBI and its agents as well as save money (GGD-81-102).

Hon. WILLIAM H. WEBSTER,
Director, Federal Bureau of Investigation, Department of Justice.

DEAR JUDGE WEBSTER: In response to concerns expressed by members of the Congress, agency officials, and individual agents, we recently conducted a survey of agent transfer policies and programs in the Secret Service; the Bureau of Alcohol, Tobacco and Firearms; and the Federal Bureau of Investigation (FBI). Our objectives were to determine whether rotation programs (1) are similar among Federal law enforcement agencies, (2) negatively affect investigations, (3) result in unnecessary costs to the Government, and (4) adversely affect agents' financial situations and career goals. Because recent changes in your Career Development Program have alleviated the problems we identified during our survey, we have discontinued our work on FBI agent transfers.

Personnel transfers involving permanent change of station have been of particular concern recently because of the financial hardships placed on the individuals moved. Personnel who move face higher home mortgage interest rates, difficulties in selling and purchasing homes, and artificially low Government reimbursement limits on moving expenses. Agencies, such as the FBI, which use transfers as an integral part of management development have experienced problems emanating from the financial hardships placed on its managers. These problems included growing reluctance by agents to enter the supervisory ranks and declining morale among present supervisors.

In the FBI, the major area of concern and the focus of our survey was the Career Development Program. A key feature of this program has been to develop managers (GS-14 and above) by providing broad experience in both headquarters and field environments. This was achieved through mandatory transfers. In essence, the program required agents to serve in permanent assignments in both headquarters and field offices in order to be eligible for the next grade level. Thus, agents could be transferred from two to seven times depending upon their progression through the supervisory ranks. In addition to the financial hardships imposed by transfers, a transfer-oriented Career Development Program was questionable given the small increases in the Federal pay ceiling and mandatory retirement at age 55 with 20 years service. Most agents would be eligible to retire at age 50 and could be expected to do so in growing numbers. These retirements would create more vacancies necessitating still more transfers.

Recently, the FBI announced a number of changes to its Career Development Program. These changes are designed to reduce the number of transfers that managers—particularly at the first level supervisory position—would have to make. FBI officials estimate the number of transfers will decline from about 320 in calendar year 1980 to less than 100 in calendar year 1981, and transfer costs will decrease by about $3 million annually. The changes will also create more flexibility in filling positions by attempting to better match agents' career objectives with the needs of the agency.

We believe that the Career Development Program modifications should benefit both the FBI and the individual agents. The full extent of these benefits, however, will not be known until the new policy has been in effect for a while.

The appropriations and oversight committees have expressed concern in the past over problems created by agent transfer policies and programs. Although our audit work was undertaken pursuant to our basic legislative responsibilities, we discussed agent transfer matters with the staff of these committees during the initial stages of our audit. Consequently, copies of this letter will be sent to these committees.

CONCERN ABOUT AGENT TRANSFERS PROMPTED OUR INQUIRY

About 1 year ago, reports of concern began surfacing about agent rotation policies and programs in the major Federal investigative agencies. Various congressional committees raised questions about rotation programs during the fiscal year 1981 authorization and appropriation process. Additionally, agency representatives brought the subject to the attention of GAO officials.

In its report on the Department of Justice authorization of fiscal year 1981 appropriations, the Senate Committee on the Judiciary noted that financial hardships resulting from transfers had caused many FBI agents to shy away from supervisory ranks. Furthermore, agents were choosing to retire rather than accept a

promotion which required a move. The report concluded that the problems facing the FBI might be occurring in other Federal agencies. Similar concerns were raised by the Senate Committee on Appropriations during appropriation hearing for the Bureau of Alcohol, Tobacco and Firearms. The committee noted that increasing numbers of very qualified agents were refusing to enter the career program because they faced transfers every few years and that agents were complaining about the transfer policy. Despite this, the number of relocations has remained relatively constant.

At about the same time, agency officials began pointing out to us informally a number of negative features of the existing transfer policies and programs. These features included: the financial hardships borne by those transferred; the inability to gain expertise in specific geographic or crime areas; the incongruity of placing emphasis on quality cases which require longer, more complex investigations; and the declining morale among supervisors.

In addition, there were other factors directly affecting agent transfers. One was the implementation of the mandatory retirement provision of Public Law 93-350 in 1978. This provision permits Federal law enforcement personnel to retire at age 50 with 20 years law enforcement service and makes retirement mandatory at age 55. Retirements created vacancies which were filled by transfers causing yet other vacancies. This law, coupled with small increases to the Federal pay ceiling and the deteriorating economy, gave agents a strong monetary incentive to retire as soon as possible.

For these reasons, we initiated a survey covering the Bureau of Alcohol, Tobacco and Firearms; the Secret Service; and the FBI. This letter discusses transfer matters in the FBI only. At the FBI we gathered general information about transfer programs, reviewed transfer policies in effect during the last several years, accumulated statisitcs on the types and cost of transfers made, reviewed FBI internal studies which dealt with agent transfer matters, and interviewed a number of FBI headquarters officials on these topics. We also gathered data on Federal transfer policies, reimbursement of expenses, and proposed changes to current rules at the General Services Administration and the Office of Personnel Management.

FBI SPECIAL AGENT TRANSFER POLICIES

The FBI has a variety of programs which result in agent transfers. For our purposes, we divided these programs into three categories: (1) individual-oriented transfers, (2) new agent transfers, and (3) supervisory transfers. Most of the concern about agent rotation in the FBI involved supervisory personnel—GS-14 and above agents. Following is a brief description of the various transfer programs for each category.

Individual-oriented

This category includes those transfers which are not normally related to an agent's career development. In most instances these transfers are requested by the agents in connection with the Office of Preference Program. This program was established to provide a means to reward agents for faithful service by transferring them to an office of their choice. This system is based upon seniority, consistent with the FBI's needs and budgetary considerations. Once an agent receives a preference transfer, that agent will not be considered for another preference transfer for 5 years.

This category also includes hardship cases relating to the employee, employee's spouse, children, parents, and spouse's parents. These hardship transfers can be temporary of permanent. The FBI reviews each case annually to determine whether the employee's hardship continues to exist. Other transfers, which may or may not be initiated by the agent, are made because of undercover operations, marriage between agents, loss of effectiveness, and changing workloads at field offices.

New agent transfers

Most agent recruiting is done at the entry level. In recent years, the FBI's policy has been to transfer a new agent once during advancement through the career ladder (GS-10 to GS-13). Because of wide disparities in sizes and workloads in the 59 field offices, however, the FBI has periodically adjusted the timing of transfers to balance the experience of the agents with the investigative needs of the field offices.

The policy for transferring new agents which was in effect at the start of our work was established in October 1979. Under this policy, commonly referred to as the 6-month policy, new agents were sworn in at the field office where they were recruited and then sent to the training academy in Quantico, Virginia for approximately 15 weeks. Once agents completed the training they returned to the office that recruited them. After they had been with the FBI about 6 months (including the 15 weeks of training), the agents were normally assigned to 1 to 12 major field

offices (New York, Los Angeles, Chicago, Boston, Washington, San Francisco, Philadelphia, Newark, Detroit, Miami, Cleveland, and Baltimore). The agents would remain in these offices until promoted to the top of the career ladder or transferred to their office of preference. It takes about 7 years for an agent to advance from a GS-10 to a GS-13.

Under this approach, however, problems developed. Because new agents were transferred to 1 of 12 major offices after completing 6 months in their first office, the 12 offices were being staffed primarily with new agents while the other 47 field offices were filling their vacancies with office of preference transfers. Our analysis of staffing patterns at smaller offices disclosed that they were being staffed almost entirely with GS-13 agents while the largest offices were being staffed with a large number of GS-10 and GS-11 agents and a significantly lower percentage of GS-13 agents.

In April 1981, the FBI announced a revised policy designed to balance the experience level among the various field offices. This policy calls for new agents to be assigned to the medium or smaller sized offices for 2 to 4 years.

Supervisory transfers

The Career Development Program governs assignment, rotation, promotion, and other career development activities for supervisory agent personnel. The program covers all GS-14 and above agent personnel—more than 1,100 individuals. The program was structured so that managers would gain experience in both headquarters and field assignments as they progressed upward through the supervisory ranks.

By definition, all management personnel are included in the Career Development Program. Entry is voluntary and begins with an agent's request to be considered for the supervisory ranks. Subsequently, an agent is given the opportunity to act in a supervisory capacity during which time his or her management potential is assessed. Successful completion of these steps makes the candidate eligible for entry into the program. A principle of FBI management development is that supervisors receive broad experience in FBI operations. Basically, this means an agent must have assignments in both headquarters and field offices before being eligible for the next grade level.

Since practically all GS-13 agent personnel are located in the 59 field offices, a new supervisor must normally undergo a permanent change of station transfer to fill a GS-14 headquarters supervisory position. After a few years, an agent will receive a lateral reassignment to a field supervisor slot, usually requiring another physical relocation. If an agent is promoted to the next level, two more career development transfers will result. Thus, upon entry into the Career Development Program, agents could expect from two to seven transfers, depending upon their progression.

The FBI's career board is responsible for making supervisory transfer decisions. The board, which is composed of members at the senior management level, determines the grade level and location of assignments. An agent may or may not receive a promotion at the time of transfer. If an agent wants to refuse the transfer, his/her only recourse is to withdraw from the Career Development Program and be downgraded to a GS-13.

Since October 1979, large numbers of supervisory transfers have been made under the Career Development Program. During calendar year 1980, about 320 career development transfers occurred. FBI officials explained that the number of transfers was increasing largely because of agent retirements. A single retirement can cause several moves because of the practice of filling positions by transfer.

SUPERVISOR TRANSFERS CREATE SERIOUS PROBLEMS

The FBI recognized that the Career Development Program as constituted was causing serious problems which would only grow worse if not remedied. The frequent transfers inherent under the program were resulting in severe financial hardship for persons transferred. This in turn was creating problems which could not be ignored. As a result, the FBI began to question whether the existing career development structure was the best approach for managerial development.

Transfers cause financial hardship

With the decline in the economy, it became increasingly difficult for transferred agents to sell their homes. In addition, when purchasing new homes, agents faced higher home mortgage interest rates and more expensive housing if they moved to higher cost cities. Furthermore, the Government's maximum reimbursements for moving expenses were not covering the costs agents were incurring.

For example, the maximum reimbursement allowances for sale and purchase of a home are $8,000 and $4,000, respectively—limits fairly easy to exceed at today's housing prices. An FBI survey of real estate purchase vouchers processed during fiscal year 1979 showed that approximately 12 percent of the employees exceeded the $8,000 reimbursement limit by an average of $800. These figures included transfers of support personnel and new agents whose expenses are usually less than those of supervisory personnel. The FBI has noted that in areas where the real estate commission is 6 percent, an agent would exceed the $8,000 limit on the basis of the real estate commission paid on any home selling for more than $133,333. Where the commission is 7 percent, an agent would exceed the limit if a home sold for $114,285 or more. In major metropolitan areas it is not unusual to find houses in this price range or higher. In addition to the commission, an agent would be required to pay all other expenses over $8,000 associated with the sale of a home.

Many agents also exceed the household goods weight criterion. An agent with dependents is reimbursed for the movement of household goods up to 11,000 pounds only. However, an FBI sample of vouchers showed that 20 percent of such shipments exceeded the 11,000 pound limit. A number of agents have been billed $500 to $3,000 for exceeding the weight limitation. Therefore, agents face the decision of whether to sell their possessions to come within the weight limit or pay transportation charges each time they move.

Making matters worse in the fact that moving expense reimbursements in excess of $3,000 are taxed. In a survey of agents transferred during 1979, the FBI found that all of them exceeded the $3,000 limit with the average reimbursement of transfer costs being about $9,000. Thus, those agents' taxable incomes have been increased by $6,000 each even though this increase is not disposable income. The FBI estimates that transfer costs have increased several thousand dollars since 1979, making the financial hardship for moving even more severe.

Problems resulting from financial hardships

Given this financial situation, it is not surprising that resistance to career development transfers has become a problem. This became evident in late 1979 when special agents-in-charge at seven large field offices estimated that only about one-third of their agents with management aptitude were in the Career Development Program. The participation rate was low largely because of the financial hardships associated with transfers. More and more agents began voicing their dissatisfaction, and increasing numbers refused transfers and accepted downgrades instead.

A February 1980 FBI study on retirement matters showed that increasing numbers of management personnel would be reaching retirement eligibility over the next few years. By 1985, for example, about 50 percent of the GS-15s (2nd level supervisors) would be eligible to retire. Given the financial hardships associated with transfers, the small increases to Federal pay ceilings, and mandatory retirement at age 55, it was apparent that agents reaching age 50 had a strong financial incentive to retire, if eligible, and start second careers.

The FBI also noted other problems that resulted from the Career Development Program policy. One dealt with continuity of leadership. The FBI was concerned that agents progressing to senior management levels were frequently transferred, thereby affecting the continuity of case management as well as the length of experience at each supervisory level. The transfers also resulted in other problems. The FBI study found that filling the vacated positions took an average of 2 to 4 months for headquarters and field positions, respectively. The study also cited that agents experienced a downtime syndrome lasting several months or more while they were waiting to be transferred or learning the new assignment after a move.

Shortly after our survey began, the FBI formed an ad hoc group, representing a cross-section of agent personnel, to study alternatives to the Career Development Program. Part of the group's effort involved obtaining the views of other agencies, such as the Office of Personnel Management, the General Services Administration, and GAO. In February 1981, we provided the group with our observations on the Career Development Program, potential modifications which might reduce the number of transfers, and an overview of career development approaches used by the other law enforcement agencies included in our survey.

We pointed out that:

The Career Development Program policy was unnecessarily rigid;

More flexibility at certain points in the Career Development Program would reduce transfers;

Others law enforcement agencies use job vacancy announement/competitive bidding systems to fill supervisory positions rather than mandatory transfers; and

Some Career Development Program positions could be filled with non-agent personnel.

FBI HAS ALTERED ITS CAREER DEVELOPMENT POLICY TO REDUCE TRANSFERS

On March 27, 1981, the FBI announced major changes to its Career Development Program for supervisors. The primary intent of these changes is to reduce the number of transfers made by supervisory personnel in order to relieve the financial hardships imposed by today's economic conditions. These changes should also alleviate some past intitutional and morale problems.

The major policy changes are as follows:

Eliminating GS-14 headquarters positions from the Career Development Program

Approximately 50 percent of the FBI's total number of GS-14 positions are located at headquarters and are filled by agents transferring in from field offices. These agents receive a promotion which offsets some of the costs they bear in transferring to headquarters. However, by eliminating these positions from the Career Development Program, agents who move to Washington receive a promotion without committing themselves to a lateral transfer after a few years.

Allowing promotions in place

About 50 percent of the GS-14 field supervisory positions will be designated stationary supervisor, which means an agent will remain at that office for at least 5 years. This should attract agents who have high management potential but who are unwilling to move or who prefer to stay at their location longer. This change is also designed to alleviate problems concerning continuity of management and filling vacancies.

Filling vacancies through promotion

If a transfer is necessary to fill a vacancy, there will be a preference for filling it through a promotion. This change is designed to minimize financial hardship on agents as well as provide an incentive for transferring.

Advertising GS-14 position to all agents

Vacancies at the GS-14 level will be advertised. Advertising positions allow agents to choose whether they wish to be considered for specific positions. This should help morale because agents who apply will have indicated a willingness to move.

These changes will affect agents generally at or aspiring to the GS-14 first level supervisor. The GS-14 supervisors comprise about two-thirds of the management positions. It should be noted that the FBI's philosophy for management development, i.e., diversity of experience, remains for the GS-15 assistant special agent-in-charge and senior executive service positions. That is, agents, as a prerequisite, must have supervisory experience at both field and headquarters positions at each grade level. A side benefit of the changes is the reduced transfer costs of the revised Career Development Program. The FBI expects the number of career development transfers in calendar year 1981 to be between 75 to 100, which is about 225 to 250 less than in calendar year 1980. We estimate this reduction will result in annual savings of about $3 million in transfer costs.

FINANCIAL DISINCENTIVES STILL EXIST

The financial hardships of a permanent change of station have made it difficult for many Federal agencies to get well qualified and experienced personnel to relocate. However, some relief may be in the offing. The General Services Administration and the Office of Personnel Management have proposed a number of changes to employee relocation regulations, among which are substantial increases to the reimbursement limits on the sale and purchase of a home. We have advised the General Services Administration that we endorse the changes designed to alleviate the financial burden on employees transferred in the Government's interest (B-196577, July 23, 1981).

On the other hand, should the reimbursement limits be raised, transferees will still be taxed on reimbursement of costs exceeding $3,000. Higher reimbursement limits can mean more taxable income. Thus, despite the changes made by the FBI and those being considered on the reimbursement limits, financial disincentives to transfer will still exist.

We wish to thank you and the many other FBI officials that met with us during our survey. We especially appreciated the opportunity to meet with and provide input to the management group studying agent transfer problems.

Sincerely yours,

WILLIAM J. ANDERSON, *Director.*

FBI AUTHORIZATION—FORENSIC SCIENCE LABORATORIES AND JURISDICTION ON INDIAN RESERVATIONS

THURSDAY, APRIL 2, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 2:10 p.m. in room B-352 of the Rayburn House Office Building; Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, and Sensenbrenner.

Staff present: Catherine LeRoy, chief counsel; Michael Tucevich, and Janice Cooper, assistant counsels; and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order. The Subcommittee on Civil and Constitutional Rights today will continue it's ongoing task of FBI authorization. Today we are going to consider two different areas of FBI responsibility. First, we are going to consider the subject of the FBI lab, and after that we're going to talk about the question of FBI jurisdiction on Indian reservations.

We previously heard testimony with respect to the functioning and proficiency of forensic laboratories on the national level. The results of such testing indicate that, perhaps, a quality assurance blind testing program could be of help to the FBI lab, and we are certainly going to chat with our witnesses about that.

We are pleased today to welcome the Assistant Director for the FBI Laboratory Division, Thomas Kelleher.

Mr. Kelleher, you are accompanied by Mr. John Hicks, and will you introduce to us your other colleague?

TESTIMONY OF THOMAS F. KELLEHER, JR., ASSISTANT DIRECTOR, LABORATORY DIVISION, FEDERAL BUREAU OF INVESTIGATION, ACCOMPANIED BY JOHN HICKS, ASSISTANT SECTION CHIEF, LABORATORY DIVISION; WILLIAM Y. DORAN, DEPUTY ASSISTANT DIRECTOR, LABORATORY DIVISION; AND L. CLYDE GROOVER, DEPUTY ASSISTANT DIRECTOR, ADMINISTRATIVE SERVICES DIVISION

Mr. KELLEHER. This is Mr. William Doran, who is the Assistant Deputy Director of our division, and Mr. Clyde Groover, who is the Deputy Assistant Director in our Administrative Services Division.

Mr. EDWARDS. Mr. Groover has testified before, and we are pleased to have all of you here. Will you proceed with your testimony, please.

Mr. KELLEHER. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I am pleased to appear before you today to discuss the functions of the FBI laboratory.

The analytical facilities of the laboratory are currently located in the J. Edgar Hoover FBI Building in Washington, D.C. In the next few months, we will dedicate and occupy the Forensic Science Research and Training Center, a $7 million facility located at the FBI Academy at Quantico, Va. All our forensic science training and research functions will be coordinated from that facility.

In addition to performing examinations of evidentiary materials obtained during the investigation of criminal matters, the FBI laboratory provides a wide range of services including research and training functions.

Our primary objective is to maintain a highly professional and thoroughly competent team of forensic experts with a broad range of capabilities to service the varied needs of the Federal law enforcement community. With respect to State and local laboratories, the FBI laboratory serves to complement the forensic services provided by non-Federal crime laboratories.

Our laboratory is a unique facility, a national resource, which has earned its reputation for excellence based on nearly 50 years of quality service. The experience, knowledge, and reference materials collected through those years is not easily disseminated nor duplicated. We can never completely divest ourselves of our responsibilities to non-Federal jurisdictions whose reliance on our services has evolved through the years. To completely withdraw or to significantly reduce the level of services provided, we believe, would create a void in the forensic community, which would adversely impact on the criminal justice system.

The FBI laboratory was officially established on November 24, 1932. Its current authorization is derived from title 28 of the Code of Federal Regulations, subpart P, section 0.85, which states that the FBI laboratory shall serve not only the FBI, but will provide, without cost, technical and scientific assistance including expert testimony in Federal and local courts, for all duly constituted law enforcement agencies, organizational units of the Department of Justice and other Federal agencies which may desire to avail themselves of the service.

The laboratory is organized into three major sections: document, scientific analysis, and special projects. Analyses performed in the document section include handwriting, typewriting, shoeprint, tiretread, and related matters. This section also performs translations of foreign language material and conducts cryptanalytic examinations of enciphered material. The scientific analysis section is subdivided into units whose functions correspond approximately to the various forensic disciplines. These are: chemistry/toxicology, firearms/toolmarks, serology, explosives, instrumental analysis, elemental analysis, mineralogy/metallurgy, and microscopic analysis. The special projects section performs surveillance photographic and field support functions, conducts forensic photographic examinations and prepares trial aids, artist conceptions, and other graphic aids and exhibits.

During fiscal year 1980, the FBI laboratory conducted 719,060 examinations on 206,182 specimens in response to 19,401 requests for laboratory analysis. Approximately 36 percent of the examination requests were performed for State and local law enforcement agencies. A survey conducted in May of 1980, disclosed that of the State and local requests handled by the scientific analysis section more than 76 percent involved serious crimes against persons such as murder, rape, armed robbery, and kidnapping.

Through a concentrated effort which began in 1974, the FBI laboratory has managed to stabilize the volume of case examination requests received despite the explosion of technology which has occurred over the past decade. Since fiscal year 1975 we have experienced a 31 percent decrease in State and local requests. This has been accomplished, in part, due to a large-scale commitment to provide specialized scientific training to examiners from other crime laboratories and thereby expand or enhance their technical capabilities. Several of our specialized laboratory courses are accredited by the University of Virginia's College of Continuing Education and attendees are eligible for graduate level credit.

As the specialized training provided State and local crime laboratories with additional capabilities, a policy was established that no examination will be conducted by the FBI laboratory on evidence from another crime laboratory which possesses the technical capability to perform the examinations being requested. It is also our policy to encourage State and local law enforcement agencies to utilize the services of crime laboratories within their jurisdictions where their cases can be given more expeditious attention.

Before my appearance today, this subcommittee was provided with the results of the FBI laboratory's participation in a proficiency testing program sponsored by the Law Enforcement Assistance Administration and conducted by the Forensic Science Foundation. I would like to comment on new examiner development in the FBI laboratory and on our administrative procedures for quality assurance. Since the examination of evidentiary material frequently establishes investigative direction and our examiners are often called upon to direct technical aspects of a field investigation, special agents with prior investigative experience have proven invaluable in laboratory assignments. Examiner trainees are selected for the laboratory from among experienced special agent investigators based on their academic qualifications and prior scientific and technical experience. Each then enters a program which takes 1 to 2 years to complete. This training is under the direct supervision of an immediate supervisor, a senior examiner, who is assisted by other experienced and fully qualified experts in that particular scientific discipline. Not until the trainee has thoroughly demonstrated technical competence and proficiency in the field is he or she permitted to conduct examinations on physical evidence in actual cases. Thereafter, every case worked in the FBI laboratory is reviewed by the examiner's immediate supervisor or another senior examiner to insure the reported results of the analysis are complete, supported by the data contained in the working notes, and consistent with the standards of the FBI laboratory.

At this time I would like to offer for the benefit of the committee a copy of our published forensic science training program, forensic science research program, the FBI forensic research and training survey evaluation, and the results of the FBI laboratory participation in the LEAA sponsored proficiency testing program.

I also have available copies of a recent survey of the U.S. attorneys regarding use of special agent examiners.

Mr. EDWARDS. Without objection, they will all be received for the file.

Mr. KELLEHER. Thank you, Mr. Chairman, I appreciate the opportunity to appear before you today and will be happy to answer any questions which you might have.

Mr. EDWARDS. Thank you very much, Mr. Kelleher.

The gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Mr. Kelleher, during the previous hearing the subcommittee had on this subject we received some testimony as to the benefits which were derived from a blind testing program, which apparently the FBI lab does not engage in. Don't you think that blind testing programs are good and why can't the FBI have that kind of internal quality control mechanism so that the results from the FBI laboratory will be less subject to being criticized for being in error?

Mr. KELLEHER. Congressman Sensenbrenner, I would like, if I may, just to differentiate between two areas that we are discussing. One is proficiency, which involves the competence to undertake an examination, and the other is the quality assurance program that you spoke of.

Addressing the quality assurance program, it may be accomplished from a management standpoint in one of several ways. One might be participating either in a joint program or an individual program on the part of each laboratory. You send in blanks or cases that actually have been predetermined, whose results are known, as unknown cases to your laboratory just to see how it performs. That is one form of quality control.

Another is, peer review and it involves post examination review of a percentage of the work that is being done. The other alternative that we have opted for is to do a 100-percent review of each case that is examined in the laboratory after completion by an experienced and qualified examiner to have his case notes and his results reviewed and questions asked of him, if necessary, by a senior examiner prior to the time that these results are released to whatever agency submitted the case.

We feel in this sense that we are actually going into a 100-percent quality assurance program. Now, we participated previously in a testing program, a proficiency testing program, that was run by LEAA, and did so primarily to avoid holding ourselves aloof from other laboratories. That is to say that "if you're willing to do so, we're willing to do so," and completed in all, I think, 18 of 21 of the examinations regarding proficiency. One, as I recall, was not done because we didn't get authorization to proceed with the program in time to meet the deadline of the first examination. The last two of the three that we did not participate in we missed deadlines on because of casework, but other than that I believe in

the quality assurance program. However, I do feel at present that the method we have suits our particular operation best.

Now, in the event that at some future time that appears to be other than what is best for our laboratory, we will be pleased to look into that to see if it would do us some good.

Mr. SENSENBRENNER. Thank you. I have no further questions, Mr. Chairman.

Mr. EDWARDS. Well, carrying on, Mr. Kelleher, the line begun by Mr. Sensenbrenner, I really don't follow your response that you review all of the cases by a senior examiner. Well, how do you know if the senior examiner is doing the right job unless you have an internal system of blind checks. How do you really know that you haven't got two incompetent persons who perhaps don't know their business?

I can't imagine why you don't have a blind test, at random, anyway, to find out what is going on. You know, we all understand that it is the best laboratory in the United States, however, we would appreciate your response.

Mr. KELLEHER. To date, as I said, from a management standpoint, we felt that it would be highly unlikely that we would line up two in a row like that, to have two people incompetent.

Mr. EDWARDS. But you don't make the same test. You don't go through the same lab test with the microscope. You look at notes and things.

Mr. KELLEHER. That is correct.

Mr. EDWARDS. Well, I think that we are suggesting that we will ask that question again next year.

Mr. KELLEHER. We would be pleased to look into that and in the event that it appears that such a program is agreeable to us and feasible to us, then I assure you we will take another good look at implementation.

Mr. EDWARDS. It sounds to me like it would be a lot cheaper, too.

Mr. KELLEHER. We would be pleased to do that, not only for our own laboratory, but for others at the facility at Quantico.

Mr. EDWARDS. And you would avoid the admiration that is tempered with some criticism that we have from these other witnesses. They say if the FBI lab is this good, why don't they at least have an internal testing system, which they don't have, and they point to some of the other labs which do have?

And then the other question, of course, that I'm sure you and your colleagues knew was coming up, was that the General Accounting Office, in its study, said that you could save perhaps millions of dollars over a long period of time by phasing out FBI agents as lab technicians, and using, like every other lab does, technicians. Why do they have to be investigators unnecessarily costing the Government and the FBI considerably more money?

Mr. KELLEHER. Our decision to retain the special agent examiner principle, which we began in the FBI laboratory at its outset, was because there are two basic values for evidentiary materials. The first is that it provides investigative direction to a case.

In obtaining evidentiary materials at a crime scene we feel it is much better not only for communication purposes with other investigators but in utilizing the expertise of the previously-as-trained-an-investigator-type examiner he can go to a crime scene, take

along with him a number of other technically trained people, supervise agent investigators at the scene and then set out leads knowing our investigative process and the capabilities of our investigators, set right from the site, if necessary, setting forth what needs to be done in the way of an investigation.

Other laboratories have a great deal of difficulty in communication between nontechnical and technical people, and we have found that the agents' experience, not only at the crime scene where he has investigative jurisdiction and can act like an investigator or as a scientist, has been invaluable in many of the major cases we have investigated.

One of the problems that crime laboratories face throughout the Nation is one of communication with their own investigators and the investigative agency they support. I believe in the Oakland Bay area approximately 5 or 6 years ago there were studies done as to the utilization of evidentiary materials in burglary cases, and it was found out that through the study, which was not conducted by the FBI, that in only 10 percent of the cases was the evidentiary material available at the crime scene ever brought to the laboratory. Who knows from that point how much of it was used in the actual investigation and ultimately in the prosecution of suspects.

So, from our standpoint, the FBI in general has had a tradition of being a scientific law enforcement agency and we feel this is witnessed by the fact that the laboratory division is headed by an assistant director that is considered on par, more or less, with the heads of other divisions. This allows prominence for these scientific support efforts that we give and assures their integration into investigations.

Mr. EDWARDS. Well, I am sure that you are aware the General Accounting Office disagrees with you rather strongly, and says, in its report, that it considered all of the major assertions the FBI lab officials made regarding the benefits of using special agents and found little support for them. I have some problem in visualizing special agents from the lab going out in automobiles or airplanes to the scene of different criminal activities and aiding the investigation, because that is almost what you are saying, I think.

Mr. KELLEHER. That-is correct; it is just what we do.

Mr. EDWARDS. Do they travel around the country from the lab?

Mr. KELLEHER. Yes, indeed, sir. The level of technology that we are speaking of includes, for example, forensic photography and crime scene photography where we will be utilizing infrared and ultraviolet or available light and certain types of apparatus that are extremely expensive and that require a high degree of photographic proficiency. These techniques may only be used in a particular field office once or twice a year, but they are so critical in cases, not only of a criminal nature, but of a foreign counterintelligence nature that we may have only one opportunity to get a particular photograph. We have to have people with special skills like that on the scene to do it, and have to use their technical capabilities not only to establish the location from which the photograph will be taken, but to make all of the proper adjustments to the equipment that is being used to make sure it functions properly, and then come back and make sure that that one shot has paid off.

Mr. EDWARDS. Do you have lab people down in Atlanta?

Mr. KELLEHER. I have been down there myself, Mr. Chairman, and we have gone down to Atlanta to examine and to process a number of the areas where suspects have been and then through our cooperation with the Georgia Bureau of Investigation Crime Laboratory, we provide them with our findings, and then offer them our assistance in additional testing that we can perform at the FBI laboratory through contacts with industry, and so forth, in trying to extract as much as possible from the particular piece of evidence that we have found.

So, we have cooperated with them and have been on the scene on several occasions.

Mr. EDWARDS. Well, that is very persuasive.

Mr. Sensenbrenner?

Mr. SENSENBRENNER. No further questions.

Mr. EDWARDS. Counsel?

Mr. TUCEVICH. Thank you, Mr. Chairman.

Mr. Kelleher, if I could refer you back to your participation in the LEAA study that you mentioned. You indicated that you participated in 18 out of the 21 tests; is that correct?

Mr. KELLEHER. That's correct.

Mr. TUCEVICH. And I believe that the FBI now maintains the ability to handle case examinations in all 21 areas covered by that proficiency study?

Mr. KELLEHER. Yes; we do.

The test No. 1, which was in December 1974 we missed the deadline because we started too late.

Mr. TUCEVICH. Now, when you say you missed the deadline, how much time are we talking about? I believe that Mr. Sullivan, who testified here last time, indicated that the deadlines were set between 4 and 6 weeks.

Mr. KELLEHER. That's correct. Our administrative authority to participate in these tests, which we had to obtain at that time, did not come through in time for us to participate.

Mr. TUCEVICH. Who would be the administrative authority that you needed that approval from?

Mr. KELLEHER. Well, we were first off evaluating it within our own laboratory at that time. And then pass it up along to the director. Quite frankly, along with this, we were breaking trail at this time. This was the first time that we had ever actually gotten in to the point where we were exchanging information freely with State and local laboratories.

As a matter of fact, when we held the first symposium in September 1973, and the second one the following year, it was the first time that these laboratories had ever gotten together, and at that time, we were still feeling around as to how much cooperation was possible, and didn't want to hold out something that we couldn't follow up with. So all of this was part of the policy formation of whether or not we should get into this thing fully.

Mr. TUCEVICH. Well, had you participated in any other of the tests you mentioned? Of those 18 that you did participate in, had you already initiated participation in any other areas before these three areas?

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Mr. KELLEHER. No. The tests were followed chronologically one after another; in other words, all 21 tests did not go out at the same time. That one test that we spoke of, the initial one, was in December 1974; the next in February 1975, the next in March, and so forth. These were sequenced-type things.

Mr. TUCEVICH. Is it your testimony that each individual test, in sequential order, had to be approved independently before you could participate?

Mr. KELLEHER. No. We got authority, once again, then, to participate. And we began to participate in the tests.

Mr. TUCEVICH. For clarification if I am correct, you had already proceeded on some tests before you failed to participate in at least one subsequent test; is that right?

Mr. KELLEHER. No. The first test came—these tests were sent out to laboratories one at a time.

Mr. TUCEVICH. I understand.

Mr. KELLEHER. The responses came in and were evaluated. And then that one ended, and the second test could be sent out.

Now, by the time our authorization came through to participate, the deadline had passed for the submission of the results of the first test.

Mr. TUCEVICH. That's the first test.

Mr. KELLEHER. That's the first test.

Mr. TUCEVICH. How about the second test?

Mr. KELLEHER. Test No. 2, we participated in and answered; in fact, we were a referee laboratory in the second test.

The third test, we participated in. The fourth test, we were a referee laboratory. The fifth test, we were a referee laboratory. The sixth test, we participated in. The seventh test was in firearms and we did not make the deadline. We had—one of the reasons, heavy caseloads in those cases, and it was because our operational casework took priority that kept us from doing so.

Understand at this time, if I may also, Mr. Tucevich, that these were being done by each laboratory for their own edification. Our participation was to see to it that we didn't appear to say, "This is for everybody else, but not for you." So this was being done primarily for our edification and our use. In fact, the basis upon which the tests were conducted was that the results would be confidential and used by the laboratories for their own purposes.

Now, at the time, our unit was handling over 50 cases per examiner, and from a priority standpoint, we had no time.

Understand, too, these were proficiency tests, and I don't mean this to sound in any other way other than instructive—the level of proficiency offered in these tests was far below that of the FBI examiners' that were working in the particular areas of our laboratory. We have, as you may know, a series of specialties in the laboratory where we are able to concentrate on one particular area—as opposed to working in all those areas.

Mr. TUCEVICH. You're saying the reason you could not participate on at least two of those tests was because of a case overload situation; is that correct?

Mr. KELLEHER. That is correct.

Mr. TUCEVICH. Now, wouldn't a situation whereby you have such a case overload, in and of itself, help to induce errors? I mean, if you are that rushed or that overloaded——

Mr. KELLEHER. When we talk about overload, for the most part we're talking about—we are not missing deadlines. At the time, we felt we had to respond to a case within 30 days, or a certain jail case would come up that required other needs, where we would have to pull people away from lesser priorities.

Now, what the case overload means is that instead of working 10- or 11-hour days, people were putting a lot more time—or cases that are not priority cases are put off for months. So that the caseload does vary.

I agree with you that if you try to press too many examinations into too much of a hurry, yes, you do induce error. And—that is a problem that every laboratory faces.

Mr. TUCEVICH. In your response to the GAO—there is a letter there from the Director which indicates that the FBI's results on the proficiency study contain no improper conclusions.

Mr. KELLEHER. That's correct.

Mr. TUCEVICH. What does that mean—"no improper conclusions?" Does that mean no wrong answers?

Mr. KELLEHER. That is basically what we mean; Yes. No wrong answers.

We are talking about terminology here in a sense, and how you word your reports. We would say that a hair was of bovine origin, which means we couldn't tell whether it was a holstein or a jersey cow, but we could tell is was of that family.

Others would respond, "Well, it's a hair from a cow." That's what I am saying, there were no improper conclusions in that sense.

Mr. TUCEVICH. If I could ask you about the difference between what a special agent does within the lab and what a technician does. You use the term "examiner" as opposed to "technician."

Mr. KELLEHER. No, not normally. That would be reserved for the special agent.

Mr. TUCEVICH. As I understand it from the GAO report, it is the technician that actually receives the case; will review the request letter; will determine what tests, if any, are to be performed; and will actually set up and perform the test in lieu of the special agent. Am I correct in that?

Mr. KELLEHER. No, that the examiner does—performs just about all of those functions that you mentioned.

Mr. TUCEVICH. I am using "examiner" and "technician" interchangeably.

Mr. KELLEHER. I see. All right. Then the examiner does that, and that is the special agent.

Mr. TUCEVICH. The examiner is the special agent?

Mr. KELLEHER. That's correct.

Mr. TUCEVICH. I am looking at page 13 of the GAO report in question. Maybe you would like to refer to that, as well.

This is paragraph 2, where it says:

> In separate interviews, three technicians within the Scientific Analysis Section expressed agreement on the work responsibilities. They said they received a case, reviewed the request letter, determined what test to perform, set up and performed

the test. Because the agent may have to testify on the findings, he is present to interpret the test results.

The senior technician told us that less experienced technicians are more likely to seek guidance from an experienced technician than from the special agent to whom they are assigned.

Does that accurately depict what now occurs?

Mr. KELLEHER. I don't believe so. Excuse me for just a moment. [Pause.]

Basically, if I may run through it, as this paragraph depicts it I think this is a problem of perception on the part of the individual who wrote this paragraph. The agent is responsible for receiving the letter and determining the type of test that must be done. He will be there, and will discuss it with a technician that works for him. But the agent-examiner is ultimately the man, the person, whose judgment—the man or a woman—whose judgment it is as to what the extent of the examination is that should be conducted.

Now, after years of working together, if the examiner is out on testimony, a technician may receive the materials as they come in, and assume what is going to be done from the type, from the description that is contained in the letter, and begin to set up the apparatus and prepare what needs to be done.

But nothing begins until the examiner comes back. And he will also decide after the technician has set this up what additional work needs to be done.

Mr. TUCEVICH. Are you saying that in every case it is the special agent and not an examiner or a technician that will always initiate the process to decide what test will be performed?

Mr. KELLEHER. No. As I mentioned, a technician—that is a person who is not an agent, but working under agent supervision—may initiate the process, but will establish what tests are going to be worked at. They may prepare a chromatography column. They may do other things like this, or schedule what needs to be done. Then the agent will come back and review what the technician has done if he is not present at the time, and then the technician will go forward, and under his supervision or working with him at the same time, do the "bench work," which is what we call the actual examination.

Mr. TUCEVICH. Would you agree with me that a reading of the interviews contained here in the GAO report, seems to uniformly indicate that the special agent does not even enter the picture until after all of the tests had been performed, and that he merely reviews the notes of the examiner and determines what, if any, conclusions are to be drawn.

Is that inaccurate?

Mr. KELLEHER. In my experience, that is inaccurate; yes. I mean, I have been an examiner myself, and operated under these circumstances. And my technician would work under my direction, and be an extension, really, of what I was doing. But when it came to reading results, and—I was a forensic serologist at the time. I would be the person who actually read whether or not there were certain indications on a slide, that these things—an agglutination had or had not taken place.

Mr. TUCEVICH. Didn't you indicate that agents frequently are called out of town to testify on cases?

Mr. KELLEHER. Yes, they were.

Mr. TUCEVICH. Who would perform that function in his absence, in initiating the tests and obtaining request letter, and determining which test was to be performed, if the agent was not present? Wouldn't the examiner then simply work on his own, unsupervised?

Mr. KELLEHER. The technician then, after long experience with the examiner, would probably know if a case came in in his absence the routine type things—that they would do, and take those steps within the parameters set forth, on the basis of their experience, by the examiner.

Understand that there are all levels of technical capability on the part of these technicians. Given certain cases, where there were certain limitations to the examination being done, the technician would set up the materials to be examined, and make cuttings, and do other things, and the examiner would return and look at what had been done and decide whether enough had been done or additional work should be done, and then actually read the results.

Mr. TUCEVICH. But there are times that a technician would work, or at least initiate the examination process, without the benefit of a special agent supervising him?

Mr. KELLEHER. That is correct.

Mr. EDWARDS. The gentlemen from Wisconsin, Mr. Kastenmeier?

Mr. KASTENMEIER. I have no questions, Mr. Chairman.

Mr. EDWARDS. Mr. Sensenbrenner?

Mr. SENSENBRENNER. No further questions.

Mr. EDWARDS. Mr. Boyd?

Mr. BOYD. Thank you, Mr. Chairman.

Mr. Kelleher, on the 24th of March, this subcommittee heard testimony from Dr. McCrone. He expressed some criticism of your laboratory and referred a previous paper submitted to the American Academy of Forensic Sciences and delivered by Mr. Peter Barnett.

I understand that you have put together some materials in response to the Barnett paper, and I assume you have some responses to Mr. McCrone's comments. Would you like to present those comments to us?

Mr. KELLEHER. Yes. Thank you, Mr. Boyd. And I will take them in reverse order.

Mr. Barnett's letter had been responded to in part by us, and I believe there may have been additional responses that were directed to Mr. Tucevich.

And if I may, I would like to have those introduced into the record, sir.

Mr. EDWARDS. Without objection, so ordered.

[The information follows:]

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PETER D. BARNETT
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March 26, 1981

Michael Tucevich
House Judiciary Committee
House Annex No. 1
Room 407
Washington, D.C. 20515

Dear Mr. Tucevich:

Enclosed please find the copy of the article from Analytical Chemistry which you asked that I send you.

I feel that some comment about some of the statements contained in this article are necessary. Unfortunately, I have not had an opportunity to thoroughly research all of the points that are made in the article, but some of the statements I feel are very misleading.

In the section headed "Gunpowder" is described simply a new way of doing things that have been done in crime laboratories for a long time. The comparison of gunpowders based on trace organic constituents, mentioned in the first paragraph of this section, has been something that has been done for a number of years by thin-layer chromotography, and a recently published paper has described doing this using gas chromotography. If the GC/MS technique has extended the sensitivity the results should be published in the secentific literature. In the third paragraph of this section it is stated that the firing distance can be determined by extracting a 10 centimeter diameter cloth sample taken from around the bullet hole. This destructive test would not be one which would be utilized in a operational crime laboratory for the simple reason that destructive tests are generally not done, and there are much simpler ways of doing the same thing without resorting to hardware that costs in the neighborhood of $100,000 - $150,000.

The area of sex determination from blood stains is one which has been worked on over the years by many researchers. The use of chromosome studies as well as hormone ratios have both been studied fairly extensively. This is not to say that the FBI work

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is not useful, however, it is not nearly so novel as is indicated in this article.

The study of PGM iso-enzymes by iso-electric focusing is a well-established technique which is in use throughout the world, and has in fact been supplanted by a much simpler technique developed by Provost and Wraxall. Neither method is particularly expensive and both give a great deal of additional information over the conventional PGM typing techniques.

In general, this article seems to imply that the FBI is in the forefront of forensic science in this country. Nothing could really be further from the truth. There have only been a handful of papers published by workers in the FBI laboratory. I can only think of two that come to mind, although, there may have been others over the years. It is also the observation of many people who are familar with the FBI operation that what is going on in the research arm of the FBI laboratory does not necessarily get transferred to tne case work sections of the laboratory.

I hope that this information will be of some use to you. If I can be of any further assistance please do not hesitate to ask.

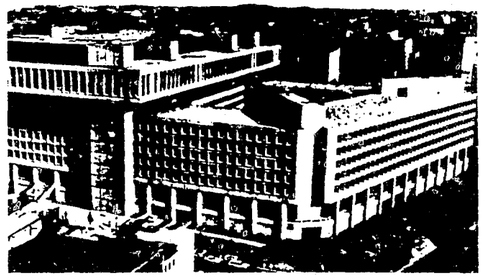
Very truly yours,

Peter D. Barnett
Criminalist

PDB/ms
Enclosure

FBI Investigates Analytical Chemistry

At the Federal Bureau of Investigation (FBI), analytical chemistry is being enlisted in the fight against crime. When most people think of the FBI Laboratory, they think of handwriting analysis, comparisons of typewriter lettering, and ultraviolet scans of bad checks. But the FBI also has a scientific analysis section, with responsibility in such areas as toxicology, explosives analysis, instrumental analysis, and research. In the Bureau's research unit, FBI scientists are involved in projects such as gunpowder analysis by gas chromatography/mass spectrometry (GC/MS), determinations of sexual identity from blood stains, differentiation between persons on the basis of variations in characteristic enzymes and antigens, and the determination of blood types from human hair samples, among others.



FBI research facilities are presently located in the Hoover Building in Washington, D.C. (above), but will soon be relocated to a new facility in Quantico, Va.

Gunpowder

Some months ago FBI research chemist Dennis Hardy was asked if he could develop a method to determine trace organic gunpowder components on garments involved in shooting incidents. When gunpowder is manufactured, three or four organic compounds are usually mixed into each manufacturer's formulation. These three or four compounds, added to the gunpowder, for example, to change the speed of burning, are selected from among perhaps 30–40 possible additives. Hardy's task was to find out if these organic compounds were deposited on target garments. If so, could they be determined by analytical methods, and could the analytical results then be used to associate a particular bullet hole with a particular weapon?

Hardy found that he was indeed able to extract the organic additives from around a bullet hole into acetone and could determine the components by GC/MS. "As it turned out," explains Hardy, "not only can most of these organic compounds be extracted from around the bullet hole, but the ratios of the various trace components appear to be preserved from the ratios of unburned trace organics in unfired bullets."

Taking the investigation one step further, Hardy also tried extracting spent bullet cartridges for the organic additives. Again, he detected the trace components, and again the ratios held. "We could relate a bullet hole with a spent cartridge and with powder from a bullet that was not fired," Hardy says.

Another facet of his research on gunpowder involved determinations of firing distance. "You would think if I fired a gun a foot away from the garment, more of these organic compounds would be deposited on the garment than if I fired from three feet away," Hardy explains. Indeed, that also turned out to be the case, under laboratory conditions. Hardy found that there were statistical limits within which he could draw conclusions about absolute firing distance, and he plans to publish his findings soon. Fortunately, there is no detectable time-dependence to the effect. The organic compounds apparently adhere strongly enough that Hardy obtains the same analytical results, whether the area around the bullet hole is extracted immediately after firing or after a delay of several weeks. "If I extract a 10-cm diameter cloth sample centered around the bullet hole," says Hardy, "I can tell you how far away that gun was fired, up to six feet away to within a six-inch tolerance, based on the mass spectral ion abundance ratios of these organic components."

Sex from Bloodstains

FBI research chemist Barry Brown has been busy with a different problem—determining sexual identity from bloodstains. The sex of an individual can be determined by examining the stained chromosomes of nucleated cells. The nuclei of the white blood cells, for example, contain either two X chromosomes (female) or one X and one Y chromosome (male). This technique, however, has limited application to the forensic sciences, since the white blood cells lose their integrity as blood dries out. The results of chromosome staining are thus quite time-dependent and often inconclusive. Red blood cells cannot be used in this test, since they do not have nuclei.

Brown devised a combination of column chromatography and radioimmunoassay (RIA) to measure steroid levels in the bloodstain, as an alternative to chromosome staining. Brown tests for three steroids in particular: testosterone, considered a male hormone, but also produced in the female in smaller quantities; and progesterone and estradiol, considered female hormones, but present in smaller amounts in males. Ratios of one steroid to another are utilized for the sex determinations, since the volume of blood that went into a bloodstain is almost impossible to determine due to differences in thicknesses and absorbances of various materials. Thus, it is not enough to determine absolute steroid levels in the stains, since the volume figures that could turn such data into concentration levels are not known.

Because the bloodstain volumes are unknown, Brown cuts a stain out, extracts it with an organic solvent, and uses column chromatography to separate the three steroids of interest from one another, and also from contaminants. He then uses RIA to quantitate the collected steroids, and divides one value by another to get ratios.

In one case Brown looked at testosterone/progesterone ratios in bloodstains from 112 females and 34 males. There was quite a difference between the male and female ratios, the average values being 3.5 (male) and 0.37 (female). Similar results were obtained by ratioing testosterone to estradiol. Brown even detected male/female differences in the progesterone/estradiol ratio, but here the variations were too great to reliably predict sexual identity in individual cases. This was partly due to the high variability of progesterone levels during the menstrual cycle and during pregnancy.

Brown's most conservative estimate is that he can predict sex from a bloodstain in probably 70% of the cases with the new method he developed. Less conservatively, using a range of one standard deviation from average values, Brown was able to predict 83% of the females and 91% of the males in one real sample. And there were no errors—the others were simply listed as "too close to call."

Now that Brown has completed the methods development and testing, the next step is to apply the method to a real case and testify on it in court. It can take years from the point a new method is first conceived until it is established firmly enough to be used in court testimony.

But Brown is already working on his next idea—developing an antibody to the Y chromosome. "If we had that," he says, "we could run an antibody–antigen reaction to test for the presence of the Y chromosome." As hybridoma technology for the production of monoclonal antibodies comes of age in the next few years, such procedures may become much more popular.

Polymorphic Enzymes

FBI research chemist Paul Mied is interested in other information that can be obtained from the analysis of bloodstains. A number of electrophoretic techniques have been developed for the separation of polymorphic enzymes in blood. Red blood cells contain many different enzymes, and some of these enzymes are polymorphic—that is, they appear in different forms in different individuals.

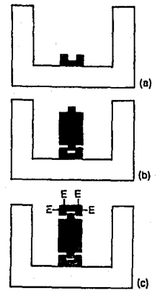
To get evidentiary information from a bloodstain, the sample is electrophoresed to separate the component enzyme systems. The pattern formed by a particular enzyme is characteristic of the polymorphic form of that enzyme found in that bloodstain, and, indeed, in that individual.

For instance, one enzyme might exist in three forms (phenotypes) and another might take five forms, in different individuals. If a bloodstain were analyzed for, say, 10 polymorphic enzymes, the product of the probabilities of occurrence of each of the enzyme phenotypes would type the individual involved very specifically. He or she might be one in 10 000, or even one in 500 000, based on his or her enzyme phenotypes.

Such a specific characterization can obviously be very useful in a criminal case. A particular suspect, for instance, could be associated with a bloodstain at the scene of a crime with an extremely high probability. In another case, it might be determined that a suspect's blood was definitely *not* present at the scene of the crime.

Mied has been studying the application of higher resolution electrophoretic techniques to the determination of these blood enzyme phenotypes. Phosphoglucomutase (PGM) is one such enzyme found in red blood cells. With conventional starch gel electrophoresis, the procedure commonly used, three phenotypes of PGM can be distinguished. But with the more sensitive isoelectric focusing, 10 PGM phenotypes can be resolved. In starch gel electrophoresis, the different enzymes migrate on the basis of their net charge in a buffer. This procedure tends to produce broad diffuse bands wherein overlapping of phenotypes may occur. Isoelectric focusing, on the other hand, separates the molecules into very narrow bands on the basis of their isoelectric points, which are characteristic of the specific amino acid composition of each enzyme molecule. So isoelectric focusing provides higher resolution than starch gel electrophoresis.

The problem is, isoelectric focusing is more expensive and more difficult to perform than starch gel electrophoresis. So the disadvantages of isoelectric focusing still outweigh its advantages for most polymorphic enzyme determinations. But Mied is investigating situations in which the additional expense and difficulty of isoelectric focusing may be worth it. For example, isoelectric focusing improves the limit of detection for various enzymes. This may be an important advantage with aged stains, since enzymes can seriously degrade with time and with poor storage conditions.



This ELISA method for detection and measurement of antigen is called the double antibody sandwich method. Antibody is immobilized on polystyrene (a). After wash, test solution containing antigen is added (b). After second wash, enzyme-labeled specific antibody is added (c). After final wash, enzyme substrate is added. Amount of hydrolysis catalyzed by enzyme indicates amount of antigen in sample

ELISA for Antigens

Another project Mied is involved in is the development of new assays for human leukocyte antigens, or HLAs. HLAs are found on the surfaces of all nucleated cells in the body, and are often referred to as histocompatibility antigens. These are the antigens that cause rejection of foreign tissue in operations such as kidney transplants. As in the case of the polymorphic enzymes, the HLA phenotype is highly characteristic of a particular individual, and thus of potential value as forensic evidence. Unfortunately, the immunological tests commonly used to determine an individual's HLA phenotype are time-consuming and laborious. So Mied is in the process of adapting the enzyme-linked immunosorbent assay (ELISA) to HLA determinations.

In one form of ELISA Mied has devised (figure), antibody to a particular antigen being sought is immobilized on a polystyrene tube. If HLA-A_1 is being sought, for instance, anti-HLA-A_1 is first immobilized. The bloodstain is extracted, and the extract is added to the polystyrene tube. If A_1 antigen is present in the bloodstain, it will bind to the immobilized anti-HLA-A_1. In the next step, a different antibody labeled with an enzyme, is added to the tube. When that enzyme's substrate is added in the final step, the extent of enzyme-catalyzed reaction (such as hydrolysis) that occurs indicates the amount of antigen originally present in the bloodstain.

A number of other projects are under way at the FBI laboratories, including determination of blood type from single human hairs and ion chromatography for the identification of explosives. Research chemist James Mudd is busy adapting various immunological techniques to the determination of blood group antigens in hair. And researcher Dennis Reutter has been working on the use of ion chromatography to identify dynamites and explosive residues. "Dynamite residues have been done here by boiling down an aqueous solution of the residue to dryness and doing X-ray diffraction," Reutter explains. "But there are problems with this. The samples are often hygroscopic, and they contain predominantly low atomic number elements like hydrogen, carbon, and nitrogen, which don't show up well in X-ray diffractometry. Ion chromatography is much faster, more sensitive, and devoid of artifact problems associated with drying the sample."

Besides innovative research for the development of new methods, the FBI can also handle some of the most sophisticated instrumental work. Whether it be ion microprobe analysis, scanning electron microscopy, or neutron activation analysis, the FBI can handle the job.

The FBI laboratories are currently located in Washington, D.C., but Bureau researchers are looking forward to relocation to a new facility, the $8 million Forensic Science Research and Training Center in Quantico, Va., which is scheduled to open in April or May of this year. At Quantico, opportunities will be available for scientists from academia, industry, and from other government agencies to work with FBI researchers on projects of mutual interest. With its expanded research center at Quantico, the FBI will no doubt remain preeminent in the effort to successfully adapt analytical chemistry to the fight against crime.

Stuart A Borman

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

March 23, 1981

Mr. Michael Tucevich
House Judiciary Subcommittee on
Civil and Constitutional Rights
House Annex 1, Room 407
Washington, D. C. 20515

Dear Mr. Tucevich:

During your visit to the FBI Laboratory on March 9, 1981, you furnished us with a copy of a non-technical paper prepared by Mr. Peter D. Barnett entitled, The Role of the Independent Expert: Several Case Examples. In that paper Mr. Barnett has specifically criticized FBI Laboratory experts with respect to work performed in three particular cases.

A review has been conducted of the pertinent FBI case files including the examiners' working notes. Where available, actual court transcripts of the expert testimony given by the analyst for the prosecution and the defense were also reviewed. In addition, contacts were made with the attorneys who handled each of these cases for the prosecution and their comments solicited with respect to the scientific evidence delivered. The attorneys for the two cases in which trial testimony was presented by the FBI expressed a desire to furnish their written comments directly to the Subcommittee and indicated letters would be forthcoming.

Our review has determined that the examinations conducted by the FBI Laboratory were proper, correct and in accordance with widely used and scientifically accepted procedures. Testimony was properly rendered and fully supported by the results of the scientific tests performed.

The FBI Laboratory is, of course, not above error. Through our formal and extensive training programs and the continuous administrative review of cases examined, we believe the chance for error in laboratory analyses performed is held to an absolute minimum. Likewise, this Laboratory is not above criticism. Indeed, we believe that valid criticism contributes to the professional growth of an organization such as ours and we welcome sincere and responsible comments on our performance. Unfortunately, the remarks contained in the Barnett paper are

FBI/DOJ

Mr. Michael Tucevich

none of these. The circumstances and facts surrounding the cases described by Mr. Barnett are inaccurate and grossly misrepresent the role of the FBI Laboratory, the conclusions expressed by our examiners, and the very substance of the evidence presented during these particular court proceedings.

Our entire evaluation of Barnett's paper may be made available to the Subcommittee if desired; however, only a few of the significant facts are being set forth herein.

With respect to the gunshot residue (GSR) case, Mr. Barnett quotes the FBI examiner as testifying, "I could not determine whether or not the individual from whom these swabs were taken had discharged a firearm." According to the actual transcript, Mr. Barnett himself testified as follows:

Question (Defense Counsel): "So in other words, you can't tell whether he did or did not fire the gun?"

Answer (Mr. Barnett): "You certainly couldn't make a definite conclusion one way or the other, that's right."

Mr. Barnett's discussion of this case in his paper is clearly inconsistent with the sworn testimony. It should be noted that Barnett also testified that he had no actual experience in GSR examinations and that his knowledge in this area was based on his readings of the literature. It is also pointed out that the expert testimony in this case was presented during a preliminary hearing and not during a trial as indicated by Barnett. The FBI expert did not testify at the subsequent trial.

Pertaining to the serological examinations, Barnett states in his paper "Reexamination of the stain evidence...." The evidence examined in the Laboratory consisted of swabs and cuttings which were consumed during the analysis. Therefore, a reexamination could not have been conducted. It is more likely that remaining portions of the stain(s) were examined and those results as indicated by Barnett were not inconsistent with the results of the FBI examiner. Additionally, the defense analyst in this case conducted tests on other evidence which was not seen by the FBI prior to the trial. Again, nothing has been presented to indicate that improper test procedures were employed by the FBI examiner or that his analysis was in error.

With respect to the hair evidence which was presented at the trial in which a guilty verdict was rendered, it is sufficient to say that two FBI experts and an expert offered by the defense, Mr. Charles Morton, all agreed

Mr. Michael Tucevich

on the substantive issue, i.e., that hairs from the scene were consistent with hairs in the sample from the defendant. According to the prosecutor, there was no issue at that trial as to how the hairs were removed from the scalp or whether or not they had been bleached. The trial in this particular case was held three times, the first two ending in mistrial. At the first trial, the hair analyst testified from his memory that the questioned hairs had been bleached and forcibly removed from the scalp. He later discovered that his testimony was not supported by his working notes. The prosecutor was made aware of the error and the matter satisfactorily resolved. It is emphasized that the first analyst's error was not central to the issue of whether the questioned hairs and hairs of the defendant were consistent. On this point, all the analysts agreed.

In the actual court transcript of the testimony of the FBI photographic expert, it is clearly established that his determination was based on certain individual identifying characteristics exhibited in the bank robbery photograph and the questioned gym bag. The examiner also correctly defined class characteristics as opposed to individual characteristics. Barnett's criticism in this case is based on distortion of material taken out of context and constitutes a very personal attack on the FBI Laboratory examiner and his qualifications. He states, "The witness demonstrated none of the qualifications of experience or training generally required of an expert witness." In fact, the FBI examiner has a Bachelor's degree in Photography, a Master of Science degree in Forensic Science and ten years of FBI Laboratory experience in conducting similar examinations. It is again noted that in the GSR case above, Barnett testified that he himself, had no experience or training in GSR examinations but relied solely on his readings.

I would like to reiterate that this Laboratory is not above criticism. However, the facts of the cases presented by Mr. Barnett have clearly been misrepresented as they pertain to the FBI Laboratory. I am concerned that such an irresponsible attack on this laboratory or any crime laboratory may not be recognized for what it is unless all the facts are available concerning the criticisms rendered. If I can be of any further assistance to the Subcommittee regarding this matter, please do not hesitate to let me know.

Sincerely yours,

Thomas F. Kelleher, Jr.

Thomas F. Kelleher, Jr.
Assistant Director
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PETER D. BARNETT
EDWARD T. BLAKE
ROBERT R. OGLE Jr.

March 3, 1981

Mr. Michael Tucevich
House and Judiciary Committee
House Annex No. 1
Room 407
Washington, D.C. 20515

Dear Mr. Tucevich:

As you requested in our telephone conversation of March 2, I am enclosing a copy of the paper which we presented at the meeting of the American Academy of Forensic Sciences in Los Angeles last month. The paper that was read at that meeting was a somewhat abbreviated form of the paper I am sending you.

I hope the information contained in this paper will be useful to your committee. If I can be of further assistance, please do not hesitate to let me know.

Very truly yours,

Peter D. Barnett
Criminalist

PDB/ms
Enclosure

THE ROLE OF THE INDEPENDENT EXPERT: SEVERAL CASE EXAMPLES

Peter Barnett, Edward Blake, Robert Ogle, Jr.
Forensic Science Associates
1450 53rd Street
Emeryville, Calif. 94608

In the practice of criminalistics, like all other branches of science, errors are made. Criminalists may commit analytical errors, be biased or prejudiced, or make mistakes in judgement which ultimately result in erroneous information being relied upon at some stage in the criminal justice system. There are a number of possible causes of erroneous data or opinions: The analysts may lack the fundamental knowledge or have insufficient experience to properly and accurately deal with the particular physical evidence or problem at hand. The criminalist may lack the analytical skills or judgement necessary, or not be provided with all of the pertinent data or evidence, to properly analyze the situation. Another possibility is that the analyst may be dishonest and knowingly give false information. Finally, equally qualified individuals simply may have different opinions.

The criminalistics community, in common with other branches of science, is properly concerned that the frequency and magnitude of misinformation provided to users of such information be minimized. Some of the methods utilized or proposed to minimize errors in the criminalistics business are shown in the first slide: Proficiency testing, training, accreditation, certification, quality control, quality assurance, and independent examination of evidence.

The first six of these have been used or attempted to a limited extent, but it is doubtful that they actually contribute to a large degree to an

increase in the overall quality of criminalistics services. The last method, independent re-examination of evidence, is, in our opinion, the best way in which the overall quality of criminalistics can be improved. The other techniques, at best, can address the question of routine analytical competence. Re-examination not only is a check of analytical competence, but tends to enhance judgemental and interpretive skills, as well as serve as a check on the one area of criminalistics which is exceedingly difficult to monitor - the courtroom testimony of the expert witness.

We are going to present four situations in which the opinion of the analyst originally examining the evidence differed from that of the re-examining expert.

The cases we have selected to discuss are chosen for several reasons: While the cases are all unique - they are not, we believe - aberrations. The problems discussed in each of these cases occur repeatedly - in many laboratories and courts in the country. Finally, these cases illustrate the fact that errors can be attributed to management, bench-level personnel, courts, or there may simply be different opinions.

All of these cases were handled by the laboratory of the Federal Bureau of Investigation. The choice of cases from that laboratory is not an effort to single out that particular laboratory. The FBI laboratory was chosen because nearly all criminalists have some knowledge of the capabilities of the FBI lab. Further, the FBI laboratory is considered the standard of practice by most courts, especially appellate courts at the State and Federal levels. Finally, the FBI is extensively involved in training criminalists from State and local crime laboratories.

The first case I would like to discuss is a bank robbery. During the robbery the automatic cameras in the bank recorded a picture of the robber holding a canvas gym bag. Subsequent investigation led to the recovery of a similar-style bag from the defendant's car. The satchel and the photographs of the robbery were submitted to the photographic sections of the FBI laboratory for evaluation. The laboratory reported that the bag in the photograph and the recovered bag were one and the same. The stated conclusion is shown in the slide. At trial the "expert" produced a display which allegedly showed corresponding characteristics which allowed him to conclude that the bag in the photograph was the same one which had been recovered.

The witness was from the photographic section of the laboratory. The witness had a Master of Forensic Science Degree from George Washington University, but did not know how to define a "class characteristic" or an "individual characteristic". It is difficult to imagine anyone with any formal training or experience in physical comparison who would not know these basic terms. One has to wonder about the quality of a graduate education program in Forensic Science which produces graduates which are not familiar with the most fundamental concept in criminalistics. The witness had never before attempted a comparison of the type he did in this case. He had never before examined a bag of the type that was submitted and made no effort to secure similar bags for comparison in this case. The witness made no attempt to learn how the bags were manufactured. In short, the witness demonstrated none of the qualifications of experience or training generally required of an expert witness. The fact that he was allowed to testify is most probably

a result of the prestige enjoyed by his laboratory in the Federal Courts.

The characteristics used by the witness in comparing the photo and the actual bag are those which a criminalist would refer to as class characteristics: That is characteristics common to a class of objects, and not necessarily unique to an individual object in the class. The witness was, apparently, unaware of this absolutely fundamental concept in the science of comparison.

The slide shows the bank photograph used by the witness to make the comparison. Nine "points" are marked on the bag held in the robber's hand. Starting at the arrow at the 9 o'clock position the points are:

1. Top horizontal line of the plaid fabric.
2. Lower horizontal line of the plaid fabric.
3. Left vertical line of the plaid fabric.
4., 5., 6., Other vertical lines of the fabric.
7. The name tag "window" provided on the bag by the manufacturer.
8., 9., The attachment points of the handle.

These points can be more clearly seen in the comparison photograph of the actual bag, shown in the next slide.

Other characteristics used to make the identification are shown on the next slide - the handle, certain characteristics of the stitching, and other features of the bag. These are clearly class characteristics which would be present on all bags of this type.

In this case, the consulting expert evaluated the evidence, and

concluded that there was grossly insufficient evidence to warrant the conclusion expressed by the prosecution "expert"; which was "It was determined that the K4 gym bag is the same bag depicted in the Q1 film held by the suspect".

The second case to be presented is much more complex, at least in terms of the technical aspects of the disputed evidence. The case involves an alleged rape and murder. The disputed physical evidence was vaginal swabs, two semen stains and some hairs recovered from the scene.

The initial examination of the swabs and stains resulted in semen being detected in each. On the swabs only a low level was noted, an amount the expert felt was insufficient for ABO blood grouping. Semen was also detected in two stains where the expert was able to find 3-4 sperm heads from cloth samples measuring approximately 1 cm. square. The trial testimony was:

Q: Did you find the presence of any blood groups in those cuttings?

A: From my test I did not identify any blood group substance.

Q: And would your results be consistent with the semen coming from a donor that was a non-secretor?

A: That's correct. However, I must add that there is a possibility that there may have been something there at one time, and I was not able to detect it during my test.

Q: But in order to minimize that possibility, you ran the test over and over again, is that correct?

A: That's correct.

Q: And each of your tests were consistent with the other?

A: That's correct. I just feel that it's fair for me to say that there's a possibility that something could have been there, but since I ran this test six times, and it was consistent, I find it unlikely that there was any blood group substance present.

In addition to the errors in logic in the above testimony, the experts laboratory procedure for absorption-inhibition typing is suspect. A page from the lab notes is shown in the slide. Note that the A, B, and AB controls, which were neat saliva samples, failed to inhibit the H-lectin, yet the customary test for secretor status is to detect the H antigen. In fact, the serological reactions shown in this table are exactly what one expects from testing a bloodstain, but it is not what one expects from saliva. With these controls one wonders how the witness could state, "I find it unlikely that there was any blood group present".

Re-examination of the stain evidence using quantitative procedures to estimate the semen content of concentrated extracts from the stain revealed that there was an inadequate amount of semen present to conclude that the semen originated from a nonsecretor. Additional testing demonstrated that the bulk of the stain in question was from the victim's urine.

The hair evidence in this case consisted of a large number of hairs recovered from a garment which had apparently been used to "sweep" the floor of the crime scene. The first prosecution hair examiner to examine this evidence recovered three pulled hairs which he indicated matched the head hairs of the defendant. He further indicated that the hairs were bleached, obviously an important characteristic. When the trial ended in a mistrial, the hairs were re-examined by another examiner from the same laboratory. This second examiner found four "hair matches" in comparing all of the questioned hairs with standards from the defendant.

The first examiner found 3 hairs, each with pulled roots and each chemically bleached which matched, in all characteristics, the hair sample from the defendant. In contrast, the second examiner found 4 hairs, none of which were bleached and only one of which had a pulled root which matched. At best these examiners only identified one hair in common - and one said this hair was chemically bleached and the other said it was not.

Both of these experts testified with a great deal of assurance that they had correctly identified the hairs. The second expert, when confronted with the differences between his findings and those of his colleague, simply said he was right because he had more experience. When the defense tried to point this inconsistency out at the trial the judge, in a decision that defies all logic, ruled that the conflict between the two experts was inadmissable.

The final case involves a question of interpretation, and may be reasonably interpreted differently by different people. The case involves a shooting death in which the victim either committed suicide or was shot by his wife (no other suspects are reasonably possible). At the scene, the victim's hands were placed in plastic bags. At the autopsy, swabs were obtained from both hands and submitted for elemental analysis by NAA. No samples were obtained from the wife, although it would have been possible to do so. The swabs were taken by an inexperienced police officer, who followed directions on the commercial kit.

Analysis of the swabs from the victim revealed levels of Ba on one hand in amounts within the range of normal background values for the population. These are shown on the slide. The swab from the other hand showed no Ba. Test firings with the gun which was used produced expected levels of Ba on the hand of the shooter, as shown on the slide.

Analysis of the palm swabs revealed low levels of Ba and traces of Sb. Test firings using the gun and similar ammunition - CCI - produced expected levels of Ba on the firing hand.

The wound was located above the heart, with a muzzle distance of 3" to 6" and a slightly right to left track. This wound would most likely be inflicted with the gun held "backwards" with the trigger being operated by the little finger.

At the trial the FBI witness testified:

"I could not determine whether or not the individual from whom these swabs were taken had discharged a firearm. However, I could not preclude the possibility...that he might have fired

a firearm and that...the firearms did not deposit these residues on this hand...or if the residues were deposited on the hand (they) were removed by washing or wiping or some similar action prior to the time that the swabs were taken."

The witness then proceeded to describe test firings of the gun which served to establish that, when fired normally, residues were deposited. Other witnesses described how the hands were protected after the shooting. The cumulative effect of this testimony was to establish that, had the victim fired the gun, there would be significantly greater amounts of Ba on his hands, therefore he must not have fired the gun.

The independent consultant's conclusion was that the zero levels of Ba on the victim's non-firing hand indicated that, for that individual, the normal background of Ba was negligible. The elevated levels on the firing hand indicated an exposure of that hand to Ba, possibly a result of firing the gun. Further, the levels on the palms were consistent with handling the gun, and lower than expected from a defense maneuver with the hands.

The fact that the level of Ba on the firing hand was lower than "normal" could be due to the fact that the position of the wound would indicate the gun was held "backwards", that is with the trigger pulled with the thumb.

While it is true that the findings do not prove that the victim had fired the gun, there is, at least, some evidence that that was the case.

One interpretation of the data in this case essentially accuses the wife of being a murderer. Surely the trier of fact is entitled to know that there is an explanation of the evidence which is consistent with a self-inflicted wound, rather than being told that there is "no evidence" that the victim had fired a gun.

The cases discussed above present one aspect of the role served by an independent consulting criminalist. There are several other roles which are served by a consultant. Advice on cross-examination of an expert is frequently sought by trial lawyers. This is the only method available to the attorney to inquire as to the sufficiency of proof for the conclusions offered by the expert witness. Assistance to the attorney in preparation for cross-examination designed to elucidate the reasons for the conclusions expressed by the witness, as well as bring out alternative interpretations of the evidence, is a frequent and proper role of the consultant.

Frequently the consultant is asked to examine evidence obtained by the defendant's own investigation. Whether or not such evidence need be, or must be, turned over to the prosecution is a legal matter, and not up to the expert to unilaterally decide. It is not unreasonable, though, that a defense attorney would like evidence he obtained to be examined first by "his" expert.

Independent experts may be retained by law enforcement agencies for laboratory analysis or consultation. This may be due to special abilities of an independent laboratory, a feeling by the law enforcement agency that the public laboratory did a poor job, or simply to buttress the case for the prosecution.

Another very common role of the consultant is in interpretation of the evidence obtained by the investigating agencies. Attorney's frequently misinterpret the significance of laboratory findings and independent experts are often called upon to translate the jargon found in many laboratory reports.

Finally, reconstruction is a critical function of the consultant. For reasons I do not understand, reconstructions are not frequently done by law enforcement laboratories. They are, however, frequently useful, not only in determining guilt, but more often in determining degree.

The cases presented here each illustrate somewhat different reasons for the use of the independent expert. They each, however, illustrate what we believe to be errors or insufficiencies on the part of the original examiner.

In the bank robbery case the witness probably was unqualified to conduct the examination. One can properly criticize the laboratory administration for allowing the examination to be conducted by such an apparently unqualified individual. One can also question the decision of the prosecutor to present such testimony and, particularly, the decision of the judge to allow the witness to qualify as an "expert".

The primary blame, however, must be laid squarely on the shoulders of the witness. One must be aware of one's limitations, and refuse to go beyond them. I cannot believe that the witness was unaware of what he should have done to try and prove his hypothesis - I think he just felt that no one was going to question him.

This case illustrates the fallacy in the argument that the court system acts as a check on incompetence. Judges and attorneys are, for the most part, not able to distinguish the qualified expert from the unqualified one. The only people who can do that are the people in the profession.

The second case illustrates two problems: First, the failure of the laboratory to keep abreast of technical advances in a rapidly advancing field. Ten or fifteen years ago the methods used for the semen analysis and conclusions expressed, may have been less questionable. Today, however, the technical abilities of the crime lab and our theoretical knowledge are such that the laboratory examination was, in our view, unacceptable by current standards.

Second, this case, again, illustrates a management deficiency as well as a lack of knowledge on the part of the bench criminalist. The responsibility to keep abreast of new developments is jointly that of laboratory administration and the individual practioners.

The hair aspect of the second case illustrates the frequently recurring problem of hair evidance. Hair is probably one of the more frequently examined types of physical evidence, yet there is little, if any, indication in the literature, or even agreement among practioners, as to the value and significance of a hair comparison. Attempts to establish the significance and reliability of hair evidence by blind trials have been thwarted and ignored by many criminalists. Until the profession is willing to rigorously establish the value of hair evidence perhaps we should not use it - much in the same way as we abandoned dermal nitrate

tests for gunshot residue, or neutron activation analysis for hair comparison.

It may be that certain laboratories, or individuals have a better "handle" on the subject of hair comparison than others. If this is the case, these laboratories should publish the results of their studies and the methods they use in the open literature.

The final case which was presented illustrates two points: First, different experts may have different interpretations of the same data and, second, the "conservative" approach to the interpretation of evidence may require alteration given the circumstances of a particular case.

The interpretation of the data in this case is debatable: One view is that unless the levels of Ba and Sb exceed by some significant amount the "average" background levels in the population there can be no conclusions expressed. Another view is that the "average" background levels in the population are not applicable to a particular person. The proper background value, if available, is the individual's own hand - the non-firing hand being the next best. In the usual situation in which the result of the test will be used to indicate when a suspect has fired a gun a "conservative" approach is to reach no conclusions unless a definite conclusion can be expressed. In this case, however, such a conservative approach was tantamount to accusing the wife of murder. The alternative interpretation of the evidence is not unreasonable: The normal background levels of Ba and Sb for this individual are zero and the elevated levels on the firing hand is consistent with the wound being self-inflicted.

The cases presented here today are several examples of situations in

which the independent laboratory provided valuable, even critical, information to the criminal justice system. In each of these cases the alternative information provided by the independent consultant was significantly different from the information provided by the law enforcement laboratory.

It should not be assumed that most re-examinations result in different conclusions. Neither should the fact that a case has been re-examined and the other expert did not testify be interpreted as meaning the work was found to be good. At least as often as evidence helpful to the defense is found, mistakes are uncovered which, if not made, would have produced a better case against the defendant. Understandably, in these cases, the independent expert is not called as a witness and, generally, his information never becomes known, except to the defense attorney. Re-examination, however, is the best method available to help insure the quality of criminalistics services.

The Role of the Independent Expert:

Several Case Examples

FBI Serology Unit Response

Introduction

On February 19, 1981, Peter D. Barnett of Forensic Science Associates (FSA), Emeryville, California, presented a paper entitled "The Role of the Independent Expert: Several Case Examples" in the Criminalistics Section of the 33rd Annual Meeting of the American Academy of Forensic Sciences. The paper discussed several cases in which the FBI Laboratory had examined evidence followed by defense-requested examinations conducted by FSA personnel. One of these cases involved serological examinations conducted by Special Agent Roy L. Tubergen (FBI file # 70-72227). The following information details the crime, examination of evidence and a detailed analysis of the paper Barnett presented and later provided to the House Judiciary Subcommittee on Civil and Constitutional Rights, House of Representatives, United States Congress.

Narrative of Crime

On the morning of November 26, 1979, a United States Border Patrolman found the body of Maria Lopez DeFelix, a Mexican National, near a GSA Storage Building. The storage building is adjacent to the main port of entry between Mexico and the United States, San Ysidro, California. The San Diego Office of the FBI and the San Diego Police Department initiated a joint investigation. A crime scene investigation was conducted and evidence was collected by the San Diego Police Department. Among the items collected at the autopsy were a pair of panties, a half slip and vaginal swabs. Initial indications revealed that the victim was raped and strangled.

Further investigation revealed that on November 25, 1979, the victim's sister-in-law attempted to smuggle the victim into the United States. However, the victim was caught and temporarily detained before being returned to Mexico at 6:30 a.m. on November 25. The sister-in-law advised that this was the last time she saw the victim alive.

The homicide received a great deal of notoriety in southern California and Mexico due to recent complaints by Mexican authorities that Mexican illegal aliens were receiving brutal treatment by the U. S. border patrol.

It was determined that two Federal Protective Agency employees were on duty when the victim and her sister-in-law were detained. One employee, Michael Edward Kennedy, was a prime suspect in a similar crime committed in early 1979. Kennedy became a suspect in the DeFelix case and was later arrested by the San Diego Office of the FBI.

Examination of Evidence by San Diego Police Department Crime Laboratory

Among the items of evidence examined by the SDPD Laboratory were vaginal swabs collected during autopsy of the body (Items 39 and 40). The report dated December 13, 1979 states:

"Item #39: Semen was identified on the deep vaginal swabs. Grouping studies were consistent with ABO non secretor status. PGM grouping did not develop due to insufficient sample which was consumed in analysis."

"Item #40: Semen was identified on the exterior vaginal swab. ABO grouping studies were consistent with non-secretor status. The swab was PGM group 1."

Examination of Evidence By FBI Laboratory Serology Unit

After preliminary examinations were completed by San Diego Police Department (SDPD), evidence (totaling more than 100 items and including all the items examined by SDPD) was forwarded to the FBI Laboratory for examination. Results obtained centered attention on the swabs (Q43, Q44) described in SDPD's report as well as a pair of panties and a half slip (FBI Q30 and Q 33, respectively) from the victim. The following paragraph is taken from the FBI Laboratory report dated January 31, 1980.

Semen containing spermatozoa, male reproductive cells, was identified on specimens Q30, Q33, Q43 and Q44. Grouping tests conducted on the seminal stains identified on Q30 and Q33 disclosed the absence of any blood group substance. Additional enzyme grouping tests were inconclusive. No semen was found on specimens Q1 through Q29, Q31, Q32, Q34 through Q37, Q40 through Q42 and Q45 through Q47.

The remaining material comprising the Q43 and Q44 swabs was consumed during verification of the presence of semen prior to any additional testing.

General Information

Considering the fact that a number of laboratories participated in the examination of the evidence, it is noteworthy to list a brief schedule:

Date of Crime: November 25-26, 1979

San Diego Lab Report Date: December 13, 1979

FBI Lab Report Date: January 31, 1980

FSA Lab Report Date: June 13, 1980

SERI Lab Report Date: December 1, 1980

In view of the time interval reflected in these dates and the unpredictable stability of the stain constituents, any quantitative conclusions must be questioned.

This case went to trial three times, with the first two trials ending in hung juries. The defendant, Michael Edward Kennedy, was convicted after the third trial. The majority of the testimony presented in this case was scientific in nature. The fact that this case was tried three times was due, in part, to the notoriety it received in the local media.

The Role of the Independent Expert:

Several Case Examples
by Peter D. Barnett

As given before the

American Academy of Forensic Sciences

February 19, 1981

Peter D. Barnett
Forensic Science Associates

The Role of the Independent Expert:
Several Case Examples

In the practice of criminalistics like all other branches of science errors are made. Criminalists may commit analytical errors, they may be biased or prejudiced or make mistakes in judgement which ultimately result in erroneous information being relied upon at some stage in the criminal justice system. There are a number of possible causes of erroneous data or opinions. The analyst may lack the fundamental knowledge or have insufficient experience to properly and accurately deal with the particular physical evidence or problem at hand. The criminalist may lack the analytical skills or judgement necessary or not be provided with all of the pertinent data or evidence to properly analyze the situation. Another possibility is that the analyst may simply be dishonest and knowingly give false information. Finally, equally qualified individuals may simply have different opinions. The criminalistics community in common with other branches of science is properly concerned that the frequency and magnitude of misinformation provided to users of its services be minimized. Independent examination of evidence is, in our opinion, the best way in which the overall quality of criminalistics can be improved. Reexamination not only is a check of analytical competence but tends to enhance judgemental and interpretive skills as well as serve as a cneck in the one area of criminalistics which is exceedingly difficult to monitor------the court testimony of the expert witness.

We are going the present four situations in which the opinion of the analyst originally examining the evidence differs from that of the reexamining expert. The cases we have selected are chosen for several reasons. While they are unique real cases they are not we believe aberrations. The problems discussed in each of these cases occur repeatedly in many laboratories throughout the county. Finally, these cases illustrate the fact that errors can be attributed to management, bench-level personnel, to courts or simply differences of opinion. All of these cases were handled by the laboratory of the Federal Bureau of Investigation. The choice of cases from that laboratory is not an effort to single out that particular laboratory. The FBI laboratory was chosen because nearly all criminalists have some knowledge of the capability of that laboratory. Further, the FBI laboratory is considered the standard of practice by many courts especially at the appellate courts at both state and federal levels. Finally, the FBI is extensively involved in training criminalists from state and local laboratories.

The first case I would like to discuss is a bank robbery. During the robbery the automatic cameras in the bank recorded the picture of the robber holding a canvas gym bag. Subsequent investigation led to the recovery of a similar type bag from the defendant's car. The satchel and photographs of the robbery were submitted to the photographic section of the laboratory for evaluation. The laboratory reported that the bag in the photograph and the recovered bag were one and the same. At trial the expert produced a display which allegedly showed corresponding characteristics which allowed him to conclude the bag in the photograph was the same one which had been recovered. The witness had never before attempted a comparison of the type made in this case. He had never examined a bag of the type that was submitted and made no effort to secure similar bags for comparison. He made no effort to learn how the bag was manufactured. In short the witness demonstrated none of the qualifications of experience generally required of the expert witness. The characteristics used by the expert witness in comparing the photo and the actual bag are those which a criminalist would refer to as class characteristics, that is, characteristics common to a class of objects and not necessarily unique to an individual object in that class. The first slide shows the bank photograph used by the witness to make the comparison. Nine points are marked on the bag (if you can see that) held in the robber's hand. Starting at the nine o'clock position, the points are: one is the top horizontal line of the plaid fabric, the lower horizontal line of the plaid fabric, top horizonal line is here, the lower horizontal line is here, there is a series of vertical lines, there's a name tag window in this area, and then the points of the attachment of the handle here and here. These are some of the points of comparison. Other characteristics used to make the identification are-this is the actual bag itself and you can see better in the slide the points actually referred to. Other characteristics used to make the identification are shown on the next slide. This is the other side of the bag; was also used the handle; certain characteristics of the stiching and soforth. These are clearly class characteristics which would be present on all bags of this type. In this case the consulting expert evaluated the evidence and concluded that there was grossly insufficient (sic) for the conclusion expressed by the prosecution expert which is (that's the quote from the report "it was determined that the K4 gym bag is the same bag depicted in the Q1 film held by the suspect").

The second case is a much more complex case at least in terms of the technical aspects of the evidence. The case involves alleged rape and murder. That disputed physical evidence consisted of vaginal swabs, two semen stains and some hairs recovered from the scene. The initial examination of the swabs and stains resulted in semen being detected in each. On the swabs only a low level was noted, an amount the expert felt was insufficient for ABO blood grouping. Semen was also detected

CONTINUED

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(5) in the two stains where the expert was able to find three or four sperm heads from cloth samples measuring approximately one centimeter square. The trial testimony was as follows: Question: Did you find the presence of any blood groups in these cutings? Answer: From my tests I did not identify any blood group substance. Question: And would your results be consistent with the semen coming from a doner that was a nonsecretor? Answer: That's correct, however I must say that there is a possibility that there may have been something there at one time and I was not able to detect it during my test. Question: But in order to minimize that possibility you ran the test over and over again is that correct? Answer: That's correct. Question: Then each of your tests was consistent with the other? Answer: That's correct. I just feel that its fair for me to say that there is a possibility that something could have been there. But since I ran this (6) test six times and it was consistent I find it unlikely that there was any blood group substance present. In addition to logical errors in that testimony, the expert's laboratory procedures for absorption elution typing is suspect. A page from the lab notes is shown in this (7) slide, note that the A, B and AB controls which were neat saliva (8) samples failed to inhibit the H lectin, yet the customary test for (9) secretor status is to detect the H antigen. In fact the serological reactions shown in this table are exactly what one expects from testing a blood stain but is not what one expects from testing saliva. With (10) these controls one wonders how the witness could state, "I find it (11) unlikely to that there were any blood group present". Reexamination of the stain evidence in this case using quanitative procedures to estimate the semen content of concentrated extracts from the stain revealed that there was an inadequate amount of semen present to (12) conclude that the semen originated from a nonsecretor. Additional (13) testing demonstrated that the bulk of the stain in question was from the victim's urine.

The hair evidence in this case (the same case) consisted of a large number of hairs recovered from a garment which apparently had been used to sweep the floor of the crime scene. The first examiner to examine this evidence recovered three pulled hairs which he indicated match the head hairs of the defendant. He further indicated that the hairs were chemically bleached, obviously an important characteristic. When the trial ended in a mistrial all of the hair evidence in the case was reexamined by a different examiner. The second examiner found four hairs none of which were bleached and only one of which had a pulled root which matched the defendant's hair. If you look at the information in the slide it is apparent, at best, in examining the same evidence these two examiners only identified one hair in common and that one hair the pulled hair, one of the examiners said was chemically bleached and the other said was not------both very certain of their opinions. Both of these experts testified with a great deal of

assurance that they had correctly identified the hairs. The second expert when confronted with the differences between his finding and those his colleague simply said he was right because he had more experience. When the defense tried to point this inconsistancy out at the trial, the judge in a decision which seems strange, ruled that the conflict between the two experts was inadmissible.

The final case involves a question of interpretation. The case involves a shooting death in which the victim either committed suicide or was shot by his wife. There is no other reasonable possibility. At the scene the victim's hands were placed in plastic bags. At the autopsy swabs were obtained from both hands and submitted for elemental analysis by neutron activation. The swabs were taken by an inexperienced police officer who followed the directions on the commercial kit. Analysis of the swabs of the victim revealed the levels of barium in one hand in amounts within the normal range of background values for the population. These values are shown on the slide. There was no antimony due to the CCI ammunition. The swabs from the other hand show no barium. Test firing with the gun which was used with similar ammunition produced expected levels of barium on the hand of the shooter as shown on the slide. Analysis of the palm swabs revealed low level of barium and traces of antimony. This is from the victim. The location of the wound was above the heart of the victim with a muzzle distance of three to six inches and a slightly right to left wound track. This wound would most probably be inflicted (if self inflicted) by holding the gun backwards, that is, the trigger being operated by the thumb. At the trial the witness testified, "I could not determine whether or not the individual from whom these swabs were taken had discharged the firearm. However, I could not preclude the possibility that he might have fired a firearm and that the firearm did not deposit these residues on this hand or, if the residues were deposited on the hand, they were removed by washing or wiping or some similar action prior to the time the swabs were taken." The witness (given that answer and keeping that in mind) the witness then proceeded to describe test firing the gun which served to establish at least when the gun was used normally residues were deposited and other witnesses described how the hands were well protected, bagged immediately, so on and so forth. The cumulative effect of the testimony was to establish that had the victim in fact fired the gun there would be significantly greater amounts of barium on his hands therefore he must have not fired the gun. The independent consultant's conclusion from looking at the analytical data was that the zero levels of barium on the victim's non-firing hand indicated that for that individual the normal background of barium was negligible. The elevated levels on the firing hand indicated an exposure of that hand to barium, possibly as a result of firing the gun. Further, the levels on the palm were consistent with handling the gun. The fact that the level of barium on the firing

hand was lower than normal could be due to the fact that the position of the wound would indicate the gun was held backwards, that is, with the trigger being pulled by the thumb. While it is true that the finding did not prove the victim had fired the gun there is at least some evidence to indicate that was the case. One interpretation of the data in this case essentially accuses the wife as being a murderer and surely the trier of fact is entitled to know that there is an explanation of the evidence which is consistent with a self inflicted wound rather then being told there is no evidence that the victim had fired a gun.

The case discussed above presents one aspect of the roll served by the independent consulting criminalist. There are several other rolls which are served by a consultant: advice on cross examination; examination of evidence obtained by the defendent's own investigation; laboratory analysis or consultation for law enforcement agencies; interpretation of evidence obtained by investigating agencies; and reconstuction. The cases presented here each illustrated somewhat different reasons for the use of the independent expert. They each, however, illustrate what we believe to be errors or insufficiencies on the part of the original laboratory examination.

In the bank robbery case the witness was probably unqualified to conduct the examination. One can properly criticize laboratory administration for allowing the examination to be conducted. One can also question the decision of the prosecutor to present the testimony and particularly the decision of the judge on allowing the witness to qualify as an expert. The primary blame however, must be laid squarely on the shoulders of the witness. I cannot believe that the witness was unaware of what he should have done to try to prove his hypothesis. I think he just felt no one was going to question him. This case illustrates the fallacy in the argument that the court acts as a deterrent. Judges and juries are for the most part not able to disinguish the qualified expert from the unqualified one. The only people that can do that are those of us in the profession.

The second case illustrates two problems. First, the failure of the laboratory to keep abreast of techical advances in a rapidly advancing field. Ten or fifteen years ago the method used for the semen analysis and perhaps the conclusion expressed may have been less questionable. Today, however, the technical abilities of the crime lab and theoretical knowledge are such that the laboratory examination was, in our view, unacceptable by current standards. This illustrates a management deficiency as well as a lack of knowledge on the part of the bench criminalist. Responsibility to keep abreast of new developments is jointly that of laboratory administration and individual practitioners.

The hair evidence in the second case illustrates a frequently recurring problem with hair evidence. Hair is probably one of the more frequently examined types of physical evidence yet there is little indication in the literature or even agreement among practitioners as to the value and significance of hair comparison. Attempts to establish the significance and reliability of hair evidence by blind trials have been of afforded and ignored by many criminalists and until the profession is willing to rigorously establish the value of hair evidence perhaps we should not use it much in the same way as we abandoned dermal nitrate tests for gunshot residue or neutron activation analysis for hair comparisons.

The interpretation of data in the final case is debatable. One view is that unless levels of barium and antimony exceed by some significiant amount the average background levels in the population there could be no conclusions expressed. Another view is that average background levels in the population are not applicable to a particular person. The proper background value, if available, is the individual's own hand. The non-firing hand is perhaps the next best standard. The usual situation in which the result of a test would be used to indicate when a suspect has fired a gun-----in that situation a conservative approach to the interpertation of the evidence is to reach no conclusion unless a definite conclusion can be expressed. In this case however, such a conservative approach was tantamount to accusing the wife as being a murderer. The alternative interpretation of the evidence is not unreasonable. The normal background levels for barium and antimony for this individual are zero or essentially zero and the elevated level on the firing hand are consistent with the wound being self inflicted.

It should not be assumed that most reexaminations result in different conclusions. Neither should the fact that a case is being reexamined and the other expert did not testify be interpreted as meaning the work was found to be good. A least as often as evidence helpful to the defense is found mistakes are uncovered which, if they had not been made, would have produced a better case against the defendant. Understandably in these cases the independent expert is not called as a witness and generally his information never becomes known except to the defense attorney.

Critique: The Role of the Independent Expert:
Several Case Examples

by: Peter D. Barnett
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Presented at the 33rd Annual AAFS Meeting,
2/17-20/81

The following critique is intended to treat various points (numbered in left margin of the attached transcript) in Barnett's paper which are of (a) a general nature, (b) specific interest to the Serology Unit (SU).

In reading the entire manuscript, it should be noted that in no way are forensic methods discussed except to criticize those conclusions of the FBI examiners. Further the methodology of Forensic Sciences Associates (FSA) is not described nor is there any opportunity to assess the relative merits of those methods.

1. Barnett uses the term "Independent." It should be noted that FSA is anything but an "independent" laboratory. It is a commercial enterprise wholly dependent on work it receives from anyone who wishes to submit material and can afford to pay for its services. The self-serving nature of this presentation is evident. The term "private" may be accurate, however, "independent" is NOT.

2. Barnett has given four reasons for differences of opinion between experts. However, the presumption of error on the part of the FBI is and was evident during the presentation. (Note the use of terms like "error," "erroneous information," "erroneous data" or "opinions and misinformation.") He fails to mention opinions offered by the FSA examiner in this case which were impeached in court. Dr. Edward Blake was impeached by prosecution rebuttal testimony of two witnesses after he testified to opinions expressed in this paper.

The following points are pertinent in assessing the validity of FSA criticisms in this matter. Oral anal and vaginal swabs were received by Dr. Blake on 6/4/80, six months after the crime. These swabs had been frozen in the San Diego Coroner's Office since collection in late November 1979. These swabs were never seen by the FBI Laboratory (although vaginal swabs Q43 and Q44 taken at the same time were examined by the FBI). After examining these swabs, Blake concluded in his report of 6/13/80, that "Human spermatozoa are present on the vaginal swabs but not on the anal

or oral swabs. The low phosphatase activity in the vaginal swabs indicates a prolonged interval between coitus and death. The low amount of semen on the vaginal swabs as revealed by the acid phosphatase activity indicates an insufficient amount of semen for genetic typing purposes."

In court, in December 1980, he testified for the defense to say the "most reasonable conclusion one can draw was that the act of intercourse preceded her death by at least 24 hours," according to AUSA Thomas Coffin, prosecutor on the case. Blake continued to say that the low amount of acid phosphatase showed that semen was not present in sufficient quantities to allow genetic typing.

Blake testified to criticize the FBI for not conducting quantitative acid phosphatase assays, however, the specific procedures used by Blake with his interpretive approach have not been subjected to open review by the general forensic serology community. He further states that in his opinion the absorption inhibition procedure was improperly conducted by the FBI Examiner in that the concentration of H-lectin used was too high.

It should be pointed out that Blake examined only three vaginal swabs yet applied the interpretation of these results to seminal stains on a pair of panties (Q30) and a half slip (Q33), specimens which he never analyzed at all. Barnett goes along with this misplaced interpretation, as he presents it with no qualification.

Coffin further produced rebuttal witnesses, Dr. Theodore Findlay, Pathologist and Mr. Frank E. Barnhardt, Chief Toxicologist, San Diego County Coroner's Office.

Dr. Findlay, who has done research on acid phosphatase levels as related to post coital interval was able to testify that while high levels of acid phosphatase may be associated with a short post coital interval, the converse is not true and should not be considered a valid practice.

Mr. Barnhardt however, tested the same swabs that Blake tested but prior to Blake receiving the swabs. (The swabs had been stored in Barnhardt's freezer until requested by the defense.) He testified to finding considerably higher levels of acid phosphatase than Blake and attributed the difference to (a) loss of acid phosphatase activity during storage in the freezer from November 1979 to June 1980, (b) loss of acid phosphatase activity in transit from Barnhardt to Blake and (c) differences in methodology between the two assays used.

An additional defense expert witness in the third trial was Mr. Brian Wraxall, Director of Serological Research Institute (SERI), Emeryville, California. Wraxall examined the panties (Q30) and the half slip (Q33) which had been previously examined by the FBI. His results as stated in his report are as follows:

"Item No. 31 Pair of Red Panties
Two areas in the crotch of the panties contained human semen. These two areas together with a third area of the crotch and a fourth area located near the waist band gave chemical reactions indicating the presence of urine. All four areas were subjected to ABO secretor testing by the absorption inhibition method. No results were obtained. The dilution of semen in the extracts of seminal stained areas was approximately 1/800. By the absorption elution method both A and H antigens were detected."

"Item No. 34 Blue Half Slip
Three areas on the slip gave chemical reactions indicating the presence of urine. They gave negative results for semen. Two other areas contained human semen; the dilution of semen in the extracts was approximately 1/1600. No ABO antigens were detected by absorption inhibition. By absorption elution A antigen and weak H antigen were detected."

In court Wraxall testified that his absorption inhibition failed to disclose any ABO blood group substances and that he had gotten a positive indication for a substance chracteristically present in urine.

On cross-examination, Wraxall stated that the "A" and "H" antigens were detected by absorption elution, a technique which he admitted is known to be sensitive enough to detect ABO blood group substances in nonsecretor individuals. With further questioning from AUSA Coffin Wraxall stated that his results were consistent with the defendant being the semen donor.

3. Barnett's reasons for choosing the FBI Laboratory do not support his statement that his presentation is "not an effort to single out that particular laboratory." They do, however, coupled with the fact that he does identify the FBI laboratory, tend to indicate that he is attempting to build a reputation by comparing results and conclusions obtained by FSA procedures to those reported by the FBI. Further, while he states that "these cases illustrate the fact that errors (again the presumption of error) can be attributed to

management, bench-level personnel, to courts or simply differences of opinion," the thrust of his presentation is focused on a comparison of totally different techniques and interpretations used for identifying blood group antigens in semen stains.

4. Barnett fails to clearly disclose the complete chain of events which led to the examination of the evidence in question by the FBI Laboratory. The swabs in question were initially examined by the San Diego Police Department for the purpose of semen identification resulting in a portion of the swabs being consumed. Additional examination by the FBI Laboratory would have been to detect possible presence of blood group substances on the swabs. However, a sufficient amount of swab was used by San Diego PD that the remainder was consumed by the FBI examiner during verification of the presence of semen. No quantitative tests to show "only a low level" were conducted by the FBI as is indicated by Barnett. His implication to this effect is incorrect.

5. Barnett states "the expert was able to find three or four sperm heads." There are two points to be made here. (a) A case review discloses that intact sperm, not "sperm heads," were found in quantities greater than "three or four" during the FBI examinations. (b) The impression is given that the number of "sperm heads" is the result of an exhaustive search and represents the total quantity of semen present. This is inaccurate, since a sperm search in the FBI Laboratory is conducted only to locate and identify sperm cells for conclusive identification of semen. Once a single cell is identified, the identification of additional cells is superfluous.

6. The FBI examiner is quoted as running the absorption inhibition test "six times." Again, Barnett does not give the complete facts. As additional testimony shows, the pair of panties (Q30) and the half slip (Q33) were both found to bear stains containing semen, three stains were grouped on the panties and one stain was grouped on the slip,all in duplicate. In all cases no blood group substance (BGS) was detected. This repetitive appraoch to detect BGS has a two-fold advantage. First, several cuttings from the same stain giving consistent results eliminates the possibility of one portion of the stain containing BGS not contained in the entire stain. Second, repetition of testing increases the chances of detecting BGS present in weaker amounts. It should be noted; however, that sufficiently low levels of BGS could escape detection by absorption inhibition regardless of the number of cuttings examined. This fact was pointed out during testimony. The detection of such low levels of BGS as a confirmatory measure, using absorption elution, is an approach which should be further evaluated.

7. Barnett states that absorption elution and neat sal' a controls were used. Neither is correct. The use of the term "elution" is a simple mistake in that absorption inhibition data was being discussed and it is difficult to believe Barnett doesn't know the difference between the two techniques. Further, his original text uses the term "inhibition." Neat saliva controls were not used. Saliva controls are used but are made by drying neat saliva on filter paper from which cuttings are taken. It should be noted, however, that the use of saliva per se as a control substance should be re-evaluated inasmuch as research has indicated that concentrations of BGS may vary between saliva and semen.

8. Barnett states that "the customary test for secretor status is to detect the 'H' antigen." It is well documented in scientific literature that high levels of the "H" BGS are found in the blood and other body fluids of blood type "O" and "A_2" secretor individuals. Secretor individuals of blood type "A," "B" and "AB" do not exhibit such high levels of the "H" BGS. It is, therefore, not accurate to consider detection of the "'H' antigen" as the "customary" test for secretor status.

9. Barnett goes on to state that "this is not what one expects from testing saliva." Again he implies misleadingly that the results are erroneous.. The absorption inhibition test used by the FBI Laboratory is designed specifically to detect (through inhibition) the high level of "H" BGS associated with blood type "O" and "A_2" secretors but not the lower levels found in the "A," "B" and "AB" secretors. The results being referred to are a classic illustration of what is expected. It is understandable that if one were to run the technique differently, using different controls and concentrations, different results might be obtained. Comparison of the different inhibition procedures (FSA vs FBI) is not valid without an indepth examination of the complete techniques and their interpretation. It should be noted that these results were confirmed in part by Brian Wraxall.

10. Barnett continues to mislead when he implies that FSA examiner(s) reexamined "the stain evidence in this case" that had been previously examined by the FBI Laboratory. As noted earlier, the swabs examined by FSA were never sent to the FBI while the panties and half slip examined by the FBI were never sent to FSA. The items in question (Q30 panties and Q33 half slip) were however, reexamined by Brian Wraxall, SERI, as outlined earlier.

11. The "quantitative procedures" referred to are never defined in any manner. However, a copy of the procedures which were in all probability used by the FSA Lab is attached. These procedures devote considerable attention to a quantitative acid phosphatase determination and subsequent interpretation of the results. Several points are noteworthy. First, seminal

acid phosphatase is known to originate in the prostate gland of man. Second, the substrate used (para-nitrophenyl phosphate), aside from being a suspect carcinogen, is a substrate which research (both FBI and others, see references) has shown to react strongly with acid phosphatase from numerous non-prostatic sources. Sodium thymolphthalein mono phosphate which is used by the FBI, however, is a substrate which has been shown to be the substrate least likely to react with nonprostatic acid phosphatase such as blood, vaginal fluid, etc. Third, the interpretations which FSA personnel feel justified in making from the results of their quantitative tests to establish the amount of semen originally deposited have not been subjected to open review by the general forensic serology community and therefore cannot be considered to be standardly accepted procedures. Further, the statement "that there was an inadequate amount of semen present to conclude the semen originated from a nonsecretor" is based on these interpretations and is therefore subject to question.

Worthington Acid Phosphatase Reagent Set Package Insert, Worthington Biochemical Corporation, Freehold, New Jersey 07728.

Roy A. V., Brower, M. E., and Hayden, J. E.: Sodium Thymolphthalein Monophosphate: A New Acid Phosphatase Substrate with Greater Specificity for the Prostatic Enzyme in Serum, Clin. Chem., 17, 1093 (1971).

Roy, A. V., Brower, M. E. and Woodbridge, J. E.: "Sodium Thymolphthalein Monophosphate, a Substrate with Almost Complete Specificity for Prostatic Acid Phosphatase." Paper presented at 1970 ASCP Meeting, Atlanta, Georgia.

Mudd, James L. and Kearney, James J.: "The Characterization of Acid Phosphatase From a Variety of Sources by Means of Acid Phosphatase Specific Activity Determination." Paper presented at 1980 Fall Meeting of Mid-Atlantic Association of Forensic Scientists and Southern Association of Forensic Scientists.

12. Further, Barnett implies that a "conclusion" was reached concerning nonsecretor origin by the FBI examiner when the quoted testimony clearly states a consistency and not a conclusive opinion.

13. A final point made in discussing the serology aspects of the paper was the "bulk of the stain was from the victim's urine." It is important to note at this point that the chain of custody of the items in question (Q30 panties and Q33 half slip) started with the collection of the evidence by the San Diego Police Department crime scene technician. After preliminary examinations at

the San Diego PD lab, the evidence was passed to the FBI Laboratory, then to SERI Labs (Brian Wraxall examiner) and finally to the court. Detection of substances of urinary origin was done in the SERI Laboratory after two previous examiners had worked on the stains. It is more reasonable to state that the "bulk of the stain" was used prior to the SERI Laboratory ever receiving the evidence. The exact relationship of the position of the stain not examined by SERI to the victim's urine can never be known.

14. This paragraph of Barnett's paper brings out two points of significance relative to the FBI Laboratory. First, it points out the contining and ever-increasing need for a qualified research staff, reviewing the newer techniques of the field as well as assisting on-line personnel in upgrading current techniques. This is not to minimize the need for original research, however. Second, the phrases "technical abilities of the crime lab" and "current standards" are clearly a reference to FSA Lab procedures (those attached) which cannot be considered at this point as standardly accepted or state-of-the-art since according to available information, these procedures have not been formally published for the general scientific community.

APPENDIX A

A Systematic Approach

to the Analysis of Semen Evidence

A SYSTEMATIC APPROACH TO THE ANALYSIS OF SEMEN EVIDENCE

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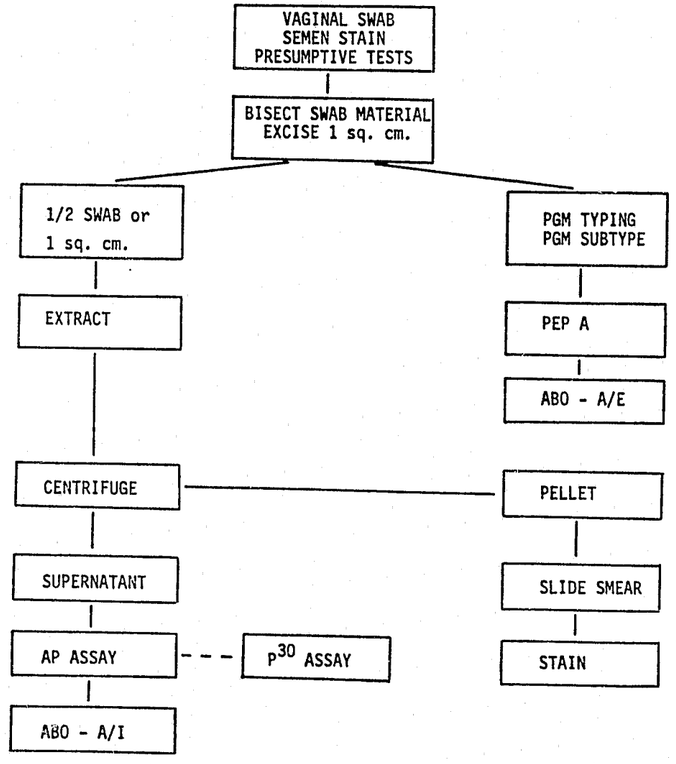

A SYSTEMATIC APPROACH TO THE ANALYSIS OF SEMEN EVIDENCE

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SUMMARY

Knowledge of the quantitative levels of acid phosphatase, phosphoglucomutase, peptidase A , and ABO antigens in semen and knowledge of their stability in rape evidence material has allowed the development of a systematic scheme for the analysis of rape kit evidence. This scheme is predicated on using the quantitative acid phosphatase test as an index of the amount of semen present in the evidence material. This scheme is intended as a framework from which the analysis of rape evidence can be pursued in a concise and logical fashion.

There are three major steps in the analysis of the sample. They are (1) location and identification of the sample and its possible contaminants, (2) estimation of the amount of semen present in the sample through the use of the quantitative acid phosphatase test, sperm content of the sample, and P^{30} assay (if required), and (3) genetic analysis of the sample if sufficient semen is present in the sample to provide information concerning the semen donor.

Semen stains on clothing or bedding can be localized through the use of a number of screening tests including careful visual observation, examination with ultraviolet lamps, ACP spot tests, and ACP mapping procedures, or a combination of the above. Semen is identified at the microscopic stage of the analysis or absent sperm, at the quantitative ACP and P^{30} stages. It should be remembered that the identification of sperm is the most specific and the most sensitive test for the presence of semen. Semen samples should also be tested for the presence of blood and saliva. Trace levels of blood that may be present can be a diagnostic indicator of vaginal injury and vaginal trauma can produce significantly elevated levels of vaginal PGM activity as the result of tissue damage to the vaginal wall. The presence of saliva in a semen sample could confuse the interpretation of ABO and PGM typing results. Once semen is identified, it remains to be established that the semen that is present is related to the alleged assault. On vaginal swab specimens the amount of semen can aid in this determination.

The amount of semen in the sample is estimated with the quantitative acid phosphatase test; it is intended that this test be used in conjunction with the microscopic observation of spermatozoa. The interpretation of the test is designed to yield a conservative estimate of the amount of semen in the sample. Should there be a significant lack of concordance between the semen estimate based on the quantitative acid phosphatase test and the microscopic observation of spermatozoa, it is recommended that the P^{30} assay be used. A low acid phosphatase level in a sample containing a large amount of sperm could signal the loss of enzyme activity; situations such as this have been found to be unusual. The amount of semen in the sample and the semen dilution in the sample extract are used to make decisions concerning the potential

success of subsequent genetic analyses and in aiding the interpretation of ABO typing results. Failure to detect antigen activity in a sample extract where the semen dilution is more concentrated than semen diluted 1/100 indicates semen from a nonsecretor. Clearly, the more concentrated the semen extract, the more confidence one can have in the conclusion that the sample originated from a nonsecretor in the absence of antigen activity.

If there is an adequate amount of semen in the specimen, ABO, PGM and Pep A genetic analyses are possible. ABO typing should be done using an absorption-inhibition procedure on cell-free sample extracts to avoid inhibition of the antisera by the victim's epithelial cells or cellular debris from the semen. Using the inhibition procedure described below the soluble antigen content of semen ranges from 1/400 to 1/50,000; the mean titer is about 1/2000. PGM typing requires about 0.5 to 1 ul of semen; however, PGM activity can degrade rapidly in samples which are not thoroughly dried before storage. Samples containing 5 ul or more are usually successfully typed. There is more peptidase A activity than PGM activity in semen; however the Pep A enzyme seems to be less stable than PGM. Both enzymes are significantly less stable than acid phosphatase.

QUANTITATIVE ACID PHOSPHATASE ASSAY PROCEDURE

Assay Solutions

Assay Buffer: 0.1 M Acetate, pH 5.5

Assay Substrate: 3 mM p-Nitrophenyl phosphate in assay buffer prepared fresh daily

Assay Stop Solution: 1 M NaOH

Procedure

1. Cut swab in ½ with straight edged scalpel or cut out one cm^2 stain. Place in test tube and extract with 0.2 ml isotris (0.14 M NaCl, 10 mM Tris, 0.08 M dextrose) in the cold for at least ½ to one hour. Remove swab material or cloth and express liquid against the side of the tube while wearing surgical gloves. Recovery of liquid should be greater than 75%; the absolute recovery of liquid does not affect subsequent calculations, it only affects the amount of material with which one has to work in subsequent antigen typing steps.

2. Centrifuge extract. Remove cell free supernatant to new test tube. Wash cellular debris with water; centrifuge, discard supernatant wash. Prepare a slide mount by removing entirety of cellular material to slide, fix by drying in a 55^{o} oven for 30(+) minutes. Stain slide with Christmas Tree Stain, mount with Permount and examine at 400X. Sperm heads are stained bright red: the acrosome appears as a significantly less densely stained organelle in the proximal 1/3 to 1/2 portion of the head. The tail and other cytoplasmic membrane structures stain green. Epithelial nuclei stain a combination of red and green if within the cell (purple or violet). Yeast cells stain red and are about the same size as sperm heads but are not differentiated.

3. Prepare a 1/10 dilution of the sample extract by placing 10 ul sample in 90 ul isotris. (Always use good quantitative practice; quantitative pipetors are a virtual necessity.)

4. Add 0.5 ml assay buffer to assay tubes to include one blank and sufficient tubes for samples and controls. Add 10 ul of sample to sample tubes (neat extract and 1/10 dilution and neat neg. controls.) Initiate assay by the addition of 1.0 ml substrate solution at time t=0 (the assay is conducted at room temperature, 20-22° C, buffers may be stored in the cold but should be brought to this temperature prior to assay). Stop the reaction after 20 minutes by the addition of 1.75 ml of 1 M NaOH. Read the absorbance of the sample assay solutions at 410 nm in a good quality spectrophotometer after zeroing the instrument against the blank. If the blank shows significant yellow coloration, this indicates significant spontaneous hydrolysis of the substrate and the substrate solution should be discarded and freshly prepared. The assay is linear to an absorbance of about 1.5 assuming a good spectrophotometer with digital absorbance readout. Values higher than this indicate a more dilute sample should be assayed. Experience has shown that most evidence samples can be handled with the 1/10 extract dilution. The assay procedure has been designed so that the absorbance reading is a direct measure of the acid phosphatase activity expressed at International Units/ml of extract (where one I.U. represents the turnover of one umole substrate/minute under standard assay conditions). Thus, if the absorbance reading for the neat sample is 0.890, there is 0.890 I.U. of ACP activity/ml of sample extract. If the absorbance reading for the 1/10 sample is 0.890, there is 0.890 X 10 = 8.9 I.U. of ACP activity/ml of neat extract. The derivation for this formula is included below.

To estimate the semen dilution in the neat extract divide 500 by ACP units/ml extract. Thus, for example one above, the semen dilution is 1/560; for example two the semen dilution is 1/56.

Estimation of the absolute amount of semen on the swab in ul is equal to $0.8 \times A_{410}$ for the neat extract (1000 X 0.2 X 2/500). Therefore, in example one, the estimated amount of semen on the swab is 0.7 ul; for example two, the estimated amount of semen/swab is 7.1 ul. A similar calculation can be made per unit area of fabric.

In estimating the amount of semen in the sample extract a value of 500 units/ml has been chosen for the calculation in order to reduce the possibility of overestimating the amount of semen in the sample and takes into consideration the fact that acid phosphatase levels in semen are log normally distributed in the population (see G.F. Sensabaugh, J. For Sci., 24(2), 1979). The distribution of acid phosphatase levels in semen for a population of 124 individuals is plotted below on both a linear and log scale. It can be seen that the data fits a normal distribution when plotted on the log scale but does not fit a normal distribution when plotted on a linear scale. This finding has important consequences in understanding the population variance about the mean. For example, the population mean is 204 I.U./ml; however, 16% of the population have levels greater than one serial dilution (400 I.U./ml) above this value. Thus, if the mean were chosen to estimate the amount of semen in a questioned sample, the amount of semen would be overestimated a significant proportion of the time. This would have a detrimental effect in assessing samples from nonsecretors. By using 500 units/ml in the calculation the amount of semen in the questioned sample is underestimated in 90% of the samples and in 8% of the remaining 10% the overestimate is within ½ serial dilution of the true value. These calculations also assume no loss of ACP activity during drying and aging of the sample; this will also tend to have a conservative effect on estimating the amount of semen in the sample. Current studies indicate that under most conditions the loss of acid phosphatase activity is minimal.

5. Following ACP assays the sample extracts are titered in antigen assays (ABH and Lewis if appropriate).

Derivations

1. Reaction: $pN\emptyset\text{-}PO_4 \longrightarrow pN\emptyset + PO_4$

2. Molar absorbtivity pNØ at 410 nm = 16,200; therefore A_{410} 1 umole/ml = 16.2

3. International Unit = umole produced/minute

4. Units/amount of sample $= \dfrac{(A_{410} \times 1.5 \times 3.25/1.5)/16.2}{\text{Time (minutes)}} = \dfrac{0.2\ A_{410}}{\text{Time (minutes)}}$

5. For 10 ul sample and assay time of 20 minutes

$$\text{ACP I.U./ml} = \frac{100 \times .2 \times A_{410}}{20} = A_{410}$$

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QUANTITATIVE ASSAY OF SEMEN USING A P^{30} Method (according to the procedure of Wraxall and Blake)

Tank Buffer: pH 8.4

Tris base (37 mM)
Glycine (0.29M)

Gel Buffer: Same as Tank

Gel: 1% Agarose (Sigma type II, $-M_r$= 0.17) prepared on 2 X 3 inch microscope slides.

Method: A standard cross-over electrophoretic procedure is employed. The antigen and antibody wells are placed in a line in the direction of current flow with the antibody well on the anode side of the antigen well; thus, the antigen and antibody migrate toward one another. The success of the cross-over method depends upon a sufficient overall net charge difference between the alkaline IgG antibodies and the antigen such that they can be induced to migrate in an electric field in opposite directions. The closer the isoelectric point of the antigen to that of the antibody, the more difficult this task becomes. Since P^{30} is a relatively alkaline protein (in reality a series of at least four isomorphs) a careful balance must be maintained between the pH of the buffer and the endosmosis of the support medium.

Voltage: 100 V (13.1 V/cm) for 30 minutes.

Staining: After the run the gel is pressed by placing a wetted piece of Whatman 1 filter paper on the surface of the gel followed by several thicknesses of blotter paper and a weight. After about 20 min. the pressed gel is washed in 1.0 M NaCl for at least 3 hours or overnite. The gel is pressed again and washed for 5 minutes but not longer in distilled water to remove the salt. The gel is then pressed again and dried in a 55°C circulating oven.

The stain solution consists of 0.2% Coomassie Brilliant Blue in MeOH:Acetic Acid:Water (5:1:5). The gel is stained for 10 minutes and destained in the dye solvent.

Remarks: The solution to be tested can be serially diluted or diluted by factors of ten and compared against a set of standard semen dilutions. An attempt should be made to determine the end point of the P^{30} detectability in the sample. This value is then compared to the detection limit of the reference standard. A comparison of the dilutions needed to reach the end point then yields an estimate of the semen dilution in the original sample extract. The estimated semen dilution should be within a factor of 2-4 of the true value. The P^{30} assay is particularly useful when there is a suspicion that the acid phosphatase values may be low due to degradation of the enzyme, it also serves as a double check on the acid phosphatase values on a routine basis. A similar assay is in the process of developement for acid phosphatase for those who prefer immunological tests to enzymatic assays. In general it can be expected that enzymatic activity will be lost before immunological activity, thus this approach to the detection of acid phosphatase may have some practical value in particular case situations.

ABO TYPING OF WATER SOLUBLE ANTIGENS BY ABSORPTION-INHIBITION (according to the procedure of Blake)

Sample Preparation: Preparation of the sample has been described in the quantitative acid phosphatase section. It is critical that the sample used for the inhibition test be cell-free and that an estimate of the semen dilution in the sample has been made. This will aid in the interpretation of the test results.

Preparation of Glass Slides: A hydrophobic surface is placed on glass slides (2 X 3 inch microscope slides or 10 X 10 cm disposable thin-layer plate glass) by incubating the glass plates in a 1% solution of Prosil or Silicad. The plates are washed with water, dried, and stored for use.

Preparation of the Antisera:
The antisera preparation to be used in the antigen assay is selected by preparing serial dilutions of antiserum and lectin in isotris (0.14 M NaCl, 10 mM Tris, pH 7.4) containing 1% BSA. The antisera dilutions are tested in a standard three part system containing one part antiserum, one part isotris, and one part cell suspension; 10 ul aliquots are used. The antiserum and blank are rotated in a humid chamber for 30 min. prior to the addition of the cell suspension. After the cell suspension is added, the agglutination reaction is monitored microscopically (100X) in 10 minute intervals for 30-40 minutes. The last antiserum dilution which yields a +3 to +4 agglutination reaction after 30 minutes of rotation is selected for the antigen assay. The diluted antisera preparations should be prepared fresh daily. Once a particular batch of antisera has been titered, it should remain constant within one serial dilution over the life of the antiserum. Preparations from Ortho are usually used at a dilution of 1/200 to 1/800. Lectin preparations are used at a dilution of 1/20 to 1/80. There is some evidence that the H-lectin requires a metal ion for maximum activity; therefore ACD and EDTA solutions should be avoided when using H-lectin.

Cell Suspension: 0.1% cell suspensions are prepared in isotris containing 1% BSA and 0.08 M glucose. Fresh cells are preferred. Stock preparations of cells are stable in the isotris-glucose solution for about 5 days. The 0.1% cell suspensions should be prepared fresh daily.

Procedure: The sample is added to the antisera solutions and rotated for at least 30 minutes prior to the addition of the cell suspension. The antigen - antibody reaction is instantaneous provided that there is good mixing of the solution. The agglutination reaction is monitored in ten minute intervals against a blank which is included on every plate. A gentle tapping of the edge of the plate after each observation period is recommended. It is frequently found that concentrated protein solutions which lack antigen activity cause the test cells to agglutinate more rapidly than the control blank. In most instances this phenomenon is merely a protein effect which reduces the natural negative charge on the cells. If the presence of antibody in the sample is suspected, this can be tested in a simple two part assay. A signal that the phenomenon is caused by antibody would be the observation that the effect is taking place in the A and/or B cells but not the O cells. An enhancement of agglutination in the O cells as well as the A and B cells signals a protein effect. For those samples which contain antigen activity the titer of the activity should be determined. This will aid in assessing whether that activity is most likely from the victim or from the semen.

ABO TYPING OF BOUND ANTIGENS BY ABSORPTION-ELUTION (modified from Howard and Martin)

Preparation of Glass Slides: Silanized glass plates are used as previously described.

Attachment of the Sample: 0.5 cm threads are attached to the glass plates with a small drop of fingernail polish. The fingernail polish should be colored so that the degree of polish migration into the thread can be monitored. Revlon Almost Red is useful for this purpose. After the samples and controls are placed on the plate, the polish is dried in a circulating oven at 55°C for 30 minutes. This process also aids in fixing the cells from fresh samples. Samples can also be fixed to the threads by adding just enough MeOH to wet the thread.

Absorption: Undiluted antisera and lectin are added to the samples and incubated in a humid chamber in the cold (8°C) for at least 6 hours or overnite.

Washing: The plates are washed in cold isotris for 15 minutes and blotted dry with a clean paper towel; this process is repeated three times. During the washing process the plates are rotated in the cold isotris solution. The isotris solution is replaced after the first washing cycle.

Elution: 10 ul aliquots of isotris (without BSA)are added to each blotted thread. Elution takes place in a humid chamber in a 60-62°C oven for 20-30 minutes. Following elution 0.1% cell suspensions in isotris containing 1% BSA and 0.08 M glucose are added to the samples. The plate is then placed in a cooled humid chamber and rotated. The agglutination reaction is monitored microscopically (100X) in 10 minute intervals for 30 to 40 minutes. A gentle tapping of the edge of the plate is recommended after each observation period.

Remarks: Absorption-elution is a useful method for typing the cellular antigens in nonsecretor semen. It is thought that these antigens are associated with the nonsperm cellular debris present in semen. It remains unproven whether low levels of secreted antigen material is also detected in nonsecretor semen using this procedure. Microscopic examination of the sample slide preparation will aid in assessing the possible sources of any antigen activity that is observed.

CONVENTIONAL PHOSPHOGLUCOMUTASE (PGM) TYPING (according to the method of Wraxall and Stolorow)

TANK BUFFER

Tris base (0.1M) pH7.4
Maleic Acid (0.1M)
$MgCl_2 \cdot 6H_2O$ (10 mM)

EDTA, Na_2 (10 mM)

Gel Buffer
1:15 aqueous dilution of the tank buffer.

Gel: 1% Agarose (Sigma type V), 1% starch

Origin: 3 cm from cathode

Cooling: Cooling plates at 4°C.

Voltage: 400 V (20 V/cm) for 2.5 hours.

CONCURRENT TYPING OF PHOSPHOGLUCOMUTASE AND PEPTIDASE A (modification of the procedure of Stolorow, et al.)

EDTA is a potent inhibitor of Pep A, thus, these two useful semen genetic markers would appear to be incompatible in the same electrophoresis buffer. However, if good quality deionized water is available, EDTA can be omitted from the conventional PGM buffer with no apparent loss of PGM activity. This allows both enzymes to be typed at the same time. The electrophoretic mobility of Pep A is slightly anodal to esterase D. Reducing agent should be included in samples to be typed in the Pep A genetic marker system.

PHOSPHOGLUCOMUTASE SUBTYPING PROCEDURE (according to the method of Kelly and Wraxall)

Tank Buffer: pH 5.5

Na_2HPO_4, anh. (0.29 M)

Citric Acid, anh. (0.1 M)

Gel Buffer: pH 5.5

Na_2HPO_4, anh. (5.7 mM)

Citric Acid, anh. (2.5 mM)

Gel: 1% Agarose (sigma type 1, if $-M_r$ = 0.10). The endosmosis of the agarose is one of the critical features of this finely tuned electrophoresis system. Relatively small deviations from the stated conditions will result in loss of resolution.

Origin: 9 cm from the cathode

Voltage: 400 V (20 V/cm) for 4 hours. During the course of the run the anode

portion of the gel will shrink to within 0.5 cm of the sample origin. The enzyme migrates toward the cathode.

Cooling: Cooling plates at 4°C.

PHOSPHOGLUCOMUTASE STAIN SOLUTION

Stain Buffer: pH 8.0

Imidazole (0.4M)
$MgCl_2 \cdot 6H_2O$ (10 mM)

Glucose-1-phosphate (10 mM)

Stain Solution:
To 10 ml of stain buffer add 2 mg NADP, 2 mg MTT, 1 mg PMS, 10 ul G6PD and 10 ml of melted 2% agarose at 55°C. Incubate at 37°C until PGM developes. Weak stains can be developed overnite.

CONCURRENT TYPING OF PEPTIDASE A AND CARBONIC ANHYDRASE (according to the procedure of Harmor, Wraxall, and Blake)

Tank Buffer: pH 7.4

NaH_2PO_4, anh. (0.1 M)

Tris base (0.1 M)

Gel Buffer: pH 7.5

Tris base (10 mM)
Maleic Acid (3.4 mM)
$MgCl_2 \cdot 6H_2O$ (0.2 mM)

Gel: 1% Agarose (Sigma type II, $-M_r$=0.17)

Origin: 8 cm from cathode.

Voltage: 400 V (20 V/cm) for 3 hours.

Cooling: Cooling plates at 4°C.

Remarks: During the course of the run the anode portion of the gel will shrink to within 2-3 cm of the sample origin. Peptidase A will be located in the shrunken portion of the gel. Hemoglobins will generally look terrible, streaking on both sides of the origin as the run proceeds; do not be alarmed, this is a normal occurrance in this system. Carbonic anhydrase II migrates cathodally to the sample origin.

PEPTIDASE A STAIN SOLUTION - O-DIANISIDINE METHOD

Stain Buffer: pH 7.5

Na_2HPO_4 (0.2M)
$MgCl_2 \cdot 6H_2O$ (2 mM), titrate to pH 7.5 with HCl.

Stain Solution:
To 10 ml of stain buffer add 2 mg L-aminoacid oxidase, 10 mg L-valyl-L-leucine, 5 mg horseradish peroxidase and 0.2 ml of a alcohol/water solution of o-dianisidine (10 mg/ml). After all components have dissolved add 10 ml of 2% melted agarose at 55°C. Develope at 37 °C.

PEPTIDASE A STAIN SOLUTION - MTT Method

Stain Buffer: pH 8.0

Tris base (0.05M) titrated to pH 8.0 with HCl, containing 10 nM $MgCl_2 \cdot 6H_2O$

Stain Solution

To 10 ml of stain buffer add 10 mg L-valyl-L-leucine, 5 mg L-aminoacid oxidase, 2 mg MTT, 1 mg PMS, and 10 ml of 2% melted agarose at 55°C. Allow all components to dissolve before adding the agarose. The reduction cycle is initiated by the reduction of the FAD moiety of the flavoenzyme, L-aminoacid oxidase, in the process of amino acid oxidation. This newly developed stain procedure is at least as sensitive as the o-dianisidine method, avoids the use of a potential carcinogen, and is easier to photograph.

CARBONIC ANHYDRASE STAIN SOLUTION

Stain Buffer: pH 6.5

KH_2PO_4 (0.1M) titrated to pH 6.5 with NaOH.

Stock Substrate Solution:
Fluorescein diacetate in acetone (10mg/ml). Stable stored at 8°C.

Stain Solution: To 10 ml of stain buffer add 0.1 ml of substrate solution. Soak Whatman 3MM filter paper and overlay the appropriate region of the gel. Incubate at 37°C until yellow fluorescent carbonic anhydrase bands appear.

CHRISTMAS TREE STAIN FOR THE IDENTIFICATION OF SPERMATOZOA (according to the procedure of Oppitz)

Reagents:

1. NUCLEAR FAST RED STAIN
   Dissolve 2.5 g of aluminum sulfate in 100 ml of hot distilled water and add 50 mg of Nuclear Fast Red (C.I. 60760). Stir and allow to cool then filter. This solution is stable for many months stored at 8°C.

2. PICROINDIGOCARMINE STAIN
   Dissolve 1.3 g of picric acid in 100 ml of warm distilled water, add 0.33 g of Indigo Carmine (C.I. 73015) and stir overnite. Filter and store at 8°C. This solution is stable for many months stored under these conditions.

Procedure:

1. Fix cells to a microscope slide in a circulating 55°C oven for 30 min.
2. Cover debris with a drop of Nuclear Fast Red stain and incubate in a humid chamber for at least 15 minutes.
3. Wash away Nuclear Fast Red stain with distilled water dispensed from a wash bottle (this avoids the specter of one slide being contaminated by material from another).
4. Add one drop of Picroindigocarmine stain to the cellular debris without drying the slide. Rotate the dye on the slide by hand for 15-30 seconds but not longer. Wash the stain from the slide with absolute EtOH dispensed from a wash bottle. Dry the slide and mount with Permount
5. Observe at 400X

Remarks:

Nuclear material is stained red by the Nuclear Fast Red dye. Sperm heads are usually well differentiated with the acrosome staining significantly less densely than the distal region of the head. Epithelial membranes are stained green by the picroindigocarmine. Nuclei inside epithelial cells appear purple. Yeast cells also stain red however the stain is uniform thoughout the cell and extends into polyp-like structures which are occassionally observed with yeast cells.

ANALYSIS OF AMYLASE ACTIVITY (according to the procedure of Blake and Sensabaugh)

Amylase activity is controlled at two genetic loci, Amy_1 and Amy_2. Amy_1 is expressed in saliva, perspiration, milk, and vaginal secretions; Amy_2 is expressed in feces, urine, blood serum, semen, and vaginal secretions. Amylase activity is particularly high in saliva and feces and this fact can aid in the identification of these body fluids. While the amount of amylase activity is the primary indicator of the presence of saliva, it is often useful to test this interpretation by an electrophoretic analysis of the sample.

AMYLASE ASSAYS IN AGAR GELS

1% agarose gels are prepared containing 0.1% starch, 0.1 M PO_4, pH 6.9, 7mM NaCl. The solution is heated to boiling to dissolve the agarose and starch after which it is poured into a disposable petri dish, 2-3 mm thick. The gels can be used after they set or stored in the refrigerator. Wells are cut into the gel and allowed to diffuse overnight. Amylase activity is detected by flooding the plate with 1% solution of Lugol's iodine. The amount of activity in the sample is logarithmically related to the diameter of the cleared circle (or linearly to the area). The gel can be calibrated by including solutions of known amylase activity on the gel.

This assay is generally applicable to many enzyme systems including phosphatases. See Schill, W.B., and G.F.B. Schumacher, "Radial Diffusion in Gel for Micro Determination of Enzymes," Anal. Biochem., 46, (1972), 502-533.

ELECTROPHORETIC ANALYSIS OF AMYLASE ACTIVITY

Electrophoresis: (acrylamide slab gel)

Tank Buffer: pH ca. 8.6

glycine	50.4 g (0.192 M)
Tris	10.59 g (0.025 M)
H_2O	3.5 liters

Gel Buffer: pH 8.8

Tris	90.83 g (.75 M)
H_2O	1 liter

Titrate to pH 8.8 with HCl

Stock Acrylamide Solution:

30% acrylamide, 0.82% N,N' - methylenebisacrylamide in H_2O (acrylamide hydrolyses to acrylic acid in alkaline buffers; therefore they should be avoided in the preparation of stock solutions). Store in a brown bottle in the cold.

Gel Preparation: 5% acrylamide gels, thickness: 1.5 to .75 mm

Stock acrylamide	5.0 ml	
Gel buffer	15.0 ml	
H_2O	10.0 ml	
APS (ammonium persulfate)	20 mg	
TEMED (N,N,N',N'-tetramethylethylenediamine)	20 ul	(initiate)

Gel Preparation (continued)

Mix all components except TEMED and degas with vacuum pump. Add TEMED and swirl. Charge gel frame without introducing bubbles. Bubble formation at the sample comb can be removed by withdrawing the comb and then reinserting it into the frame. Place a layer of water on the exposed acrylamide solution and allow it to polimerize (about 1 hour). No pre-run is necessary.

Sample Preparation:

After buffer is placed in the upper electrode chamber, the sample comb is removed and the wells are washed by pipetting buffer into the wells. Samples are made dense by adding several crystals of sucrose and are then applied to the top of the well with a microliter syringe.

Conditions:

Gels (17.5 X 14 cm X 1.5 mm) are run at a constant current of 30 ma. (90-250V) until the buffer front reaches the bottom of the gel (about 3-4 hours).

Amylase Stain:

Substrate solution: (prepared fresh daily)
1% soluble starch in 0.1 M PO_4, pH 6.9 containing 7 mM NaCl. Heat to boiling to dissolve starch, then cool to room temperature.

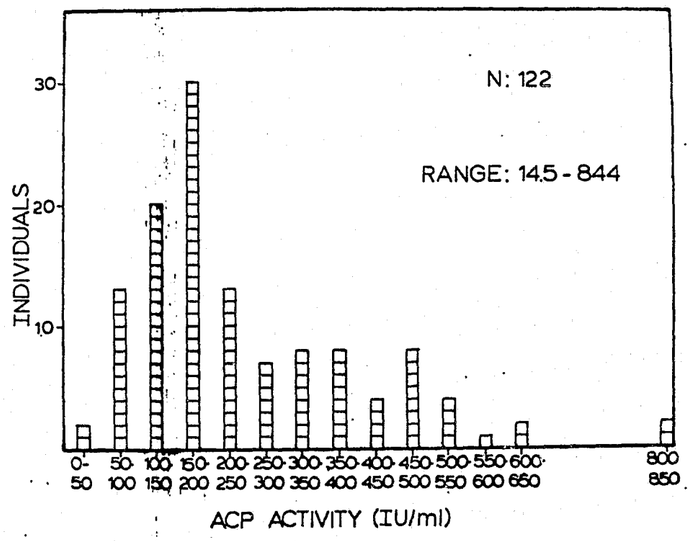
Lugol's iodine solution:

KI	2 g
I_2	1 g
H_2O	200 ml

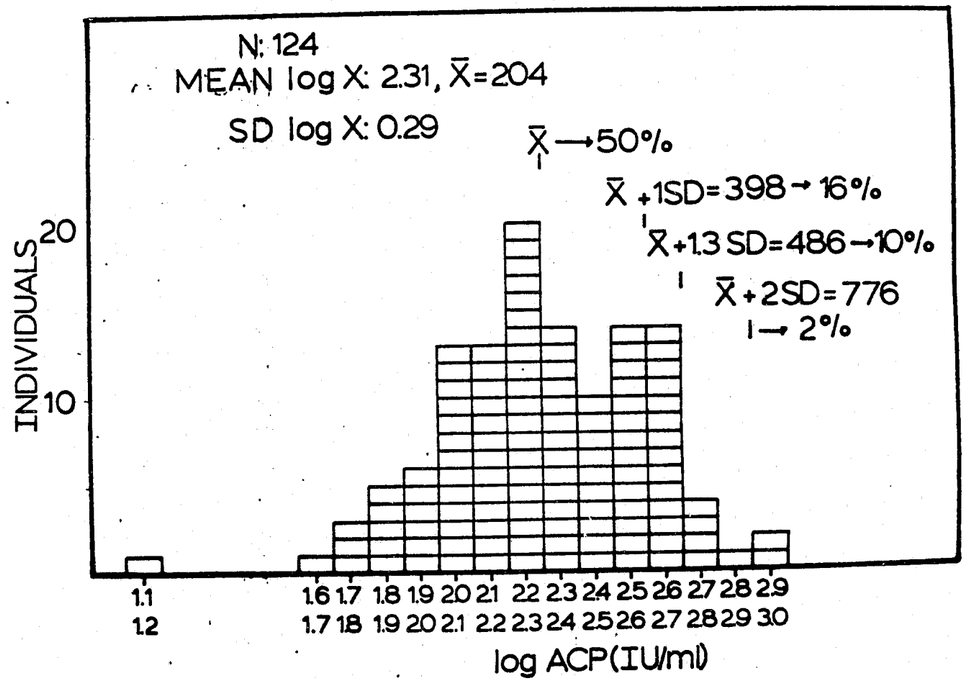
Place gel in excess substrate solution (e.g., pyrex baking dish) and incubate for 1 hour with agitation (e.g., Eberbach rotator). Then wash gel with water and place on a glass plate and incubate an additional hour or longer depending on the activity of the samples. After the second incubation period the gel is bathed in a dilute solution of Lugol's iodine (about 1%). Within minutes the gel turns a deep blue revealing white bands of amylase activity.

A SYSTEMATIC APPROACH TO THE ANALYSIS OF SEMEN EVIDENCE: CASE EXAMPLES

Case#	Alleged Post-Coital Interval (hrs)	ACP (iu/swab)	Sperm in Debris	ul Semen on Swab	Dilution of Semen in Extract	ABH Titers in Extract			PGM on Swab	VICTIM		CONCLUSION
						A	B	H		ABO/ Sec	PGM	
1	2.5	.024	few									not compatible with ejaculation within alledged post cotial interval.
2	3.5	.057	few									not compatible with ejaculation within alledged post-coital interval.
3	3.5	.054	few									not compatible with ejaculation within alledged post-coital interval.
4	2.25	5.2	many	10	1:48	1/20	1/80	1/40	2-1	O	1-1	AB secretor semen donor; carries PGM_1 2 allele
5	2.5	6.2	many	12	1:32	-	-	-	2-1		2-1	non-secretor semen donor
6	2.0	1.35	many	2.7	1:150	1/4	-	-	1-1	A Sec	1-1	no definite conclusion-- data indicates vaginal fluid rather than semen as source of A activity. Semen donor most likely a non-secretor.
7	3-7	.262	many	0.5	1:763	-	-	neat		O Sec		no information about semen donor generated.


N: 122
RANGE: 14.5 - 844
INDIVIDUALS
30
20
10
0-50
50-100
100-150
150-200
200-250
250-300
300-350
350-400
400-450
450-500
500-550
550-600
800-850
ACP ACTIVITY (IU/ml)

584


N: 124
MEAN log X: 2.31, X̄=204
SD log X: 0.29
X̄ →50%
X̄ +1SD=398 → 16%
X̄ +1.3 SD=486 →10%
X̄ +2SD=776
1 → 2%
INDIVIDUALS
20
10
1.1
1.2
1.6 1.7 1.8 1.9 2.0 2.1 2.2 2.3 2.4 2.5 2.6 2.7 2.8 2.9
1.7 1.8 1.9 2.0 2.1 2.2 2.3 2.4 2.5 2.6 2.7 2.8 2.9 3.0
log ACP(IU/ml)

Gunshot Residue Case

Elizabeth Ann Schultz, Suspect
Jack E. Schultz, Victim
Murder

Background of Case

By letter dated August 25, 1976, the Oakdale, California, Police Department requested that cotton applicator swabs taken from the back of hands of the victim be analyzed for the elements antimony and barium. Antimony and barium are components of most primer mixtures and can be deposited on the hand when a firearm is discharged. After a telephonic request from the contributor, the palm swabs were also examined and the firearm involved was test fired to determine its deposition characteristics.

In summary, it was reported that no significant amounts of antimony and barium were detected on any of the swabs; barium only was present in the primer mixture of the .22 caliber ammunition involved; the firearm deposited a significant quantity of barium; and it could not be determined if Jack Schultz had discharged a firearm. However, this did not preclude the possiblity that he could have discharged a firearm and no gunshot residues were deposited on the hand or that these residues, if deposited on the hand, were removed by washing or wiping before the specimens were obtained.

In October 1976, the notes and data in this case were turned over to the defense pursuant to a court order. When a preliminary hearing was set for this case, the prosecutor requested FBI testimony because a defense expert was interpreting the FBI data to show an opinion different from ours. In the interest of justice, SA Donald Havekost testified as to his results and opinion. Peter Barnett testified for the defense. An indictment was returned and the subject was found not guilty at trial. Havekost did not testify at the trial.

On March 10, 1981, Fred Canant, private attorney, Modesto California, who was the prosecutor handling this case was contacted by SA John W. Kilty.

Canant was informed of the FBI's interest in the case. He stated that the pathologist testified that the wound in the victim was not compatible with a self-inflicted one and that there was other evidence to indicate that Jack Schultz was a murder victim. He stated that he desired to show that the absence of significant amounts of antimony and barium on the victim's hands reinforced this theory; however, Havekost maintained during his testimony at the preliminary hearing that his results were inconclusive and could not point in any direction. Canant stated that Havekost didn't do his case any good (or harm) so he decided not to call him for trial.

Gunshot Residue Case (Continued)

Observations:

1. Barnett's written paper and oral presentation state, "At the trial the FBI witness testified:" According to Havekost and Canant, Havekost did not testify at the trial.

2. Barnett's paper and speech make no mention of the pathologist's opinion or any other evidence, only that "the cumulative effect of this testimony (presumably Havekost's) was to establish that, had the victim fired the gun, there would be significantly greater amounts of barium on his hands, therefore he must not have fired the gun." Obviously, Canant did not think this was the "cumulative effect" of the testimony or he would surely have called Havekost as a prosecution witness at the trial.

3. When Barnett introduced the gunshot residue case during his oral presentation he stated, "The final case involves a question of interpretation." He then proceeded to talk about the case. In his written paper Barnett follows the quoted sentence with "and may be reasonably interpreted differently by different people."

4. Aside from the "interpretation of the data" question, it appears that Barnett misrepresented the Laboratory's role in this case by failing to mention the pathologist's opinion, stating that Havekost testified at a trial and generally leaving the impression that Havekost's testimony misled the "trier of fact."

5. The Laboratory stands by the interpretation Havekost made of the data gathered in this case. It is our opinion that other persons doing GSR work would reach the same "no conclusion." As a point of information, our general policy for the past two years has been to not examine swabs for gunshot residue when the primer mixture does not contain both antimony and barium. It is our firm conviction that the absence of significant amounts of antimony and barium on the hands of a suspected shooter should not infer that that person did not discharge a firearm.

6. Mr. Barnett quotes the FBI examiner as testifying, "I could not determine whether or not the individual from whom these swabs were taken had discharged a firearm." According to the actual transcript, Mr. Barnett himself testified as follows:

Question (Defense Counsel): "So in other words, you can't tell whether he did or did not fire the gun?"

Answer (Mr. Barnett): "You certainly couldn't make a definite conclusion one way or the other, that's right."

Mr. Barnett's discussion of this case in his paper is clearly inconsistent with the sworn testimony. It should be noted that Barnett also testified that he had no actual experience in GSR examinations and that his knowledge in this area was based on his readings of the literature.

Photographic Examination Case

ABDULLAH MUHAMMAD
Bank Robbery

The evidence in this matter was submitted to the Laboratory by airtel May 10, 1979, and involved both document and photographic comparisons. The photographic examination was completed on 6/28/79, the report to Anchorage is dated July 11, 1979.

The photographic comparison included shoes, pants, ski mask and a gym bag. It was determine that the shoes (K1), pants (K2) and ski mask (K3) were either the same style and/or similar to the comparable items depicted in the Q1 role of surveillance film from captioned robbery. Positive identifications were not made because of the lack of specific individual characteristics.

It was further determined that the gym bag (K4), was the same bag as depicted in the Q1 film. At trial (7/30-8/3/79), the examiner did produce a display depicting photographs of the bag as depicted in the questioned film and those made in the Laboratory. It was explained that the display was strictly for purposes of explanation to the court and jury. The examination was all inclusive and not limited to the display photos.

An examiner with a Bachelor's Degree in Photography, a M.S. in Forensic Science and 10 years of FBI Laboratory experience should certainly know the difference between class and individual characteristics. It is surmised that Barnett made the statement about his not knowing the difference because Barnett considers all the characteristics to be class while the examiner and other experienced photo examiners, also found sufficient individual and identifying characteristics for an identification.

While the examiner states he had never before (or since) examined a bag exactly like the K4 bag, he has conducted thousands of comparisons utilizing the same training and methods. It is not practical for FBI Laboratory examiners to go about securing similar or comparable items for comparison or to determine methods of manufacture as Barnett suggests we should because of time and cost.

In this matter the examiner testified as an expert, was so accepted by the court and defense and subsequently rendered his "expert opinion".

Barnett's paper suggests that the entire examination was based upon only those characteristics shown in the display which is not true as previously explained. Additionally, the identification was based upon the location of the horizontal and vertical pattern to the edges of the bag. It was noted that the pattern was not symmetric which indicated that the manufacturer made no attempt to match patterns, etc. Therefore, the class characteristics become individual ones. Mr. Barnett has either overlooked that or refuses to accept it. This is the same philosophy which is utilized for photo comparisons of shirts, plaid jackets, etc. The random pattern match makes the characteristics unique.

The court transcript indicates the qualifications and experience of the FBI analyst and are clearly and fully set forth as is his definition of class characteristics and individual characteristics.

Hair Examination Case

U. S. vs. Michael Kennedy
Murder

In the case U. S. vs. Michael Kennedy, the hair examinations were conducted by SA Frederick J. Wallace. It is noted that there were three trials in this case, two mistrials before a conviction on the third trial. After the first trial SA Wallace suffered a heart attack, thus causing the need for a re-examination of the items of evidence. The re-examinations were conducted by SA Robert E. Neill.

SA Wallace testified that he identified three head hairs removed from the victims clothing that matched the head hairs from the suspect. His notes indicate that he found a fourth head hair that exhibited marked similarities to the head hairs from the suspect. When SA Neill re-examined the items he advised that, in his opinion, the fourth hair was within the range of characteristics exhibited by the known head hair from the suspect and he testified that, in his opinion, this hair was also a match and could have originated from the suspect.

Mr. Barnett indicates a discrepancy in the Agents testimony with regard to the bleaching of the hairs and whether or not the questioned hairs were forcibly removed. The possibility does exist that SA Wallace could have become confused, due to the voluminous amount of notes and the long periods of direct examination and cross examination, with respect to the roots being forcibly removed. With regard to bleaching, there was a discussion between SA Wallace and SA Neill as to whether or not the areas of bleaching on the hairs was the result of sun bleaching or chemical bleaching. In a discussion with AUSA Thomas Coffin, the prosecutor in this case, he advised that these "discrepancies" did not relate to the court issues and in fact, were never issues at all. They were resolved during the second trial and the bleaching of the hair and the hairs being forcibly removed never came up in the third trial - the trial in which the conviction was obtained. AUSA Coffin further advised, and the record indicates also that the identification of the hairs was made by both FBI experts and, in fact was agreed to by Charles Morton, the hair examiner for the defense. All three of these individuals arrived at the same conclusion with respect to the substantive issue of the trial concerning the association of the questioned hairs with the known sample of the suspect.

Mr. KELLEHER. As regards the comments made by Mr. McCrone, which I read in his statement, I would at this time like to explain what our relationship is with Mr. McCrone.

Mr. McCrone operates a private laboratory in the Chicago area. He is extremely proficient in the utilization of microscopy, of a microscope, and those techniques that are used to best illuminate and best display those objects that are being looked at through a microscope to obtain the best results from them.

Mr. McCrone has provided instruction in the use of these microscopes, and for many years enjoyed an outstanding—has enjoyed an outstanding reputation in being able to do just that.

There was a time when we received an appropriation to purchase a number of new microscopes, all of which were extremely valuable to us, and we felt that since he had this capability, that we would not want our people to possibly go—to go without the benefit of his instruction in those areas. And we sent them to an instruction—rather, a session—that he had, in our area, for instruction in the use of this type of microscope.

Thereafter, I think this thing—his comments begin to lose perspective, because Mr. McCrone is not an expert in all of the areas of criminalistics that we address in our laboratory, and a number of the people that were present were from different disciplines. There may have been people there from firearms; and others from microscopy, the microscopic unit; others from serology; and they were there just for that purpose.

They were not there to gain any particular instruction in their specific scientific discipline, because we are of the opinion that he was not now and never has been competent in some of these other areas.

When the people returned to our laboratory and we received information from him, there was no idea that there was a proficiency testing afoot, or even that these things—that the communications from him should be responded to. I feel that he has really overstepped himself in his evaluation of the competency of laboratories.

The proficiency testing that was done by LEAA showed us, indeed, that all laboratories were not proficient in certain of the disciplines involved in the broad field of criminalistics.

But these laboratories, many of them that responded, would not have conducted such an examination if that particular evidence had been sent to them; they would have forwarded it either to us or to another laboratory that they knew had that capability. It was an opportunity that they took to test themselves, or—"Let's try out the new man and see whether or not he can handle this type of thing, and maybe we can broaden our capability"—or that the results were very useful to him.

And we, after several of these examinations, or several of these proficiency tests, we began for a while there to receive a little bit more than we normally got in the way of materials from other people—but that leveled off, ultimately.

Why he chose to couch his criticisms in the terms he did, I am really at a loss to explain, and I don't think you can find it in any records. I do believe it was just that he had a sour perception, frankly, of our organization. That's the best I can give you.

Mr. BOYD. In your March 23 letter to majority counsel, which is submitted to the subcommittee for the record, you made reference to a more complete evaluation of Mr. Barnett's paper. Was that included among the materials which you submitted? And if not, would you please submit it?

Mr. KELLEHER. We will be pleased to submit that, a complete response to all of these comments.

Mr. BOYD. To what extent, Mr. Kelleher, does the FBI ever serve as a training ground for State and local jurisdictions who have established their own laboratories? How effective are those State and local laboratories?

Mr. KELLEHER. Would you ask that question again?

Mr. BOYD. To what extent does the FBI serve as a training ground and serve to train local and State laboratory personnel?

Mr. KELLEHER. We have basically three major functions in addition to our actually on-site support function of our investigative organization. They are in the examination of casework, in scientific and specialized training, and in research.

We have fully committed ourselves to the course that we set out for ourselves back in 1974: To provide scientific and technical training for State and local laboratories whenever and wherever possible within our budget limitations. In 1977, we had approval, or had established this program, with constant communication and guidance from State and local laboratories. We have established a program of offering specialized scientific training in those areas that we felt were most in need. And during several symposia that were held—and I have here the report of the first symposium, dated January 17, 1974, and the report of the second symposium, that I would like to introduce to the record, if I may.

Mr. EDWARDS. Without objection, they will be received.

[The information referred to follows:]

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

FBI LABORATORY PARTICIPATION IN THE LEAA SPONSORED PROFICIENCY TESTING PROGRAM CONDUCTED BY THE FORENSIC SCIENCES FOUNDATION, INC.

1974 - 1977

FBI LABORATORY

INTRODUCTION

In 1974, the Forensic Sciences Foundation, under a grant from LEAA, established a nationwide voluntary Proficiency Testing Program involving the Nation's crime laboratories. This project was the first to conduct proficiency testing of criminalistic laboratories on a nationwide basis. Laboratories had the opportunity to judge their performance in examining controlled substances, blood, paint, glass, hairs, fibers, firearms, physiological fluids, questioned documents, wood, arson accelerants, soils and elemental analysis of metal. The project, which was initiated by the members of the criminalistics community, had the objective of researching the methodology and feasibility of crime laboratory proficiency testing.

The participating laboratories were assigned an identifying code number for each examination conducted. This insured the anonymity guaranteed by the Forensic Sciences Foundation and also allowed each laboratory to compare their performance against others receiving the same samples.

The FBI Laboratory participated in 18 of the 21 different test samples from 1975 to early 1977, and was the referee laboratory in 5 of these. There were no improper conclusions made by the laboratory as reflected by those results published by the Forensic Sciences Foundation. The Laboratory decided to discontinue its participation in as much as the tests involved were an additional burden on Bureau resources not directly related to casework, and it was felt that the Laboratory would not stand to benefit from further participation.

The following pages contain a copy of the completed data sheets for each proficiency test in which the FBI Laboratory participated. Along with each data sheet are comparison comments showing the FBI Laboratory findings and those of the sample suppliers and referee laboratories. The source of these comparison comments is the final report for each proficiency test which was provided by the Forensic Sciences Foundation.

PROFICIENCY TESTING PROGRAM

Lab Code A- 516

PROFICIENCY TESTING PROGRAM

TEST NO. 1

Examine according to your normal laboratory procedures and complete portion(s) below which complies with your laboratory policy.

1. (a) What is the controlled (narcotic or dangerous drug) substance Pentobarbital

(b) Indicate method(s) used.
1. Koppanyi
2. Ultraviolet - Spectrophotometry
3. Infrared - Spectrophotometry
4. Thin layer Chromatography
5. Gas Chromatography

2. (a) Please add any other data (quantitative-qualitative) that you routinely develop.
60% Pentobarbital as Free acid. Extraction + Ultraviolet Spectrophotometric Scan For other drugs was negative.

(b) Indicate method(s) used.
Δ Abs. 260 mμ of Pentobarbital curve on Ultraviolet Spectrophotorel at 13.0 & 10.5 ph. Concentration determined From standard calibration graph.

IMPORTANT

DO NOT SIGN THIS DATA SHEET OR IN ANY OTHER WAY IDENTIFY YOUR LABORATORY.

RETURN COPY TO: KENNETH S. FIELD, FORENSIC SCIENCES FOUNDATION, SUITE 515, 11400 ROCKVILLE PIKE, ROCKVILLE, MARYLAND 20852.

Chemistry Unit

Controlled Substance

Test No. 1

Findings:

FBI	Supplier of Sample	Two Referee Labs
60% pentobarbital	74 ± 5% sodium pentobarbital	Same as supplier

NOTE: FBI data sheet was not included in the Proficiency Testing report No. 1. At the time this proficiency test was completed, the Laboratory had not yet decided to officially participate in this program.

FIGURE 3

DATA SHEET - TEST #2

LAB CODE A-_____

☐ CHECK HERE (AND RETURN IF YOU DO NOT PERFORM FIREARMS ANALYSIS)

DATA SHEET

PROFICIENCY TESTING PROGRAM
TEST NO. 2

Examine according to your normal laboratory procedures and complete portion(s) below which complies with your laboratory policy.

I. PROBABLE WEAPONS(S)

1. *This question refers to the projectile identified with a three digit number.*

What is the most probable weapon(s) from which this projectile was fired (type - make - model - caliber)?

2. *This question refers to the cartridge case identified with a three digit number.*

What is the most probable weapon(s) from which this cartridge case was ejected (type - make - model - caliber)?

- 2 -

3. *This question refers to the cartridge case identified with an "C".*

What is the most probable weapon(s) from which this cartridge case was ejected (type - make - model - caliber)?

4. *This question refers to the projectile which has no special "test" marks.*

What is the most probable weapon(s) from which this projectile was fired (type - make - model - caliber)?

LAB CODE A-_____

DATA SHEET

PROFICIENCY TESTING PROGRAM
TEST NO. 2

II. ADDITIONAL INFORMATION ROUTINELY DEVELOPED

1. Projectile marked with three digit number

a. Other Data (Numbers of lands, grooves, direction of twist, weight, dimensions, caneluire, probable load, etc.)

b. Indicate Methods

2. Cartridge case marked with three digit number

a. Other Data (Position of extractor, ejector, form of firing pin impression, etc.)

b. Indicate Methods

3. Cartridge case marked with an "A".

a. Other Data (Position of extractor, ejector, form of firing pin impression, etc.

b. Indicate Methods

4. Projectile with no special "test" marks

a. Other Data (Number of lands, grooves, direction of twist, weight, dimension, caneluire, probable load, etc.)

b. Indicate Methods

IMPORTANT

DO NOT SIGN THIS DATA SHEET OR IN ANY OTHER WAY IDENTIFY YOUR LABORATORY.

RETURN TO:

KENNETH S. FIELD
FORENSIC SCIENCES FOUNDATION, INC.
11400 ROCKVILLE PIKE, SUITE 515
ROCKVILLE, MARYLAND 20852

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Firearms Unit

Firearms Evidence **Test No. 2**

Findings: **FBI was referee lab No. 2.**
Correct with suppliers suggested answers.

NOTE: **A copy of the completed Data Sheet - Test No. 2 was not maintained by the Firearms Unit.**

599

PROFICIENCY TESTING

☐ CHECK HERE (AND RETURN) IF YOU DO NOT PERFORM BLOOD ANALYSIS

DATE RECEIVED IN LAB 3-17

DATE PROCESSED IN LAB 3/17

DATA SHEET

PROFICIENCY TESTING PROGRAM

TEST #3

HUMAN BLOOD ANALYSIS

The sample is a human blood stain, therefore we ask that you supply only the methodology you would use in answering questions 1 and 2. It is not necessary to perform the actual tests. This applies to questions 1 and 2 only.

1. Indicate the methods you would normally use to ascertain that the sample is blood

   Method(s): Benzidine and/or phenolphthalein followed by hemochromogen (Takayama).

2. Indicate the methods you would normally use to ascertain that the blood is from human species.

   Method(s): Ring Precipitin and/or Ouchterlony double diffusion (using "in house" prepared anti-serum).

Examine according to your normal laboratory procedures and complete portion(s) whic comply with your laboratory policy.

3. a. What is the ABO factor? B

b. Indicate method(s) used: Howard and Martin (Acetate Sheet) for agglutinogen.

Lattes (crust test) for agglutinin.

* Inhibition would also have been used had sample size permitted

4. If your laboratory has the capabilities to perform any other grouping or subgrouping procedures (such as MN, Rh, or isoenzymes, etc.) run any or all of them and report your findings here. (For each grouping or subgrouping identifi please indicate the methods used. Attach additional sheets if necessary.)

Group: MN

Method(s): Howard and Martin (Acetate Sheet)

Group: Rh ($C^+ D^+ E^+ c^+ e^+$) Modification of ROH? method; threads mounted on acetate sheet.

Method(s):

Group PGM 2-1 Starch gel electrophoresis.

Group EAP "A" " " " .

Serology Unit

Blood Analysis Test No. 3

Findings:

	FBI	Supplier	Ref #1	Ref #2	Ref #3
ABO factor	(same)	group B	(same)	(same)	(same)
AK		type 1		(same)	(same)
EAP	(same)	type A	(same)	(same)	(same)
Hb		type A			
Hp		Type 2-1			
MN	(same)	type MN		type M	(same)
PGM	(same)	type 2-1	(same)	(same)	(same)
Rh	(same)	Positive, Cc DEe	(same)		
Rheumatoid Arthritis Factor		Negative			

NOTE: (same) - same results as supplier.

LAB CODE #- 2 15
Lab Code 896

PROFICIENCY TESTING

☐ CHECK HERE (AND RETURN) IF YOU DO NOT PERFORM GLASS EXAMINATION

DATE RECEIVED IN LAB 4/29/75
DATE PROCESSED IN LAB 4/30/75-5/1/75

DATA SHEET

PROFICIENCY TESTING PROGRAM

TEST #4
GLASS EXAMINATION

Item A represents a glass sample taken from the scene of a burglary. Item B represents a glass sample taken from the trousers of a suspect.

1. Item A could have common origin with Item B.

☐ YES

☒ NO

☐ Inconclusive

2. What information (quantitative and qualitative) did you develop to arrive at your conclusion in No. 1?

Item A

No fluorescence in U.V. (short wave).
D=2.4911g/cc; N_C, 1.5129; N_D, 1.5157; N_F, 1.5216
Dispersion curve different shape from B.

Item B

Fluorescence on one side in U.V. (short wave).
D=2.5054g/cc; N_C, 1.5158; N_D, 1.5185; N_F, 1.5247
(We would normally stop here since A is different from B. For this study we also did density (D), refractive index (N_C, N_D, N_F.) These are also different beyond any possibility of same source as B.

Report:

The glass in specimen A is significantly different from the glass in specimen B and could not have come from the same source as specimen B.

3. Method(s) and instrument(s) used:

Fluorescence:

Short wave ultraviolet light, darkened box, observation.

Density:

Float-sink method. When equal to bromoform-alcohol mixture at 25°+ 0.1°C, used plumb bob and Christian Becker density balance.

Refractive Index and Dispersion Curve:

AOAC method using:

1. Mettler Hot Stage, FP 52
2. B & L Monochromator, quartz-iodide lamp, condenser lens
3. American Optical Phase-Star microscope with 10X eyepieces, 10X objectives, long working distance condenser

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Mineralogy

Glass Examination Test No. 4

Findings: FBI Lab was Referee Lab No. 3

Could item A have common origin with item B?

FBI	Supplier	Other Referee Labs
No	No	No

605

LAB CODE A- 896

☐ CHECK HERE (AND RETURN) IF YOU DO NOT PERFORM AUTO PAINT EXAMINATIO

DATE RECEIVED IN LAB 5/21/75

DATE PROCESSED IN LAB 6/4/75

DATA SHEET

PROFICIENCY TESTING PROGRAM

TEST #5
AUTO PAINT EXAMINATION

Item A represents a paint specimen recovered from the clothing of a dead victim found at roadside--an apparent hit-and-run victim. (Disregard metal base plate.)

Items B and C were taken from two separate suspect vehicles. (Disregard metal base p

1. Item A could have common origin with:

☐ B

☒ C

☐ Both

☐ Neither

2. What information (quantitative and qualitative) did you develop to arrive at your conclusion in No. 1?

The layer structure of the paints of A, B and C are as follo

1. Medium orange acrylic enamel
2. Medium gray primer
3. Dark gray primer

Microscopically A, B and C matched in colors and textures; however, under quantitative and qualitative analyses, it was determi that the inorganic and organic constituents of the medium orange acrylic enamel layer of A and C matched and were different from B. A and C contained nickel and no antimony. B contained antimony and nickel. The pyrolysis products of the organic portions of A matched and were significantly different from B.

83-073 O - 82 - 39

3. Method(s) and instrument(s) used:

1. Analysis of inorganic constituents was accomplished by the following instrumental means:

a. Emission spectrograph
b. Spark source mass spectrograph
c. Scanning electron microscope

2. Analysis of organic constituents was accomplished by the following instrumental means:

a. Pyrolysis gas chromatograph
b. Infrared spectrophotometer

3. Microscopic and microchemical tests were also employed on A, B and C.

DATA SHEETS MUST BE RECEIVED AT THE FOUNDATION OFFICE BY JUNE 20, 1975.

Instrumental

Auto Paint Exam Test No. 5

Findings: FBI Lab was Referee Lab No. 3. Our results were consistent with supplier and other referee labs.

LAB CODE A-896

☐ CHECK HERE (AND RETURN) IF YOU DO NOT PERFORM DRUG ANALYSIS

DATE RECEIVED IN LAB 6/13/75

DATE PROCESSED IN LAB 6/19/75

DATA SHEET

PROFICIENCY TESTING PROGRAM

TEST #6

DRUG ANALYSIS

1. The enclosed substance was a street buy. The agent needs all the qualitative and quantitative information you can give him.

The questioned powder was found to contain 3.0% heroin, 2.4% procaine, 2.1% cocaine, as free bases, mixed with lactose.

2. Indicate method(s) used:

1. Weight: 530 milligrams.
2. Spot tests: Kopponyi - negative
   FPN - negative
   $FeCl_3$ - negative
   Mecke's - green-blue (opiate)
   Marquis - purple (opiate)
   Cobalt Thiocyanate - blue (-caine)
3. Infrared spectrophotometry, as is, identified lactas
4. General screen for acid and neutral drugs - negative
5. Gas Chromatography - 3% OV-17 and 3% QF-1 column.
6. Thin Layer Chromatography - ethyl acetate; Benzene; NH_4OH (60-35-5).
7. Ultraviolet spectrophotometry of components purified by TLC.
8. Infrared spectrophotometry of heroin purified by col
9. Quantitation:

   GC - Heroin - 3% QF-1 at 230°C
   - Procaine - 3% QF-1 at 200°C
   - Cocaine - 3% QF-1 at 200°C
   - Chlorpromazine, internal standard
   - Amounts as free bases:

   Heroin 3.0%
   Procaine 2.4%
   Cocaine 2.1%

DATA SHEETS MUST BE RECEIVED AT THE FOUNDATION OFFICE

BY JULY 14, 1975.

Chemistry

Drug Analysis — Test No. 6

Findings:

FBI	Supplier	2 Ref. Labs
Heroin	Heroin Hydrochloride	(same)
Procaine	Cocaine hydrochloride	(same)
Cocaine	Procaine hydrochloride	(same)
Lactose	Lactose	(same)

NOTE: (same) means same as supplier.

Firearms

Firearms Evidence — Test No. 7

Findings: FBI did not participate in this exam.

NOTE: Firearms Unit caseload was over 50 per examiner and deadline passed prior to examining this test specimen.

Code 896

☐ CHECK HERE (AND RETURN) IF YOU DO NOT PERFORM BLOOD ANALYSIS

DATE RECEIVED IN LAB 8-5-75

DATE PROCESSED IN LAB 8/21-22

DATA SHEET

PROFICIENCY TESTING PROGRAM

TEST #8

BLOOD ANALYSIS

Please examine samples according to your normal laboratory procedures and complete report which comply with your laboratory policy. The checklists are intended as a convenience in filling out the report; they are not intended to suggest any specific test or battery of tests. Please add any additional information you consider pertinent to your response.

1. Have the stains been confirmed as blood?

	Item A	Item B	Methods Used:
Yes	☒	☒	☐ Color test (Specify)_____
No	☐	☐	☒ Crystal test (Specify) HEMOCHROMAGEN
Inconclusive	☐	☐	☐ Macroscopic
			☒ Microscopic
			☐ Precipitin
			☐ Other (Specify)_____

Comments: _____

2. Have the stains been confirmed as human blood?

	Item A	Item B	Methods Used:
Yes	☒	☒	☐ Electrophoresis
No	☐	☐	☒ Precipitin - tube
Inconclusive	☐	☐	☒ Other (Specify) Gel Double Diffusion

Comments: _____

3. Could Item A and Item B have originated from the same source?

☐ Yes ☒ No ☐ Inconclusive

4. What information did you develop to arrive at your conclusion in Question 3? (Attach additional sheets if necessary.) The table is provided for your convenience. It is not intended to suggest any particular test or battery of tests. Different EAP TYPE

Grouping	Item A Type	Item B Type	Methods Used:
ABO	"O"	Incon.	Howard Mactin Acetate Sheets Latter
AK (adenylate kinase)			
Amylase			
EAP (erythrocyte acid phosphatase)	AB	A	Starch gel electrophoresis
EsD (esterase D)			
Hb (hemoglobin)	Incon	Incon	Cellulose Acetate Membrane
Hp (haptoglobin)	Incon	Incon	Acrylamide Gradient
LDH (lactic dehydrogenase)			
MN	N^+	M^+	Presence of N/M and Not typed. Acetate sheet thread meth
PGM (phosphoglucomutase)	2-1	Incon	Starch gel electrophoresis
Rh	$D^+ c^+ e^+$	$D^+ c^+$	Factors only-not type. Modified RCMP thread method
Rheumatoid Arthritis factor			
S			
Other (Specify)			

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Serology

Blood Analysis **Test No. 8**

Findings:

	FBI	Supplier	Ref 1	Ref 2	Ref 3
Confirmed as blood? A and B	yes yes	yes yes	No No	yes yes	yes yes
Human Blood? A and B	yes yes	yes yes	yes yes	yes yes	yes yes
A and B from same source?	No	No	No	No	No

LAB CODE A - 896

☐ CHECK HERE (AND RETURN) IF YOU DO NOT PERFORM GLASS EXAMINATION

DATE RECEIVED IN LAB 8/19/75
DATE PROCESSED IN LAB 10/4/75

DATA SHEET
PROFICIENCY TESTING PROGRAM

TEST #9
GLASS EXAMINATION

tem A and B represent glass samples removed from the clothing of two hit and run ctims found in different locations. Item C represents glass removed from a suspect hicle.

Could Item A and B have common origin with Item C?

	Item A	Item B
Yes	☑	☑
No	☐	☐
Inconclusive	☐	☐

t information (qualitative and quantitative) did you develop to arrive at ur conclusions in Question 1? (Please check all appropriate boxes and provide values where applicable.)

	Item A	Item B	Item C
a. Color	colorless	colorless	colorless
b. Density	2.2614 gm/cc	2.2614	2.2614
c. Dispersion Curves	Yes	Yes	Yes
d. Elemental Analysis	-	-	-
e. Physical Match	-	-	-
f. Refractive Index	n_D 1.4778-20°C	1.4778-20°C	1.4778-20°C
g. Thickness	NA	NA	NA
h. U.V. Light	-	-	-
i. X-ray Fluorescence	-		
( ) Other (Specify)			

3. Please specify the methods and/or instructions which were used for those methods checked in Question 2. (Example: Refractive Index using Cargille liquids, hot stage; Density gradient tubes with mixture of bromobenzene and bromoform, etc. Attach additional sheets if necessary.)

Method: Refractive index using Dow #550 silicone oils, calibrated N. B. S. reference glass.

Method: Dispersion curves platted on Hartmann Net to determine N_D, N_C and N_F.

Method: Density using Ethanol and Bromoform to balance glass (sink-float method). Desnity of liquid determined on Christian Becker Density balance @ $25^oC \pm 0.1^oC$.

Method:

DATA SHEETS MUST BE RECEIVED AT THE FOUNDATION OFFICE BY OCTOBER 6, 1975

Mineralogy

Glass Exam Test No. 9

Findings:

	FBI	Supplier	Ref 1	Ref 2
Could A and B have common origin with C?	yes yes	yes yes	yes yes	No yes

PROFICIENCY TESTING

☐ CHECK HERE (AND RETURN) IF YOU DO NOT PERFORM PAINT EXAMINATION ~~EXAMINATION~~ Substitute # A 846

10/24/75 DATE RECEIVED IN LA
11/21/75 DATE PROCESSED IN L

DATA SHEET
PROFICIENCY TESTING PROGRAM

TEST #10A
PAINT EXAMINATION

Item B represents a paint sample removed from the door jamb of a burglarized building. I
A and C represent samples found on the clothing of two different suspects.

1. Could Items A or C have common origin with B?

	ITEM A	ITEM C
YES	☐	☐
NO	☒	☒
INCONCLUSIVE	☐	☐

2. What information (qualitative and quantitative) did you develop to arrive at your conclusions Question 1? Please check all appropriate boxes and provide values where applicable.

In the left hand column indicate the sequence (1,2,3 etc.) in which the tests were run. with an asterisk (*) the point where a conclusion was reached, even though subsequent tes were performed for confirmatory purposes.

Sequence of Testing		ITEM A	ITEM B	ITEI
_____	DENSITY STUDIES			
*5	EMISSION SPECTROSCOPY (Specify Elements Identified)			not identi A or B
_____	FLUORESCENT STUDIES			
_____	INFRARED ANALYSIS			
1	MACROSCOPIC EXAMINATION			
2	MICROSCOPIC EXAMINATION			
*4	PYROLYSIS G-C	not identical with B or C		
3	SOLUBILITY TESTS (Specify Solvents Used)			
_____	THIN LAYER CHROMATOGRAPHY			
_____	UV SPECTROPHOTOMETRY			
_____	X-RAY DIFFRACTION			
_____	X-RAY FLUORESCENCE (Count Ratio)			
_____	OTHER (SPECIFY)			

3. Please specify the information developed with each of the methods and instruments checked in Question 2. (Example: Solubility tests using HCl, H_2SO_4, Acetone and HNO_3). Please provide specific and complete responses. Attach additional sheets if necessary.

Method: Not possible to determine if A or C could have had a common or with B from macroscopic, microscopic or solubility testing. Solvents used we chloroform, acetone and diphenylamine.

Method: Gas pyrolysis chromatography (isothermal, curie point-770° C) indicates that the organic portion of A is different from B and C. The latter two are similar to each other in organic composition.

Method: Emission spectroscopy:

1. A vs. B - Similar to each other in inorganic composition.
2. A and B vs. C - Major constituents, titanium and zinc, q different. Minor constituents of lead and aluminum diffe Trace differences also noted in selenium and cadmium.

Synopsis of Differences:

A and B have more titanium than C.
A and B have less zinc than C.
Additional Comments:
A and B have more lead than C.
A and B have less aluminum than C.
C contains selenium and cadmium which were not detected in A or B.

DATA SHEETS MUST BE RECEIVED AT THE
FOUNDATION OFFICE BY NOVEMBER 26, 1975

Instrumental

Paint Exam **Test No. 10**

Findings:

	FBI	Supplier	Ref 1	Ref 2
Could A and C have common origin with B?	No No	No No	No No	No No

☐ CHECK HERE AND RETURN IF YOU DO NOT PERFORM SOIL EXAMINATIONS

DATE RECEIVED IN LAB 12/1

DATE PROCESSED IN LAB 12/8

Lab Code 398

DATA SHEET
PROFICIENCY TESTING PROGRAM
TEST #11
SOIL EXAMINATION

Item A represents a soil sample from a burglary scene. Items B and C represent samples of soil removed from the shoes of two different suspects.

1. Could Items B or C have a common origin with Item A?

	Item B	Item C
Yes	☐	☐
No	☑	☑
Inconclusive	☐	☐

2. What information (qualitative and quantitative) did you develop to arrive at your conclusions in Question 1? Please check all appropriate boxes and provide values where applicable.

In the left hand column indicate the sequence (1,2,3, etc.) in which the tests were run. Indicate with an asterisk (*) the point where a conclusion was reached, even though subsequent tests were performed for confirmatory purposes. If elemental and/or mineral composition is determined, indicate the elements and/or minerals identified.

Sequence of Testing		ITEM A	ITEM B	ITEM C
1	Color	Lt. yel. brown to yel. brown	Lt. yel. brown	Lt. yel. brow
-	Density Studies			
5	Microscopic Examination	More heavy minerals, magnetic, biatite than B or C. Limestone absent.	Similar C Limestone	Similar B Limestone
-	Emission Spectroscopy			
3	X-Ray Diffraction	Diff. from B & C	Like C	Like B
4	X-Ray Spectroscopy	Diff. from B & C	Like C (similar)	Like B (similar)
8	Other (Specify) Turbidity of washings	Settles clear 20 min.	Liquid brown 20 min.	Liquid brown 20 min.
2	pH	7.0	10.0	10.0
6	Spot tests for NO_3	Lower than B or C	Higher than A	Higher than A
7	Mineralogical	Diff. from B & C	Diff. from A	Diff. from A

Method: 1. Color - Munsell Color Chart in daylight-quality light.

2. pH - meter-micro electrodes.

3. Turbidity - The liquid above the sand is examined visually for turbidity and color of suspended matter after 20-30 minutes standing (settling) time.

4. X-ray Diffraction - G. E. diffractometer on fine portion spread on a slide, charts compared, B and C have differences apparent from chart.

4. Kevex and NS 880 XES, Elemental comparisons verified differences in Fe (Magnetite) Ca and K as indicated by X-ray diffraction and mineralogical comparisons.

5 and 7. Soils washed and liquid decanted; sand portions separated with Bromoform. Heavy minerals weighed (A, 4.2%, B, 2.9%, C, 2.4%). Minerals identified and compared with use of petrographic microscope. Limestone in B and C; not found in A. Texture of soil, general type, modal grain size all compared under low-power, incident light microscope. (A is different texture from B and C)

6. Spot tests for fertilizer materials not completed. However, the test for NO_3 showed more nitrate nitrigen as indicated by diphenylamine in B and C than in A.

4. Comments: This Laboratory advises submitting agencies to attempt to obtain and submit soil in coherent lumps because additional characteristics can be compared.

Samples B and C have additional components, probably fertilizer and limestone. This Laboratory would request additional samples from the crime scene inasmuch as the mineralogy of the soils indicates possible close proximity of A to B and C, and A could have come from an untreated area near B and C.

Mineralogy

Soil Exam **Test No. 11**

Findings:

	FBI	Supplier	Ref 1	Ref 2	Ref 3
Could B or C have common origin with A?	No No	No No	No No	No No	Yes Yes

624

FIBER EXAMINATION TEST #12

By letter dated 1/6/76, the Forensic Sciences Foundation, Inc., submitted their sample #12 which consisted of three green fiber specimens labeled "A," "B" and "C." Sample "C" was considered as being from a crime scene while samples "A" and "B" were considered as being from the shoes of two suspects.

The fibers were examined microscopically. Sample "A" was identified as wool. Samples "B" and "C" were identified as synthetic. Since "A" and "B" were obviously different from "C," no other tests were run.

It was reported that "A" and "B" were nonident with "C."

625

Microscopic Analysis

Fiber Exam

Test No. 12

Findings:

	FBI	Supplier	Ref 1	Ref 2
Could A or B have common origin with C?	No No	No No	No No	No No
Item A	Wool	Wool	Wool	Wool
Item B	Synthetic	Acrylic	Snythetic	Orlon Acrylic
Item C	Synthetic	Dacron Polyester	Synthetic	Dacron

PROFICIENCY TESTING

LAB CODE B 398

CHECK HERE (AND RETURN) IF YOU DO NOT DO PHYSIOLOGICAL-FLUID EXAMINATION.

DATE RECEIVED 3/25/7
DATE PROCESSED 3AG. 3/2
Mailed 3/2/76.

DATA SHEET
PROFICIENCY TESTING PROGRAM

TEST #13
PHYSIOLOGICAL FLUID EXAMINATION

Items A and B represent evidence collected in connection with a rape case. Please examine the items according to your normal laboratory procedures and complete portion(s) which comply with your laboratory policy. Please add any additional information you consider pertinent to your response.

1a. The stain on Item A (Blue Cloth):

☐ was examined with inconclusive results
☐ was examined and determined ☒ ~~tentatively as representing~~ TO BE CHARACTERISTIC OF a human saliva s
☐ conclusively

1b. The following tests were conducted to arrive at the answer to question 1a:

☐ Microscopic examination
☐ Phase contrast
☐ Bright field (specify stains used) _____

☐ Acid phosphatase determination
specify substrate: _____ specify dye: _____

☒ Starch amylase
☐ Microcrystalline (specify) _____

☒ Blood group determination (specify factors sought, and methods used).

Factors: "A" PRESENT
Methods used: ABSORPTION INHIBITION

☐ Other (specify) Anti-Human (Ring Precipitin)

2a. The stain on Item B (Pink Cloth):

☐ was examined with inconclusive results
☒ was examined and determined ☐ tentatively as representing a human semen
☒ conclusively

2b. The following tests were conducted to arrive at the answer to question 2a:

☒ Microscopic examination - IDENTIFICATION OF SPERMATOZOA
☐ Phase contrast
☐ Bright field (specify stains used) _____

☒ Acid phosphatase determination
specify substrate: DISODIUM MONO-PHENYL PHOSPHATE specify dye: Folin-Ciocalteu PHENOL REAGENT

☐ Starch amylase
☒ Microcrystalline (specify) FLORSUCE

☐ Blood group determination (specify factors sought, and methods used)

Factors: "A" PRESENT; PGM (1-1)
Methods used: ABSORPTION-INHIBITION; STARCH GEL ELECTROPHORESIS

☒ Other (specify) ANTI-HUMAN - (Ring Precipitin)

3. Additional Comments:

Serology

Physiological Fluid

Test No. 13

Findings:

FBI	Supplier	Ref 1	Ref 2	Ref 3
Saliva - Type A	Saliva - Type A	Inconclusive	Inconclusive	Saliva - Type
Semen - Type A	Semen - Type A	Semen	Semen	Semen - Type

PROFICIENCY TESTING

☐ CHECK HERE (AND RETURN) IF YOU DO NOT PERFORM ARSON EXAMINATION

Lab Code 13 395

DATE RECEIVED IN LAB 3/25

DATE PROCESSED IN LAB Sent 4/1/76

DATA SHEET
PROFICIENCY TESTING PROGRAM

TEST #14
ARSON EXAMINATION

Item B represents a piece of evidence found at the scene of an attempted arson. Items A & C were found in the back seat of a fleeing motor vehicle minutes after a silent alarm was activated at police headquarters.

1. a. Could Items A or C have common origin with Item B?

	A	C
Yes	☒	☒
No	☐	☐
Inconclusive	☐	☐

b. Does the evidence denote a conspiracy?

Yes	☐	
No	☒	No basis for conspiracy conclusion from Laboratory examination.
Inconclusive	☐	

2. What information (qualitative, quantitative and criminalistic) did you develop to arrive at your conclusion in Question 1? List the order of tests performed. Asterisk (*) the point at which a conclusion or conclusions were reached.

Sequence of Testing	Information Developed
1.	Liquid(A) flammable, room temp.; odor (A) & (B) similar to gasoline.
2.	GC Headspace on (A) and (B), similar.
*3.	GC on (A) and solvent extraction of (B), similar.
*4.	Microscopic comparison of (B) and (C) fabric.
5.	

3. a. Was an accelerant found? Yes ☒ No ☐

b. If "Yes", was it identified? Yes ☒ No ☐

Identified as: Gasoline

4. Please specify the information developed with each of the methods and instruments used.

Please provide specific and complete responses. Attach additional sheets if necessary.

Method: Physical Examination - Liquid (A) odor of gasoline, flashes at room temp.; odor similar to gasoline on (B) cloth.

Method: Headspace on (A) liquid and vapors in (B) container similar on Perkin-Elmer 900, column DC 550, capillary 100 ft.; 60°C hold 3 mins.; program 6°c/min. to 145°c.

Method: (B) fabric extracted with N-hexane, evap. to 1 ml.; 1 ul of (B) extract and .1 ul of (A) liquid on GC, PE 900; same conditions as above.

Method:

5. Additional Comments: Specimens "B" & "C" each includes a piece of white cotton fabric. Each piece is approximately 8 3/4" long. The "B" piece of fabric varies in width from about 3 7/8" to 4"; the "C" piece of fabric varies in width from about 4 1/4" to 4 3/8". A cut edge of the "B" piece of fabric microscopically matches a cut edge of the "C" piece of fabric. It was concluded that the two pieces were originally adjoining portions of the same piece of fabric.

DATA SHEETS MUST BE RECEIVED AT THE FOUNDATION OFFICE BY APRIL 23, 1976

Chemistry

Arson Exam — Test No. 14

Findings:

	FBI	Supplier	Ref 1	Ref 2	Ref 3
Could A or C have common origin with B?	Yes Yes	Yes Yes	Inconclusive Yes	Yes Yes	Yes Yes
Evidence denote Conspiracy?	No conclusion	No opinion	Yes	No	No
Accelerant?	Yes, gasoline	Yes, gasoline	Yes, gasoline	Yes, gasoline	Yes, gasoline

PROFICIENCY TESTING

LAB CODE B 398

☐ CHECK HERE (AND RETURN) IF YOU DO NOT PERFORM DRUG ANALYSIS

DATE RECEIVED IN LAB 5/11/76

DATE PROCESSED IN LAB 5/19-20/76

DATA SHEET

PROFICIENCY TESTING PROGRAM

TEST #15

DRUG ANALYSIS

1. The enclosed substance was a street buy. The agent needs all the qualitative and quantitative information you can provide.

The submitted capsule contained 0.92 grams of powder composed of .80% methamphetamine base and .35% ephedrine base mixed with sodium carbonate and ~~.otose.~~ lactose.

(Over)

2. Indicate method(s) used:

1. Spot Tests - Marquis, Kepponyi, etc.
2. Thin-Layer Chromatography - Davidow System
3. U.V. Spectrophotometry
4. Gas Chromatograph/Mass Spectrometer
5. Gas Chromatography - (Quantitation)
6. IR Spectroscopy
7. X-Ray Diffraction

DATA SHEETS MUST BE POSTMARKED BY JUNE 9, 1976

Chemistry

Drug Analysis — Test No. 15

Findings:

FBI	Supplier	Ref 1	Ref 2
methamphetamine base	d, l-methamphetamine HC1	(same)	(same)
ephedrine base	ephedrine sulfate	ephedrine HC1	(same)
sodium carbonate	carbonate	(same)	sodium carbonate
lactose	lactose	(same)	lactose

Note: (same) means same as supplier.

DATE RECEIVED IN LAB 7-17-76
DATE PROCESSED IN LAB
Lab Code 178

DATA SHEET
PROFICIENCY TESTING PROGRAM

TEST #16
PAINT EXAMINATION

Item B represents a paint sample removed from the door jamb of a burglarized building. Items A and C represent samples found on the clothing of two different suspects.

1. Could Items A or C have common origin with B?

	ITEM A	ITEM C
YES	☐	☐
NO	☒	☒
INCONCLUSIVE	☐	☐

2. What information (qualitative and quantitative) did you develop to arrive at your conclusions in Question 1? Please check all appropriate boxes and provide values where applicable.

In the left hand column indicate the sequence (1,2,3 etc.) in which the tests were run. Indicate with an asterisk (*) the point where a conclusion was reached, even though subsequent tests were performed for confirmatory purposes.

Sequence of testing		ITEM A	ITEM B	ITEM C
1	DENSITY STUDIES			
*5	EMISSION SPECTROSCOPY (Specify Elements Identified)	Ti, Fe, Si, Al, Mg, Mn.	Ti, Fe, Si, Al, Mg, Mn.	Zn * Ti, F Si, Al, Mg, M
	FLUORESCENT STUDIES			
	INFRARED ANALYSIS			
1	MACROSCOPIC EXAMINATION	similar color to B		similar color to
2	MICROSCOPIC EXAMINATION	similar color to B		similar color to
*4	PYROLYSIS G-C	A different from B		Slight variation with
3	SOLUBILITY TESTS (Specify Solvents Used) $CHCl_3$, Acetone, H_2SO_4	Insol - dye bleeds out looks different in H_2SO_4	Insol - dye bleeds out	Insol - dye bleeds out
	THIN LAYER CHROMATOGRAPHY			
	UV SPECTROPHOTOMETRY			
	X-RAY DIFFRACTION			
6	X RAY FLUORESCENCE (Count Ratio)	Like B		Like B + Z
	OTHER (SPECIFY)			

3. Please specify the information developed with each of the reagents and instruments checked in Question 2. (Example: Solubility tests using HCl, H_2SO_4, Acetone and HNO_3). Please provide brief but complete responses. Attach additional sheets if necessary.

Method: Solubility - $CHCl_2$, Acetone similar for A,B &C - dye bleeds out Diphenylamine - negative; in H_2SO_4 detect slight color difference between A chips and the B & C chips

Method: GC - on two different columns; A distinctly different from B, On one column C exhibited reproducible peak reversal and on other certain peaks were always enhanced over the ones for B.
A was eliminated at this point.

Method: SEM and XE mission Spectroscopy indicated A & B similar in elemental composition but C distinctly different with presence of zinc.
C eliminated at this stage.

4. Additional Comments:

Some time was required during initial examination of the one B chip. A variation in layer structure was noted but, after microscopic, microchemical and instrumental (GC) comparisons, it was concluded that B consisted of only one layer of paint which had been pressed and sandwiched together to give a multi-layered appearance.

DATA SHEETS MUST BE RECEIVED AT THE
FOUNDATION OFFICE BY AUGUST 9,1976

Instrumental

Paint Exam

Test No. 16

Findings:

	FBI	Supplier	Ref
Could A or C have common origin with B?	No No	No No	No No

LAB CODE 731

☐ CHECK HERE (AND RETURN) IF YOU DO NOT PERFORM METAL EXAMINATION

DATE RECEIVED IN LAB____

DATE PROCESSED IN LAB____

DATA SHEET
PROFICIENCY TESTING PROGRAM

TEST #17
METAL EXAMINATION

Items A, B, and C represent metal samples submitted in connection with a criminal case.

1. a) Could Items A and B have a common origin?

☐ Yes
☐ No
☐ Inconclusive

b) Could Items A and C have a common origin?

☐ Yes
☐ No
☐ Inconclusive

c) Could Items B and C have a common origin?

☐ Yes
☐ No
☐ Inconclusive

2. What tests were employed to answer Question 1? (Please be specific, e.g. emission spectroscopy, energy dispersive X-Ray, etc.) Use page 4 if additional space is required.

a._____

b._____

c._____

d._____

3. Please report any elemental data (both qualitative and quantitative) developed in the analysis of Items A, B, and C. Report quantitative data in either % by weight or ppm. Indicate which instrumental techniques identified each element reported.

ITEM A			ITEM B			ITEM C		
Element	Instrument	Quantity	Element	Instrument	Quantity	Element	Instrument	Quar

4. If particular elements were sought but found not to be present in Items A, B, and C, please indicate those elements below.

ITEM A		ITEM B		ITEM C	
Element	Instruction	Element	Instruction	Element	Instruction

Elemental

Metal Exam Test No. 17

We did not participate.

NOTE: Deadline passed before test completed.

LAB CODE 828

☐ CHECK HERE (AND RETURN) IF YOU DO NOT PERFORM HAIR EXAMINATION

DATE RECEIVED IN LAB 9/30/7

DATE PROCESSED IN LAB 10/8/7

Mailed 10/14/76

DATA SHEET
PROFICIENCY TESTING PROGRAM

TEST SAMPLE #18
HAIR EXAMINATION

The hair samples A, B, C, D and E were collected in connection with a criminal investigation.

1. Please provide species origin for each hair sample.

Sample A Dog

Sample B Cat

Sample C Elk

Sample D Bovine

Sample E Mink

2. Please specify the methods used to answer question 1.

1. Ordinary brightfield transmitted light microscopy of each specimen. Hairs mounted in Permount. Longitudinal views only.
2. Scale casts made of samples "C" and "E."
3.

3. Does your laboratory have a reference collection of hairs?

☒ Yes ☐ No

If "Yes", is this your own "in-house" collection or a commercially available collection?

☒ "in-house" ☐ commercial

Please specify_____

4. Additional Comments:

DATA SHEETS MUST BE POSTMARKED BY OCTOBER 31, 1976

644

Microscopic

Hair Exam Test No. 18

Findings: (Quick Report Only)

FBI	Quick Report
Dog	Dog
Cat	Cat
Elk	Deer
Bovine	Cow
Mink	Mink

645

LAB CODE 810

PROFICIENCY TESTING

☐ CHECK HERE (AND RETURN) IF YOU DO NOT PERFORM WOOD EXAMINATION

DATE RECEIVED IN LAB 11/22/76

DATE PROCESSED IN LAB 11/23/76

Mailed — 12/1/76

DATA SHEET
PROFICIENCY TESTING PROGRAM

TEST #19
WOOD EXAMINATION

Items A, B, and C represent wood samples submitted in connection with a criminal case.

1. a) Could Items A and B have a common origin?

☐ Yes
☒ No
☐ Inconclusive

b) Could Items A and C have a common origin?

☐ Yes
☒ No
☐ Inconclusive

c) Could Items B and C have a common origin?

☐ Yes
☒ No
☐ Inconclusive

2. Please indicate species for:

Item A Western Fir

Item B Hard Maple

Item C White Pine

- 2 -

3. Please indicate methods used:

☐ Simple magnifier Magnification_____

☒ Compound microscope Magnification 63X - 400X

☒ Transmitted light

☐ Reflected light

☐ Other (please specify) _____

_____

4. Additional comments:

Microscopic

Wood Exam Test No. 19

Findings: (Based on Quick Report only)

FBI	Quick Report
No	No
No	No
No	No
Fir	Fir
Maple	Maple
Pine	Pine

CONTINUED

7 OF 10

LAB CODE 285

☐ CHECK HERE AND RETURN IF YOU DO NOT PERFORM QUESTIONED DOCUMENT EXAMINATION.

DATE RECEIVED IN LAB 11/17/76
DATE PROCESSED IN LAB 12/22/76
Mailed to K - 11/20/76
Designated entry.

DATA SHEET
PROFICIENCY TESTING PROGRAM

TEST #20
QUESTIONED DOCUMENT EXAMINATION

TRANSMITTAL LETTER BY EVIDENCE SUBMITTER

The victim in this case has had several arguments with fellow workers. It is suspected that one of these workers sent the enclosed threatening letter and envelope.

Samples are enclosed:

- handwriting of four fellow employees
- typewriting from three typewriters used where all those involved worked

You are asked to determine which (if any) of the suspects prepared the handwriting on the threatening letter as well as which of the typewriters (if any) had been used to prepare the typewriting on the letter and envelope.

NOTE: All materials have been handled by several people. It is not necessary to examine documents for fingerprints or palmprints. In addition, please disregard the fact that the questioned letter, "Q", has not been folded or rolled.

ENCLOSURES: Questioned envelope
Questioned letter, marked "Q"
Handwriting specimens: 4 standard specimens from each of 4 suspects, marked by B, C, D and E.
Typewriting standards, marked 1, 2 and 3 prepared on:

1. Royal Upright NHP #5866314
2. IBM Selectric #9370467
3. IBM Selectric D.C. #122596, SN#26-214-1243

1. Did any of the suspects execute the handwriting on the questioned letter?

[X] Yes	If "yes", which one?	[X] B
[ ] No		[ ] C
[ ] Inconclusive		[ ] D
		[ ] E

2. Was any of the three typewriters used to prepare the envelope?

[X] Yes	If "yes", which one?	[X] 1
[ ] No		[ ] 2
[ ] Inconclusive		[ ] 3

3. Was any of the three typewriters used to prepare the questioned letter?

[ ] Yes	If "yes", which one?	[ ] 1
[ ] No		[ ] 2
[X] Inconclusive		[ ] 3

4. Could any of the three typewriters be excluded as having been used to prepare the questioned letter?

[X] Yes	If "yes", indicate which one(s)	[X] 1
[ ] No		[X] 2
[ ] Inconclusive		[ ] 3

5. Please explain any factors or observations which influenced the development of your opinion. (Attach additional sheets if necessary.)

Although the #3 IBM Selectric II typewriter element (Ball) was probably used to prepare the letter, it could have been used on any other typewriter of the same model lacking in internal mechanical or electrical malfunctions and with the same end result. For this reason, the #3 typewriter could not be positively identified.

6. Does your laboratory maintain a reference file of typewriting standards? [X] Yes [ ] No

Please describe briefly: This laboratory maintains a visible reference file of typewriting standards, both domestic and foreign, as well as information supplied by typewriter manufacturers and distributor concerning models, dates of production, etc.

7. Additional Comments: (Attach additional sheets.)

Documents

Questioned Document Exam

Test No. 20

We were referee lab.

LAB CODE 123

☐ CHECK HERE (AND RETURN) IF YOU DO NOT PERFORM FIREARMS EXAMINATION

DATE RECEIVED IN LABORATORY 2/8/77

DATE PROCESSED IN LABORATORY 2/9/77

DATA SHEET

PROFICIENCY TESTING PROGRAM
TEST #21

FIREARMS EXAMINATION

Examine according to your normal laboratory procedures and complete portion(s) elow which complies with your laboratory policy.

All bullets are marked with a letter on the base; the wrapping for each bullet is lso marked with the same letter as appears on the base of the bullet.

1. BULLET COMPARISONS

a. Which, if any, of the three projectiles were fired from the same gun?

☐ None

☒ Projectiles fired from same gun
(List letters)

M

N

☐ Inconclusive
Explanation of inconclusive answer:

2. ADDITIONAL COMMENTS:

Specimens "C", "M" and "N" are .25 Auto caliber bullets of Winchester-Western manufacture. It is pointed out that bullets such as these have been loaded into cartridges bearing the trade names Federal and Browning.

Specimens "M" and "N" were identified as having been fired from one weapon.

Although specimen "C" bears rifling impressions such as those in "M" and "N", nothing was found to indicate that "C" had been fired from the weapon which fired "M" and "N". There are some microscopic marks of possible value on "C" for comparison purposes.

Among the weapons which produce rifling impressions such as those in "C", "M" and "N" are Astra, Colt, PAF "Junior" and Raven Arms Company.

DATA SHEETS MUST BE POSTMARKED BY MARCH 4, 1977

Firearms

Firearms Exam

Test No. 21

Findings:

Projectiles fired from same gun?

FBI	Supplier of Sample	Referee
M, N	M, N	FBI Lab responses were used as referee

Mr. KELLEHER. This shows the results of sessions held and chaired by State and local laboratory people that asked us to follow along certain lines and establish training areas that they felt were most needed at the time. We have now, just had ready for completion which I mentioned previously—a $7 million facility at Quantico that we feel could be utilized fully to train up to 1,200 scientists a year from a backlog of requests of approximately 3,000 that we have right now in the various areas that are described in our training manual.

Mr. BOYD. How many States and localities have competent crime laboratories to date?

Mr. KELLEHER. At present, there are approximately 240 crime laboratories within the United States—Federal, State, and local crime laboratories.

Mr. BOYD. How many are State and local, and not Federal?

Mr. KELLEHER. This would be an estimate at this time, but I think almost all of those are State and local crime laboratories—240.

Mr. BOYD. Thank you. I have no further questions.

Mr. EDWARDS. I might have a couple, Mr. Kelleher. I think you understand that this committee recognizes that you have a splendid lab, and that it is undoubtedly the best in the world, and you are to be complimented on that.

I must add, however, that twice when the General Accounting Office made suggestions you have turned them down point blank, and that you also do not have even a basic blind testing system within your organization. And I am sure we're going to talk about that in the future.

Being outsiders, it bothers us, because how do you know you don't have some people there that aren't doing a good job? You haven't proven at all that your system of testing is—reliable. It is hard for us to understand, and for the layman to understand, how or why your system of testing is terribly reliable.

Do you want to respond to that?

Mr. KELLEHER. I think, Mr. Chairman, basically, if that perception bothers you, and it bothers other people, then it is up to us to undo that, in a blind testing program. If it would encourage—or put that to rest, we would be pleased to look into it. And we will be happy to report on its progress at the next meeting.

Mr. EDWARDS. I wouldn't want to suggest to the lawyers that they use that when they are attacking your examiners, but knowing that, if I were a defense lawyer, I might bring it up a few times.

But I do have one last question before I yield. How do you know that your people are keeping up-to-date? Do you have them in universities for refresher courses in forensic science?

Mr. KELLEHER. Indeed, we do. We do have liaison with several universities right now. Many of the courses that we give are accredited by the University of Virginia.

Mr. EDWARDS. How about your taking courses?

Mr. KELLEHER. We initiated a program within our laboratory in 1968 with the George Washington University and established a master's degree in forensic science, and we were very pleased to see that develop into a forensic science department, and I've served on

the faculty of that department and lectured to people both in our laboratory and other Federal laboratories. I received my master's degree in forensic science in 1971, and I think we are well over 100 in the number of people that have completed this master's course in this one university.

We maintain constant liaison with the faculty of the University of Virginia, and Dr. Willard Harrison is our direct scientific counterpart. He is the chairman of the chemistry department of the university, and we have taught in such institutions as Antioch College, when they began their program here in Washington. Our examiners and several of our technicians are on the faculties of local universities constantly, exchanging information. We look forward to really improving this relationship and taking full advantage of it at our forensic science training facility at Quantico.

Mr. EDWARDS. And do you go to England to check with Scotland Yard, as well as Germany and Japan?

Mr. KELLEHER. We have now recently received communication and will be responding to the Home Office Central Research Establishment in the United Kingdom. I have myself attended forensic science meetings of Interpol, and we have—my predecessor from whom I just took over in late February, and early March, has just recently completed a tour of laboratories in both Germany or throughout Europe, and with this research establishment. We hopefully will have going with them an exchange program shortly. We do exchange scientific results and most recently have completed research on a technique which permits us to determine sex from a bloodstain—sex of the individual, from a dried bloodstain, and we intend to share this as quickly as possible with the scientific community.

Mr. EDWARDS. Well, we are pleased to hear that. Mr. Kastenmeier, do you have any questions?

Mr. KASTENMEIER. No, I don't.

Mr. EDWARDS. Well, thank you. We have some more witnesses on another subject, but Mr. Kelleher and your colleagues, we thank you very much for a most valuable session.

Mr. KELLEHER. Thank you, Mr. Chairman.

[Pause.]

Mr. EDWARDS. Hello, Mr. Monroe, we are delighted to welcome Charles P. Monroe, Assistant Director, Criminal Investigation Division, Federal Bureau of Investigation.

Are you accompanied by Mr. Gilbert?

Mr. MONROE. Mr. Gilbert had another commitment come up, and I have with me Mr. James Frier. Mr. Frier has direct supervision over our investigation on Indian reservations in the Department.

Mr. EDWARDS. We welcome you, Mr. Frier, too. Previous witnesses on this subject urged that there is currently a duplication of law enforcement effort on Indian reservations. We are hopeful that perhaps a greater share of the responsibility for the detection and investigation of major crimes can be shifted to tribal authorities. We could thereby encourage local participation in what is most certainly a local concern, as well as free the much needed resources of the FBI for other vital tasks.

Mr. Monroe, we welcome you again. You may proceed with your testimony.

TESTIMONY OF CHARLES P. MONROE, ASSISTANT DIRECTOR, CRIMINAL INVESTIGATION DIVISION, ACCOMPANIED BY JAMES FRIER, CRIMINAL DIVISION, FEDERAL BUREAU OF INVESTIGATION

Mr. MONROE. Thank you, Mr. Edwards. I would like to read a brief statement and then answer questions that the committee may have.

Mr. Chairman and members of the subcommittee, I am pleased to appear before you today to discuss the Federal Bureau of Investigation's jurisidiction over crimes committed on Indian reservations. In order to present this jurisdictional responsibility, I would like to briefly discuss the legal authority, jurisdiciton, and investigative policy currently and historically governing the FBI on Indian reservations.

Concerning the legal authority, the Constitution of the United States gives Congress the authority to regulate commerce with the Indian tribes. There are reserved for federally recognized tribes, some 55 million acres of land in the United States. This land is held in trust by the United States for the benefit of the Indian people. The executive branch's responsibility to protect and preserve Indian land and natural resources and other related rights, derived from treaty, Federal statute, or case law, exercises this trust responsibility through the Department of Justice and the Department of the Interior.

As early as 1790, the Indian Trade and Intercourse Acts were passed providing for Federal criminal jurisdiction over Indian land transactions and requiring Federal licensing of trade with Indian tribes. The Indian Trade and Intercourse Acts were enhanced by the General Crimes Act, now codified as title 18, United States Code, section 1152, describing the laws governing Indian country. The General Crimes Act, later modified to the Major Crimes Act, now applies laws applicable to Federal enclaves in Indian country, with the exception of crimes committed by one Indian against the person or property of another Indian, Indians punished by the local law of the tribe, and areas specifically reserved to tribes by treaty as being within their exclusive jurisdiction.

The Federal Government has exclusive jurisdiction over approximately 90 Indian reservations on which approximatley 500,000 Indians reside. There are also large numbers of non-Indians residing on reservations. Law enforcement reponsibilities are divided between the Department of Justice and the Department of the Interior. Within Interior, the Bureau of Indian Affairs through its Division of Law Enforcement Services, provides police and other law enforcement personnel for most of the Indian reservations within Federal jurisdiction.

A number of tribes provide their own tribal police. Within the Department of Justice, the FBI investigates major crimes and other Federal crimes which occur on Indian reservations, and the U.S. attorneys prosecute those crimes. In addition to the Federal Government and the tribes, States normally have limited jurisdiction on reservations. However, Public Law 93-280, has authorized certain States jurisdiction over crimes committed on Indian reservations in that State.

The FBI is charged with the responsibility of investigating violations of all Federal statutes not specifically assigned by Congress to any other Government agency. Violations specified in title 18, United States Code, section 1153, occurring in Indian country, with the exception of violations relating to the liquor and narcotics laws are investigated by the FBI. The Department of the Interior is specifically authorized by congressional enactments to investigate the latter offenses.

Up to four law enforcement agencies may provide services on Indian reservations. These are the FBI, the BIA, tribal police, and State police.

The State police play a nominal role in law enforcement on most reservations. Except in States which have acquired jurisdiction pursuant to Public Law 93-280, State jurisdiction is limited to reservation crimes where both the offender and the victim are non-Indian. A number of tribes have arrangements with State police to patrol State highways crossing the reservation. The normal practice is to cite Indians into tribal courts and non-Indians into State courts.

The FBI does not "police" Indian reservations, except in unusual situations. It is not a peacekeeping force. The role of the FBI is to investigate violations of Federal law, primarily under the Major Crimes Act, title 18, United States Code, section 1153. The day-to-day responsibility for reservation law enforcement is with the BIA and the tribal police. Most reservations have tribal police forces under the direction of a police chief appointed by tribal government. The tribal police are paid either through tribal funds or BIA money which has been awarded to the tribe on a contract basis for law enforcement purposes. The current trend is for the BIA to provide police services through awarding contract money to the tribes.

During the 1970's numerous civil disturbances on Indian reservations erupted causing considerable violence and extensive property damage. The most recent occurred on the Red Lake Indian Reservation in Minnesota in May of 1979 and resulted in the loss of two lives and considerable property damage. The FBI's role in this disturbance was strictly investigatory, and we did not enter the Red Lake Indian Reservation to conduct criminal and civil rights investigations until order had been restored.

This response resulted in serious criticism of the FBI by local law enforcement and citizenry; the product of which caused the FBI in conjunction with the officials of the Department of Justice to draft a memorandum of understanding between concerned law enforcement organizations and to clarify the responsibilities of tribal police and the BIA of the Department of the Interior. This memorandum was signed by the Departments of the Interior and Justice during January of 1981 and ideally will serve to avoid future misunderstanding and also provide more responsive services to Indian reservations subjected to civil disorders in the future.

The memorandum provides that the initial reactive responsibility to quell civil disorders rests with the tribal police and the BIA. In the event they are unsuccessful in restoring order, the Department of the Interior may then request assistance from the Attorney General. The Attorney General will then decide whether to

restore order either through use of civilian or military forces. The Special Operations Group of the U.S. Marshal Service is available to the Attorney General as the civilian force, if the need arises. The FBI will not enter the reservation to conduct criminal and/or civil rights investigations until order has been restored.

On Indian reservations which do not come under the jurisdiction of Public Law 93-280, the investigations of criminal offenses committed under title 18, United States Code, section 1153, are investigated by both the BIA and the FBI. In some States, specifically Arizona and New Mexico, the Offices of the U.S. Attorneys have identified certain offenses to be completely investigated by the BIA. However, in the majority of States containing reservations under Federal jurisdiction, the Offices of the U.S. Attorneys require that investigations leading to prosecution be conducted by the FBI regardless of a prior BIA investigative effort.

The FBI investigates crimes committed on Indian reservations under the general Government crimes program. The general Government crimes program is 1 of the 11 FBI investigative programs under which 22 separate investigative classifications are budgeted and managed. In addition to crimes on Indian reservations, the general Government crimes program also investigates crimes committed on Government reservations, as well as thefts of Government property.

In recent years, in order to derive the maximum benefit of agent manpower expended on criminal case investigations, priorities were established within each investigative program to identify areas in which the FBI investigations would have the greatest impact.

It is the objective of the FBI divisions with Indian reservation responsibilities to expend the maximum utilization of manpower in the investigation of priority cases. It is the goal of FBI management that quality investigative matters occupy the majority of agent work time expended on Indian reservations. It is further the goal of FBI management that improved training of BIA and tribal police organizations will enable the investigations of lesser magnitude to be handled in a routine manner, thus enabling the FBI to concentrate on those cases requiring FBI expertise.

Mr. Chairman, I will now be glad to answer any questions which you might have.

Mr. EDWARDS. Thank you, Mr. Monroe. Mr. Kastenmeier.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

You refer to numerous civil disturbances on Indian reservations in the 1970's and more recently the Red Lake Indian Reservation in Minnesota in May 1979. Does the memorandum of understanding place the FBI in a distinctly different role than it played in the past during the 1970's with respect to Indian reservations?

Mr. MONROE. It clarifies the question as to the FBI's role in a civil disturbance situation. It would in this situation, a situation once again like, such as on the Red Lake Reservation, whether the FBI should go in and restore order, attempt to restore order, and it defines our role as investigators. And then, of course, subsequent to any investigation, should there be a prosecution and then the arrest. But we are not a law-restoring organization.

Mr. KASTENMEIER. But you say that—and I quote you, "The FBI does not police Indian reservations, except in unusual situations. It is a not a police-keeping force."

In what unusual situations do you police Indian reservations?

Mr. MONROE. The unusual one would be on the direct order of the Attorney General. It would be an unforeseeable situation that would—perhaps we would have the manpower near us. We would perhaps have some SWAT teams nearby and the Marshal Services, perhaps, could be committed to another operation, and they needed help, then the Attorney General could and would call upon us, but it would be when the available manpower that would normally respond is not available. Then our understanding is that we could be called by the Attorney General.

Mr. KASTENMEIER. Well, I understand that. That is a clarification. It wouldn't necessarily follow, satisfy, say, critics of FBI involvement to know that though, would it? If, indeed, the FBI could be brought in to police situations, and presumbly the FBI does not seek to be called into police situations. They would rather have the Marshal Service, the tribal police force or possibly even guard units or whatever, rather than for the Bureau to be policing the situations; is that not correct?

Mr. MONROE. That is quite accurate, sir. We do prefer that our role not be of riot control. First of all, our people are not specifically trained in that area. We could train them, but we go out and hire rather, educated people for primarily investigative roles, and we don't see ourselves in that role at the present point.

Mr. KASTENMEIER. Well, that is the reason I ask, is to determine whether it is necessary for the FBI in any eventuality to police Indian reservations.

Mr. MONROE. As I said earlier, I can't see normally any reason other than, if you had two or more crises going on, and your manpower was split, and the Attorney General says something has to be done at such a reservation, send three FBI SWAT teams, that hypothetical, I think, would be the only instance that I can think of, where we would respond. It is not a role we seek, sir.

Mr. KASTENMEIER. Thank you. Thank you very much, Mr. Chairman.

Mr. EDWARDS. Well, I think that the FBI would like to get out of the business of doing as much of the work it does in criminal investigations, on Indian reservations, where it can be more appropriately handled by other agencies, such as the tribal police; isn't that a general statement of what you would like to do?

Mr. MONROE. Yes, sir. Once the tribal police, the BIA offices are up to acceptable professional standards on all of the reservations, we would certainly be willing to back away and allow them to have it and provide any support that they may later need, certainly.

Mr. EDWARDS. Well, I think that we do have unanimity on this committee on both sides of the aisle that we would probably rather have you doing other work, and having the Government spend enough money and time to try to upgrade not only the tribal police but also to have courts that could handle more serious crimes too.

Now, if there is a murder or a felony robbery in a town on most of the reservations, would not the trial take place elsewhere? Take

place in a city away from the reservation, in a Federal district court?

Mr. MONROE. Yes, that is true. All of the Federal court trials would be away from the reservation.

Mr. EDWARDS. Misdemeanors are handled in the tribal courts ordinarily; is that correct?

Mr. MONROE. Yes, sir.

Mr. EDWARDS. So it is clear on its face that there is a genuine problem in putting somebody in an automobile or in an airplane and taking him or her into alien areas, where everything is strange. There is almost a problem of due process there. We are suggesting to the new Attorney General, that he think about setting up some pilot programs in areas where the tribal police are up to this responsibility and perhaps seek a change in the law that would upgrade the tribal court. But while you have this responsibility, and it is a big responsibility, how many agents do you have at one time working on the Indian matters?

Mr. MONROE. Annually, the FBI expends the equivalent of between 34 and 37 agents work-years on Indian matters.

Mr. EDWARDS. My next question then follows. How many Indians do you have who are FBI agents? How are you attempting to recruit more?

Mr. MONROE. We have 23 agents, and 18 support personnel. Twenty-three agents out of an agent force of over 7,400 agents. It is certainly a very small percentage, and we are actively trying to recruit them, as we are other minorities. And we have not had the best luck. But we do have 23 at this time, but we could certainly use more.

Mr. EDWARDS. Well, we look forward to talking to you more about that in the future.

Now when the Chairman of the U.S. Commission on Civil Rights testified before the subcommittee on March 19, he was critical of the manner in which the FBI deals with allegations of agent misconduct on the reservations. He indicated that the person making such a complaint was never advised of the outcome of the investigation; is that true?

Mr. MONROE. That is true. This is—as far as I understand it, it is the Attorney General's policy that at least a complainant is not directly advised. When there is an allegation, I would presume that if the agent had had something serious enough to be tried in court, of course, then they would see that. But it is the policy of the Director of the FBI and the Attorney General at this point, that those results are not given back to the complainant, and I'm in no position to comment one way or the other on it.

Mr. EDWARDS. Well, you might suggest to your superiors that the question was asked. Could not some communication be made of these cases, whether or not you give the results of it or not, but at least say that you have investigated the matter?

Mr. MONROE. We've recently done something similar in routine civil rights investigations on allegations against police officers. The police officers are later advised what happened to that investigation against them, so I would hope that there may be a parallel, sir.

Mr. EDWARDS. And the Commission was also critical of the lack of the zeal with which the FBI pursued the investigation of these complaints of agents' misconduct, the implication being that the FBI didn't investigate these complaints with any great zeal.

What kind of procedures do you follow when you get a complaint of agent misconduct?

Mr. MONROE. I can assure you that, first of all, it is the type of investigation that we don't like to do, because no one likes to have a problem within their organization, but because we don't like problems, we pursue them with considerable zeal. So I think that criticism is unwarranted, and they are done very thoroughly, very professionally, and very rapidly. So in case where there is a problem with persons, either they need to be removed, or the person can be found culpable. That there is no lack of zeal, I can assure the critic.

Mr. EDWARDS. Well, let's be specific. The Commission was critical about things that took place in the Wounded Knee incident and because your investigation of misconduct was handled by the very office whose agents were under suspicion. They were accused, and yet their colleagues who were working at the next desk did the investigation, and apparently no independent investigation outside of that particular office, other than a review of the record occurred. Especially when a Federal court dismissed the charges based at least partially on agent misconduct, you can see why we are concerned. How do you respond to that?

Mr. MONROE. Could I have Mr. Frier respond to that?

Mr. EDWARDS. Sure.

Mr. FRIER. Sir, after that case was dismissed by the Federal judge in that particular trial, both the Attorney General and FBI Headquarters met and determined that an internal investigation should be so conducted.

Now, this investigation was conducted by the Minneapolis office, because they are the office that covers that territory. And they do have individual—or agents available to conduct those investigations who were in no way involved with the investigation itself.

The results of those investigations were reviewed by the Attorney General and also FBI Headquarters. And based upon that investigation, it was unsubstantiated. And the Federal Government vigorously pursued an appeal of that case.

Mr. EDWARDS. What happened on appeal?

Mr. FRIER. It was overturned by the eighth circuit.

Mr. EDWARDS. So the district judge was wrong according to the circuit court?

Mr. FRIER. The circuit decided that it would be—that it would constitute double jeopardy to retry the subjects of the Wounded Knee trials, and therefore refused to entertain the Government's appeal.

Mr. EDWARDS. I think I have taken more time than I'd like to at the moment.

Mr. Kastenmeier, do you want to ask anymore questions?

Mr. KASTENMEIER. No thank you, Mr. Chairman.

Mr. EDWARDS. Counsel.

Mr. TUCEVICH. Thank you, Mr. Chairman.

You referred in your testimony—I believe it was on page 6—to a situation where the majority of the U.S. attorneys require, in your words, FBI investigations even if the Bureau of Indian Affairs or tribal police have already investigated the case. Isn't this a needless duplication of effort?

Mr. MONROE. It is certainly a duplication of effort, needless. I guess the U.S. attorney doesn't feel it is needless. But other than in our Phoenix and Albuquerque Division, all of the other U.S. attorneys with Indian reservations do require that because of what they perceive to be a lack of professionalism on the part of the tribal officers, in that territory.

Mr. TUCEVICH. Would that be your perception of the situation? Are they so inadequate that they are incapable of submitting a proper case investigation?

Mr. MONROE. Well, I don't like to criticize my brothers in the law enforcement fraternity. I would have to say that that is unfortunately fairly accurate, from what I understand, yes.

Mr. TUCEVICH. Well, wouldn't it be more likely the case that the reason that the U.S. attorneys want the FBI to be there is because they make better witnesses before a jury rather than because they investigate so much better?

Mr. MONROE. I think it is probably both.

Mr. TUCEVICH. And since the trials generally take place in U.S. district courts in a major city among people who are not of the Indian culture, an FBI agent would probably be better received by a jury than would be a BIA or a tribal police officer?

I guess what I am suggesting is that it may be more of a cosmetic than of real concern.

Mr. MONROE. It may be cosmetic, but your key witnesses are almost always going to be the Indians themselves. They're going to be your key witnesses. So cosmetic, I'm not so sure. It's going to have cosmetic—I don't see how much effect.

It is the direct testimony of the witnesses that really should be influencing the juries.

Mr. TUCEVICH. You also indicated that it is within your zone of responsibility to cover, I believe you said, 55 million acres of land. And for that you have 35 agents, between 34 and 37 agents?

Mr. MONROE. They travel a lot.

Mr. TUCEVICH. I imagine they do.

Mr. MONROE. My budget and manpower man, Mr. Groover, could answer that better.

Mr. GROOVER. The number of agents that have been cited, the 35 or thereabouts, is an accumulation of time. It is not individuals assigned to that. Wherever we have an office covering the territory, we may only have part of one agent's time devoted to Indian reservations. So this is reflective of an accumulation of time, which would be equivalent to 35 agents fulltime.

Mr. TUCEVICH. But by any standard, it would be fair to say, wouldn't it, that you are spread pretty thin?

Mr. MONROE. That is very fair to say, I would think.

Mr. TUCEVICH. So it would be logical to assume that a great deal of the investigation is now, in fact, being done by the BIA or tribal police?

Mr. MONROE. True, except for the more complex, more serious felonies.

Mr. TUCEVICH. I believe Mr. Fleming, in his testimony on the 19th, also indicated that the recommendations forthcoming from the Commission would encourage that FBI agents receive additional training in the area of Indian culture and in customs.

To your knowledge, sir, has the FBI undertaken any such program to sensitize its agents to Indian culture?

Mr. MONROE. We recently, as of last spring, spring of 1980, we had the first such program. It was up in the State of Minnesota, where we brought together agents from that immediate area who worked on Indian matters.

And we brought a Canadian cultural anthropologist down and conducted a cross-cultural seminar, which turned out to be extremely valuable to our people. It helped to narrow somewhat the cultural gap which does exist between the FBI investigator and the Indian.

And it was so beneficial that we look forward to holding something similar. We do have, although not as extensive and not as good, but we do have some training at our academy in these matters. The one in Minnesota was, beneficial and, certainly we would like to copy that in the future in other parts of the country with other tribes.

Mr. TUCEVICH. Approximately how many Indian officials, be it BIA or tribal police, does the FBI now train?

Mr. MONROE. We have—first of all, the FBI National Academy, which is, if you will, the graduate school of law enforcement, where the top law enforcement officials—state, local, and Federal—are selected to attend. And so far we have trained 25 Bureau of Indian Affairs officials there.

We try to get four in each year, and they themselves have come to us and have asked to have that doubled. At this point, we are considering that. We haven't made a decision, but we have 25 graduates at that level. And then in 1980 we had 19 separate schools out in the field, where we trained over 494, if I recall—approximately 494 tribal police and BIA officials in investigative matters.

So we have done—we have gone out and tried to expand our training. That was just during 1980. That 494 was in 1980.

We have done it in previous years.

Mr. TUCEVICH. Have you had any kind of perception or result of how effective that training has been towards upgrading their efficiencies and their capabilities?

Mr. MONROE. Especially those who attend the National Academy, which is the epitomy for state and local people. Many of those individuals have gone on to be top officials in their agencies. And we have seen that their training has been outstanding for them.

For the others, I would say that I frankly don't have a handle on it, but I'm sure that, since I know our training programs, I'm sure they have benefited, but I could not give you a specific answer or a specific example.

Mr. TUCEVICH. If I could change the subject a little bit. With respect to the *Leonard Peltier* case. There was an allegation made that certain affidavits which were procured by the FBI and later

used to extradite Mr. Peltier from Canada were, in fact, false. Has the Bureau investigated that?

Mr. MONROE. We certainly have. And with regard to the facts, Mr. Frier, to my left here, is quite knowledgeable. And there were three affidavits involved in that. And I'll have Mr. Frier address those.

Mr. FRIER. Yes, sir. Three affidavits were taken from Myrtle Poor Bear in 1976, within a span of about 1 month. The statement that the affidavits were false was misleading. What it was is that the first affidavit stated that she was not present at the crime scene, but that Leonard Peltier told her that he, in fact, had killed the two agents.

The second affidavit, which was taken about a week later, stated that she was at the crime scene, she did observe Peltier do the killings, and went into a little more detail.

In that regard, the third affidavit stated essentially the same as the second, only in sufficiently more detail.

Now, I must point out that is extremely common that a witness in a case who is fearful for their life oftentimes does not divulge everything accurately the first time, or attempts to minimize their presence as far as the activities that were investigated were involved.

And we did an internal investigation regarding the allocations of the falsified affidavits. And in our opinion, they were totally unsubstantiated. Those affidavits were taken by the agents in good faith, and no coercion of any type was ever applied to Myrtle Poor Bear.

Now, they were never used in the trial. That was a decision of the U.S. attorney prosecuting the case.

Mr. TUCEVICH. May I stop you for a moment?

You indicated no coercion was applied at all?

Mr. FRIER. No, sir.

Mr. TUCEVICH. Wasn't there an allegation made by Myrtle Poor Bear that, there was in fact, coercion applied?

Mr. FRIER. Myrtle Poor Bear turned her entire story around at the end of the trial. Her reason for that I cannot explain.

Mr. TUCEVICH. Well, I guess what I'm interested in is what particular steps did the FBI take to either substantiate or discredit her allegations?

Mr. FRIER. We did an internal investigation of the agents that took the affidavit. Following that investigation, we determined that her allegations were not accurate.

Mr. EDWARDS. Now, did that investigation come out of Washington or the field office?

Mr. FRIER. It came out of the same field office.

Mr. EDWARDS. You really, in all sincerity, think that is good practice?

Mr. FRIER. Yes, sir, I do. A field office has a lot of FBI agents involved in various investigative matters. Not every agent in Minneapolis works Indian cases. In fact, only one-fourth of them do.

Mr. EDWARDS. But they have lunch together?

Mr. FRIER. No, sir, they don't. Minneapolis covers three States, Minnesota, North Dakota, and South Dakota. The reservations are extremely removed from Minneapolis headquarters. And the general procedure would be to have headquarters agents conduct those investigations.

Mr. EDWARDS. Well, my only point is that I think the perception of a stranger or a layman—like we are, sitting up here—and the perception of perhaps a few million people who live in this country does not agree with that. When they think of the Minneapolis office, they think of people working together.

They don't think of perhaps a couple of suboffices, and so forth. So that is a problem, and I think your people ought to think more about it.

Mr. MONROE. Your comments about the perception I think I totally agree with. I can see a perception problem there since that time. Maybe not because of that reason, but since that time we have created internally the Office of Professional Responsibility, which is designed to take at least what would appear to be a much more objective look at these types of situations, and your observations concerning the agents and individuals that certainly know each other well. But it would be equally true of some people from Headquarters who've been in the FBI for a long time; they know each other well, too.

We try to do everything as objectively as possible, so if the man would come from headquarters, it is only a slightly different perception. We do try to do everything as objectively as possible, sir.

Mr. TUCEVICH. There was another incident, I believe, that has caused some consternation, and we've received innumerable letters—at least the subcommittee has—about a situation involving Anna Mae Aquash, who was found dead.

I believe that the FBI or some local police authorities performed an initial autopsy, and that the initial result indicated that she had died of exposure, however, a subsequent autopsy indicated she had died, in fact, from a bullet wound to the back of the head.

My question is: Did the FBI play any role in some way examinng the body in the first instance?

Mr. FRIER. Sir, when Anna Mae Aquash's body was found on the Pine Ridge Reservation by a rancher, it was in a state of extreme decomposition. It was very bloated and unrecognizable as to who it was. In fact, it was unidentifiable for quite a long period of time. So the body was removed to the local coroner's office, and he performed an autopsy. We played no role in that autopsy whatsoever. And he ruled that she died of natural causes.

However, after she was buried, and several weeks later, allegations arose that that was not the case. And the FBI filed a court order to have the body exhumed. And then a separate——

Mr. TUCEVICH. Was it the FBI that filed for the court order, or rather her family?

Mr. FRIER. Upon receiving information from our Identification Division that Aquash was a fugitive and wanted by the FBI, we initiated proceedings for exhumation prior to receiving any information that Aquash's relatives desired a second autopsy.

When the body was exhumed, it was examined by, Dr. Garry Peterson, Hennepin County Medical Examiners Office, Minneapolis, Minn. who determined that she had, in fact, been shot in the back of the head. Why the first coroner totally misdiagnosed the death, we don't know. It has certainly been a situation which we

are very upset about, because the FBI took a lot of pressure as far as alleged coverups because of that kind of thing.

However, let me assure you that that investigation is still continuing. And it has been pursued as vigorously as we can do it. And I believe that no criticism can be levied as to how the investigation in obtaining the identification of her killers has progressed.

We have done everything possible in that regard.

Mr. TUCEVICH. Well, has the FBI made any effort to investigate why a person performing an autopsy could not distinguish between a gunshot wound to the head or exposure as a cause of death?

Mr. FRIER. Well, it's very difficult to say why a doctor misidentifies a cause of death.

No, we did not do an investigation as to why he misread the cause of death.

Mr. TUCEVICH. Do you have any plans to do so, to initiate such an investigation?

Mr. FRIER. No, sir. It is extremely removed from the time, and I don't think anything could come of it if we did so attempt now.

Mr. EDWARDS. How do you know, if you just asked him, he wouldn't say somebody—and I'm not saying who—talked him into it or bribed him or something?

Mr. FRIER. Sir, I can't say. I really don't know just what his excuses or reasons for missing that identification were. And I really don't know what follow-up was done as to why he did it so poorly.

However, we have no involvement in that at all, and our investigation has been as aggressive as possible to solve this case.

Mr. EDWARDS. Well, I am sure it has been a pain in the neck to you; and it has been to this committee, because we get a lot of mail on it. So we wish somebody would question the doctor. Was he drunk, or what happened? It would be very interesting to see what his response would be.

Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman.

You indicated that Myrtle Poor Bear filed three affidavits; is that correct?

Mr. FRIER. Yes, sir, that's right.

Mr. BOYD. Which of those three were used to extradite Leonard Peltier?

Mr. FRIER. The last two, which were notarized by the court. And they were the only ones that were notarized by the court. For some reason, the initial one never was. They were sent under the direction of the U.S. attorney to the Canadian authorities.

Mr. BOYD. And why was she not called at the trial, aside from the fact that the U.S. attorney chose not to call her?

Mr. FRIER. Well, the U.S. attorney, in interviewing Myrtle Poor Bear, prior to when he would have used her in the trial, determined that, first of all, he didn't need her information. But even more important than that, he determined that she was an extremely emotionally and highly unstable person. And he did not put a lot of reliability in her ability to withstand cross-examination, so he chose, at that time, not to use her testimony.

Mr. BOYD. With regard to the Minneapolis office of the FBI, you said that it covers four States; is that correct?

Mr. MONROE. Three States, Minnesota, South Dakota, and North Dakota.

Mr. BOYD. How many offices are outside of Minneapolis?

Mr. MONROE. The Minneapolis division has 14 suboffices.

We do have a map here. We could look it up right now.

Mr. BOYD. How many total personnel, agents—personnel are attached to that office?

Mr. MONROE. We have 14 suboffices. We refer to them as resident agencies. And we have about 45 agents. I don't happen to have that figure available right now, but probably close to 45 agents.

Mr. BOYD. Would that number of 45 agents qualify as one of the larger offices outside of large metropolitan areas such as New York or Washington?

Mr. MONROE. It's a medium-sized office.

Mr. BOYD. You commented earlier, Mr. Monroe, on the quality of BIA investigative techniques. Would you say that it is fair to say that—that is, your view is shared by many Indian tribes as well?

Mr. MONROE. I don't have a good answer for that. I really don't have an answer as to the way the Indian tribes do perceive them. I don't know if my colleague does or not.

Mr. FRIER. Sir, it is the perception of our supervisors in FBI offices that are designated as Indian country offices—in other words, those that have large reservation responsibilities—that the expertise and the ability of the BIA and/or the tribal police varies extremely. And there are certain BIA special officers in States such as Montana, for example, where our supervisors think that they have the ability to do good investigative reports and, in fact, do so.

However, it is also the opinion of other divisions that have reservations in their territory that the BIA does not have the manpower nor the training necessary to take this role over to the capacity such as is now being done in Arizona and New Mexico.

Mr. BOYD. Isn't it the expectation of the Bureau that the training responsibility with regard to BIA personnel and tribal police will be expanded?

Mr. MONROE. Not unless our manpower and budget is expanded. We plan to do what we can within the limitations, but I don't see much of an expansion role at this point.

Mr. BOYD. I ask that because those particular investigative personnel are distinguishable from State and local police, in that they operate on Federal land and they are, indeed, Federal employees.

You also earlier affirmatively responded to the chairman's suggestion about possible pilot programs which might involve tribal police more thoroughly in the conduct of their own law enforcement effort.

I assume that in so doing you would support jurisdiction for non-Indians in Indian country being transferred as well to competent tribal police forces. Is that a fair assumption?

Mr. MONROE. That is really a difficult one for us to respond to frankly. That is more of a policy decision for the Attorney General from a legislative standpoint, and I would rather not get into that one, if I might avoid that, sir.

Mr. BOYD. I have no further questions. Thank you.

Thank you, Mr. Chairman.

Mr. EDWARDS. Let's get back just for a moment to Myrtle Poor Bear. She did testify in the trial of Richard Marshall and Russell Means. They were tried for the murder of Martin Montileaux in 1975. Marshall was convicted and remains incarcerated. The essential testimony on which Marshall was convicted was provided by Myrtle Poor Bear. She testified that Marshall confessed to the crime to her on two occasions. She was a surprise witness and produced by FBI agent David Price.

Then she repudiated her testimony in the *Marshall* case, stating it was coerced. Have you looked into the circumstances under which Myrtle Poor Bear provided the testimony against Marshall and Means?

Mr. FRIER. Sir, that case was, I believe, in 1975, which was about a year prior to her providing the affidavits against Leonard Peltier, and I don't really know the details in that specific case. However, I can understand how her frame of mind could have changed dramatically. Since that time there was a lot of pressure placed on that woman regarding what we call the Resmurs trial, which was the reservation murders trial, and why she lost her composure and the U.S. attorney decided that she was not a credible witness at that time, I cannot say.

I also cannot state what kind of a witness she was during the Marshall trial. I don't know.

Mr. EDWARDS. The investigation of possible agent misconduct where you have a person making a complaint is a very important part of the whole process.

Mr. MONROE. It goes right at the heart of the organization, sir.

Mr. EDWARDS. People can very upset if they think they're getting the runaround. And in one case in California which we have been corresponding with you about, a complaint was made by a local official in a city in California, and yes, the Office of Professional Responsibility in Washington picked the case up, but then they referred it back to the field office, the criminal division of the same field office.

That in the same town as where the complaint took place and where the agent who was alleged to have been guilty of misconduct was stationed? Now is that the normal procedure for the Office of Professional Responsibility? For them not to do the investigation themselves but to refer it back to the field office?

Mr. GROOVER. Mr. Chairman, the way normally that is done under the Office of Professional Responsibility is depending on the circumstances in the individual incident. The investigators from OPR in Washington at headquarters might conduct the investigation themselves. More often, the investigation will be conducted by the field office under the direct supervision of the special agent in charge, either by him, by the assistant special agent in charge or by one of them with the assistance of an investigator in the office. The special agent in charge would be responsible for the investigation. It would be reviewed by the Office of Professional Responsibility in Washington. It also would be submitted to the Office of Professional Responsibility in the Department of Justice.

Should action be taken or proposed, it would also be reviewed by—what we have is an administrative summary unit in the administrative services division. A recommendation would then be made from there. It gets a number of reviews. It is not left to the discretion of an individual agent in an office, whether he knows the individual. Under no circumstances would it be assigned to someone who was involved with the original case. It would be outside of that entirely.

Mr. EDWARDS. Well, I can see where you would have to do that in most cases, but in serious cases where the Bureau's reputation might be at stake, I would hope that you would send somebody out——

Mr. GROOVER. In those cases, it would be conducted by an investigator from Washington.

Mr. EDWARDS. Are there further questions?

Counsel?

Ms. LEROY. Thank you, Mr. Chairman.

Mr. Monroe, on page 5 of your testimony, you talked about an incident on the Red Lake Indian Reservation. I don't believe the subcommittee is familiar with that incident. Could you describe it in more detail and also describe the FBI's response and the nature of the criticism that was aimed at the FBI?

Mr. MONROE. I will have Mr. Frier respond.

Mr. FRIER. In May of 1979, an individual named Harold Sullivan Hansen, Jr. and five others took over by force the law enforcement center on the Red Lake Indian Reservation in Minnesota, and thereafter they took hostages, five Bureau of Indian Affairs and tribal police officers. Subsequent to that, a civil disturbance occurred with gunfire, lootings, burnings resulting in the destruction and loss of property totaling $4.5 million and the death of two individuals.

Our initial response was that weekend where we provided FBI agents as a SWAT team to show up on the reservation; however, upon their appearance, they were ordered by officials at FBI Headquarters and the Attorney General not to enter the reservation until order had been restored.

Order was eventually restored.

Ms. LEROY. By whom?

Mr. FRIER. By the local police and the Bureau of Indian Affairs and tribal police. However, following the restoratioin of order, the local police—this is the sheriff's offices and the State troopers and all other local law enforcement agencies involved—were extremely upset with the FBI because they felt it was the position of the FBI to assume command in a violent situation of that type and run the policing action of a reservation and restore order.

That primarily came out of the activities that resulted from Wounded Knee, and it was because of this criticism and because of the misunderstanding of the State and local police that initiated FBI Headquarters to, in conjunction with the Department of Justice, draft a memorandum of understanding between Justice and Interior, which was signed into agreement this year.

Now it is the opinion of the Department that only as an extreme last resort would the FBI ever be called into a position to send forces on, and in all probability, this will never happen. If the marshalls cannot handle this, then the Attorney General most likely will resort to the military.

Ms. LEROY. Have the people who were responsible for the death of the two people on the reservation been found, and is the FBI conducting that investigation?

Mr. FRIER. Oh, yes. Those trials were held last year.

Ms. LEROY. And did the FBI conduct the investigations in those cases?

Mr. FRIER. Yes, all of the investigations of all of the crimes that were committed on the reservation during that civil disturbance.

Ms. LEROY. Well, could you furnish the subcommittee with a copy of that memorandum of understanding.

Mr. FRIER. Yes, we have one here.

Ms. LEROY. Thank you.

Mr. TUCEVICH. One of the other recommendations that Mr. Fleming of the Civil Rights Commission indicated would be forthcoming from the Commission would be to urge that both the House and Senate Judiciary Committees have access to internal FBI investigations concerning allegations of agents' misconduct.

Does the Bureau have a position in response to that? In other words, would you be willing to provide such materials to both the House and Senate Judiciary Committees on a confidential basis?

Mr. MONROE. It is our understanding because of certain privacy considerations, our interpretation of the Privacy Act, it's our opinion at this point, we would probably have difficulty with that, but it is an area that we will explore and talk with you about later, if we could.

Mr. TUCEVICH. Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much for very helpful testimony. And I'm glad that we could work together on resolving some of these problems with the reservations and making them independent. We are very pleased with your testimony.

The committee is adjourned.

[Whereupon, at 3:55 p.m., the hearing was adjourned.]

[Submitted material follows:]

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

DEPARTMENT OF JUSTICE

AND

THE DEPARTMENT OF THE INTERIOR

REGARDING

FEDERAL RESPONSE TO CIVIL DISORDER ON INDIAN RESERVATIONS

The purpose of this agreement is to delineate the responsibilities of the various federal agencies for civil disorder control on Indian reservations in the United States and to identify basic command and control channels and general procedures for such operations. The policy contained herein shall apply to civil disorder situations arising on any Indian Reservation under federal law enforcement jurisdiction, either exclusive or concurrent.[1]

For the purposes of this agreement, a civil disorder is defined as follows:

> The term "civil disorder" means any public disturbance involving acts of violence by assemblages of three or more persons, which causes an immediate danger of or results in damage or injury to the property or person of any other individual.[2]

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[1] A current list of reservations and juridiction is attached to this agreement and will be updated from time to time as necessary by the Department of the Interior.

[2] 18 USC 12, Section 232(1).

Nothing contained in this agreement shall be construed as in any manner limiting, modifying, or redefining the statutory and other investigative authority of the Federal Bureau of Investigation.

POLICY

The Attorney General has been designated by the President as chief civilian officer for coordination of all federal government activities relating to civil disturbances, including acts of terrorism within the United States. However, it is the policy of the Attorney General that existing established law enforcement authority on Indian reservations will not be superseded or augmented by Department of Justice law enforcement resources and authority unless absolutely necessary and then only at the request of the Secretary of the Interior or his designated representative.

The primary responsibility for the law enforcement response to a civil disorder situation arising on an Indian reservation under Department of the Interior jurisdiction will rest exclusively with the Assistant Secretary - Indian Affairs or the Commissioner of Indian Affairs or his delegated representative.

Where local resources are inadequate to deal with civil disorder, the Commander of specially trained Bureau of Indian Affairs law enforcement officers will act as the Commissioner's representative,

will be responsible for restoring order. All Bureau of Indian Affairs law enforcement officers engaged in restoration of order on the reservation will operate under the command of the senior Special Operations Service Unit official on site.

Whenever any civil disorder reaches a point beyond the control capabilities of local and Bureau of Indian Affairs resources, the Department of the Interior may elect to request assistance from the Department of Justice.

Based upon a request for assistance by the Department of the Interior and an assessment of the civil disorder situation, the Attorney General or the Deputy Attorney General will determine what, if any, response is appropriate and shall so advise the Department of the Interior in a timely manner.

If a decision is made to intervene, the Attorney General or Deputy Attorney General will order or request deployment of federal civilian or military forces. The selection of Department of Justice resources to be committed shall rest exclusively with the Attorney General or the Deputy Attorney General.

GENERAL PROCEDURES

1. In the event of an actual or potential civil disorder on an Indian reservation under federal jurisdiction, the Bureau of Indian Affairs will take or direct appropriate law enforcement action and notify the nearest office of the Federal Bureau of Investigation.

2. The Federal Bureau of Investigation (FBI) office notified will immediately report the incident to the FBIHQ in Washington. FBI-HQ will immediately notify the Office of the Deputy Attorney General through the Department of Justice Emergency Programs Center.

3. At this point civil disorder control responsibility rests solely with the Department of the Interior and any FBI special agents on site are responsible only for normally authorized investigative activity to the extent that such activity can be safely conducted and for keeping FBIHQ appraised of the disorder situation so that the Attorney General or Deputy Attorney General will be prepared to act quickly and effectively on any subsequent request for assistance.

4. When the Department of the Interior determines that a civil disorder on an Indian reservation cannot be controlled or terminated by local or BIA resources and requests Department of Justice assistance, the Attorney General or the Deputy Attorney General will assess the situation and determine what response is appropriate. If a Department of Justice or other response is required, the selection of civil response resources to be employed shall rest exclusively with the Attorney General. If federal civilian resources are inadequate, military forces will be requested by the Department of Justice through established procedures.

5. Upon arrival and deployment at the scene of a civil disorder, and at a time to be designated by the Attorney General or the Deputy Attorney General, the Attorney General's designee on site will assume operational control of the disorder situation and will be responsible for restoring order in accordance with established procedures and instructions.

6. When the law enforcement resources designated by the Attorney General or the Deputy Attorney General assume control of a disorder situation the Secretary of the Interior will place his law enforcement resources at the site at the disposal of the Department of Justice designee.

7. At a time to be mutually agreed upon by the Department of Justice and the Department of the Interior control of law enforcement activity at the scene of the civil disorder will be returned to the Department of the Interior.

It is understood and agreed that a basic objective of this agreement is to ensure a coordinated and effective federal effort in response to incidents of civil disorder on Indian reservations. It is anticipated that this agreement will serve to eliminate delays in appropriate federal law enforcement action during periods of civil disorder and will clearly define basic law enforcement responsibilities, which will be further implemented through continuous development of contingency plans and procedures by the agencies involved.

FOR THE DEPARTMENT OF JUSTICE

Charles B. Renfrew

CHARLES B. RENFREW
DEPUTY ATTORNEY GENERAL

Dated: 1. 20.81

FOR THE DEPARTMENT OF THE INTERIOR

Lorie D. Andrus

Dated: 1-8-81

The following list of Indian Reservations was furnished by the Department of Interior, Bureau of Indian Affairs, Division of Law Enforcement Services and represents those reservations as of 22 January 1981 that are included in the scope of this agreement.

Bureau of Indian Affairs
Division of Law Enforcement Services

BIA RESPONSIBILITY FOR LES BY STATE
AND RESERVATION/TRIBE

STATE	RESERVATION/TRIBE
1. Alaska (1)	1. Annette Island
2. Arizona (Incl. (18) NM & Utah	2. Navajo
	3. Colorado River
	4. Cocopah
	5. Fort Mohave
	6. Fort Yuma
	7. Fort Apache
	8. Kaibab
	9. Hopi
	10. Fort McDowell
	11. Papago
	12. Ak Chin (Maricopa)
	13. Gila River
	14. Salt River
	15. San Carlos
	16. Camp Verde
	17. Havasupai
	18. Haulapai
	19. Yavapai-Prescott
	20. Tonto Payson
3. California (1)	21. Hoopa/Yurok
4. Colorado (2)	22. Southern Ute
	23. Ute Mountain
5. Florida (1)	24. Miccosukee
6. Idaho (4)	25. Fort Hall
	26. Kootenai
	27. Coeur d'Alene
	28. Nez Perce
7. Kansas (2)	29. Kickapoo
	30. Potawatomie
8. Maine (3)	31. Indian Township
	32. Pleasant Point
	33. Penobscot
9. Michigan (5)	34. Bay Mills
	35. Hannahville
	36. Keweenaw Bay
	37. Saginaw-Isabella
	38. Sault Ste. Marie

BIA RESPONSIBILITY FOR LES BY STATE
AND RESERVATION

STATE	RESERVATION/TRIBE 2.
10. Minnesota (2)	39. Nett Lake
	40. Red Lake
11. Mississippi (1)	41. Choctaw
12. Montana (7)	42. Blackfeet
	43. Crow
	44. Flathead
	45. Fort Belknap
	46. Fort Peck
	47. Northern Cheyenne
	48. Rocky Boys
13. Nebraska (1)	49. Omaha
14. Nevada (26)	50. Battle Mountain Colony
	51. Campbell Ranch
	52. Carson Colony
	53. Duck Valley Reservation
	54. Duck Water Reservation
	55. Dresslerville Colony
	56. Elko Colony
	57. Fallon Colony
	58. Fort McDermitt Reservation
	59. Goshute Reservation
	60. Las Vegas Colony
	61. Lovelock Colony
	62. Moapa Reservation
	63. Odgers Ranch
	64. Pyramid Lake Reservation
	65. Reno-Sparks Colony
	66. Ruby Valley Reservation
	67. South Fork Reservation
	68. Summit Lake Reservation
	69. Walker River Reservation
	70. Washoe Pinenut Allotments
	71. Washoe Ranches
	72. Winnemucca Colony
	73. Woodfords Community
	74. Yerington Colony
	75. Yomba Reservation

BIA RESPONSIBILITY FOR LES BY STATE
AND RESERVATION

STATE	RESERVATION/TRIBE 3.
15. New Mexico (22)	76. Jicarilla
	77. Mescalero
	78. Nambe Pueblo
	79. Picuris Pueblo
	80. Pojoaque Pueblo
	81. San Ildefonso Pueblo
	82. San Juan Pueblo
	83. Santa Clara Pueblo
	84. Taos Pueblo
	85. Tesuque Pueblo
	86. Acoma Pueblo
	87. Cochiti Pueblo
	88. Isleta Pueblo
	89. Jemez Pueblo
	90. Laguna Pueblo
	91. Sandia Pueblo
	92. San Felipe Pueblo
	93. Santa Ana Pueblo
	94. Santo Domingo Pueblo
	95. Zia Pueblo
	96. Zuni Pueblo
	97. Ramah-Navajo
16. North Carolina (1)	98. Eastern Cherokee
17. North Dakota (3)	99. Fort Berthold
	100. Fort Totten
	101. Turtle Mountain
18. Oklahoma (10)	102. Absentee-Shawnee
	103. Apache
	104. Caddo
	105. Cheyenne-Arapho Tribe
	106. Commanche
	107. Delaware
	108. Kiowa
	109. Pawnee Tribe
	110. Ponca Tribe
	111. Wichita
19. Oregon (3)	112. Warm Springs
	113. Burns Paiute Allotments
	114. Umatilla

BIA RESPONSIBILITY FOR LES BY STATE
AND RESERVATION

STATE	RESERVATION/TRIBE 4.
20. South Dakota (9)	115. Cheyenne River
	116. Crow Creek
	117. Flandreau
	118. Lower Brule
	119. Pine Ridge
	120. Rosebud
	121. Sisseton
	122. Yankton
	123. Standing Rock (Inc. ND)
21. Utah (2)	124. Skull Valley
	125. Uintah and Ouray
22. Washington (25)	126. Chehalis
	127. Colville
	128. Hoh
	129. Kalispel
	130. Lower Elwah
	131. Lummi
	132. Makah
	133. Muckleshoot
	134. Nisqually
	135. Nooksack
	136. Ozette
	137. Port Gamble
	138. Puyallup
	139. Quileute
	140. Quinault
	141. Sauk-Suiattle
	142. Shaolwater
	143. Skokomish
	144. Spokane
	145. Squaxon Island
	146. Suquamish (Port Madison)
	147. Swinomish
	148. Tulalip
	149. Upper Skagit
	150. Yakima
23. Wisconsin (1)	151. Menominee
24. Wyoming (1)	152. Wind River

TOTALS: 24 States - 152 Reservations

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

January 17, 1974

To: STATE AND LOCAL CRIME LABORATORIES

I am sure you are aware of a recently completed National Symposium on Crime Laboratory Development held at the FBI Academy December 3-6, 1973. Although it was not possible to invite a representative from every state and local crime laboratory in the United States, the 46 attendees represented 120 of the estimated 200 of these laboratories presently active in law enforcement.

Your assistance in the crime laboratory survey conducted by the FBI during October, 1973, is very much appreciated and provided a data base for consideration during the symposium. Enclosed for your information are summaries of the workshop activities and a list of attendees.

Among other things suggested by the symposium participants was a national association of crime laboratory administrators to work for the accomplishment of common objectives. A group of symposium attendees volunteered to serve as a steering committee for this organization and will meet in St. Louis, Missouri, over the weekend of January 25-27, 1974, to consider this suggested activity. Their names are designated on the attached list.

If you have any thoughts concerning this proposal or the other material furnished to you, please feel free to communicate them to me or any member of the steering committee prior to the St. Louis meeting.

I look forward to the successful implementation of the goals expressed at this symposium, namely, those of training, research, and consultation. You will be kept advised of all future efforts in this regard.

Clarence M. Kelley
Director

Enclosures (5)

PARTICIPANTS IN THE FBI NATIONAL SYMPOSIUM ON CRIME LABORATORY DEVELOPMENT HELD AT THE FBI ACADEMY, DECEMBER 3 - 6, 1973. (Those designated with an * have volunteered to serve as a steering committee for the establishment of an organization of crime laboratory administrators.)

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Crime Laboratory Systems & Organizations Workshop

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Communication and Cooperation Workshop

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Research Workshop

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Specialized Scientific Training Workshop

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CRIME LABORATORY SYSTEMS AND ORGANIZATIONS WORKSHOP

Early in workshop activity it was ascertained the state/local crime laboratories presently in existence were organized and developed in highly individualized systems responding to the particular needs and available assets in the community served. Staffing of these crime laboratories with either civilians or sworn personnel took place as the planners sought to actualize their concept of how a crime laboratory should function. These systems are now operational and it was considered unproductive to attempt to establish any single ideal arrangement as being most desirable for new laboratory development. Schematic diagrams of the crime laboratory organization and its position in the parent organization were furnished by many of the symposium attendees and will provide a basis for future study of efficient models for planned facilities.

Each of the workshop groups unanimously requested a specialized course in crime laboratory management be developed by the FBI, utilizing data obtained through the FBI crime laboratory survey, the facilities of the FBI Academy and topical material such as was provided by attendees from the State of California belonging to the Association of Criminalistic Managers. Suggested by workshop participants to improve overall laboratory effectiveness were lectures in the areas of personnel management, records keeping, communications and fiscal management.

State government participation in the activities of crime laboratories ranged from (a.) total administration on a state level of all crime laboratories within its borders to (b.) a complete lack of involvement. For this reason, the role of the state government in crime laboratory activity could not be generalized. The Federal Government's role, primarily one of funding in the past, was seen as greatly expanded with the FBI's new program of supporting state/local crime laboratory development through specialized training, research and communications which are detailed in other reports.

The maximum interest in all these workshop sessions was generated in the first session by an attendee's suggestion that a national organization of crime laboratory administrators be formed to provide a means of direct contact to accomplish common objectives. This was repeated through each session and was finally brought up for action at a general meeting.

RESEARCH WORKSHOP

In connection with the Research Workshop which was held at Quantico, Virginia, the following summarized suggestions are set forth:

1. Responsibilities for research in the criminalistics area should rest primarily with the FBI Laboratory and secondarily with local laboratories (state, county and city).

2. All ongoing research by forensic science laboratories, whether negative or positive, should be reported to all laboratories. This type of reporting would avoid duplication of research efforts. Reporting could be done by a publication such as a forensic science newsletter which could be coordinated by the FBI.

3. Evaluation of published research in the criminalistics area emanating from laboratories other than the FBI should be made by the FBI. Research conducted by the FBI and published should be evaluated by local laboratories.

4. An advisory committee should be established which could be available to advise the Law Enforcement Assistance Administration concerning their priorities of funding for research in the criminalistics area.

5. Individuals who conduct research in the criminalistics area should be qualified to conduct such research.

6. Fellowships for a period of six months to one year should be established and awarded on the basis of merit to conduct research in criminalistics.

7. Priorities of research
   A. Blood - individualization and sex determination of bloodstains, as well as frequency studies on polymorphic components.
   B. Semen - individualization.
   C. Hairs - individualization.
   D. Gunshot residues.
   E. Research on the statistical significance or frequency of occurrence of a piece of evidence, such as glass, a fiber, paint and soil:
   F. Application of computers to laboratory operation.

Communication and Cooperation Workshop

In this workshop, the need for personal, written and other types of communication was emphasized. A newsletter type of communication was suggested wherein current developments in crime laboratory work could be reported and disseminated to all interested crime laboratories. A suggestion was made for the FBI Laboratory to publish such a newsletter with the material therein being furnished on a continuing basis by the contributive effort of all law enforcement laboratories. In addition, research efforts would also be included in this newsletter. Coordination will be made so as not to duplicate other newsletters or their content.

The need was discussed for an abstract service on current forensic science literature. The FBI Academy Library is planning to publish current abstracts to law enforcement laboratories in a pilot project in the near future. This will be published separately from the planned newsletter.

Discussion was held on the possible establishment of a National Crime Laboratory Library. Consensus was that such is not necessary at the present time in view of access to numerous local libraries and other well-known technical sources. Any problems which cannot be resolved in this field locally, can be referred to Mr. Clark Shoaff, FBI Academy Library, Quantico, Virginia, or to any of the FBI Symposium participants.

The need for procedural books or manuals concerning techniques used in the various criminalistic disciplines was discussed. Consensus was that there is not a serious need for these books at the present time since any techniques, if published, could be construed as standard methodology which is considered by the attendees as highly undesirable. Hence, any publication of this nature is being held in abeyance for the present for reconsideration when training texts are developed for requested specialized training.

Several inquiries were made concerning the possible evaluation of crime laboratory equipment, its availability, limitations, etc. Such an evaluation is not considered practical at this time.

Specialized Scientific Training Workshop

A. General considerations:

1. Because of the diversity between the size, equipment and manpower of the individual laboratories, as well as local operating policies, it would appear that no single proposed course would have universal appeal or fill a common need. But rather than considering this as an obstacle to future training, it simply points out the wide scope of programs required to satisfy the field need. For instance, field elimination tests, such as the benzidine test performed by the crime scene technician, were considered an asset to the laboratory serving large jurisdictions involving considerable distances. On the contrary, large city laboratories would prefer that no one examine the evidence before receipt at the laboratory.

2. Any course proposed should be described in such detail that the individual laboratory director could evaluate his personnel's qualifications. Specialized equipment to be used should also be identified so that each director knows if it is consistent with his own equipment.

3. Each proposal should be accompanied by suitable questionnaires to be completed by a designated candidate for evaluation by the training facility. These would allow for a class to be composed of students with a given level of competence.

4. The average course duration should be two weeks with a normal maximum of four weeks. A course of longer duration would have to be of unusual importance.

5. All courses should be structured so that the student would return to his laboratory with the capacity to instruct other laboratory personnel.

6. All courses should include moot court training as it would relate to the presentation of testimony in that specific area.

7. Courses should not duplicate instrument-type training offered by the equipment manufacturer.

8. Any course would be more productive if held at the Quantico facility rather than on-site training or regional seminars.

9. All participants agreed that outside experts should be considered as instructors and indicated a willingness to furnish their own personnel for this purpose.

10. A unanimous feeling was present that courses should emphasize application/participation rather than theory. "Hands-on time" should be considered as being of utmost importance.

11. In formulating courses, don't assume the field need is only in advanced areas or that a certain level of competence can be presumed. A course in how to use a microscope was suggested as an example.

12. Outside funding was a crucial factor. Without it, most laboratories could not support this program.

13. Accreditation by the University of Virginia was thought to be a tremendous incentive.

B. Priority of needs:

1. Specific areas of need were identified as: blood and body fluids; hair and fiber analysis; as well as glass and paint examinations. These should be offered in a full range from basic to advanced.

2. Specialized areas, such as advanced photography classes in specialized techniques, microphotography, document photography and advanced fingerprint courses in latent processing and chemical development were suggested.

3. General areas were also requested in crime scene processing and an introductory course in forensic science for new employees.

4. Support needs in the form of audio-visual aids for field training. These could range from basic procedures to a familiarization course in the most sophisticated of instrumental techniques.

5. Crime laboratory management courses. These should not be general concepts but respond to everyday problems, such as inventory control, workload distribution, case control, personnel development and utilization of available systems. These courses should be directed at various levels for both the directors and the working "bench" supervisors.

6. Courses whose purpose is to update and share new techniques and methods where needed.

7. Training of long duration, such as in questioned documents, or firearms identification, would not be feasible, but the short course geared to raise the level of proficiency would be valuable.

All participants strenuously emphasize the previously mentioned need for practicality rather than a theoretical approach.

SURVEY OF FEDERAL AND
STATE PROSECUTORS

4/16 - 30/80

During the past year, the General Accounting Office (GAO) conducted a survey of the Federal laboratory system including the FBI, DEA, ATF, and U. S. Postal Service. Part of their survey dealt with the merits of using Special Agents with scientific backgrounds as FBI Laboratory examiners. The other three agencies use non-Agent personnel as examiners. In an effort to assist the FBI in responding to GAO's inquiry, I am requesting your assistance by asking you to complete a survey sheet that has been prepared to assess the performance of Special Agent examiners as expert witnesses. In addition, it would be helpful if you have had experience with the other Federal laboratories, if you could respond to questions 7 and 8 with a brief narrative regarding your views. Questions 1 through 5 are asking you to rate the response on a scale of 1 to 5. Please circle the number on the line that represents your evaluation of the Special Agent expert witness.

We hope your responses will be based on direct knowledge you may have or perceptions you may have as a result of dialogue with Assistant U. S. Attorneys in your office. One of our primary objectives is to serve the Federal prosecutors in the most professional manner we can. Your assistance in responding to this survey will help us in evaluating our position.

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	4	5
disorganized & unprepared		organized, prepared		very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a)

1	2	3	4	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes _____ no _____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes _____ no _____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

_____
U. S. Attorney

FBI/DOJ

_____
Judicial District

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

3 13 16 4.4

1 2 3 4 5

disorganized & unprepared — organized, prepared — very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

3 9 20 4.5

(a) 1 2 3 4 5

displayed lack of professional maturity — sincere — displayed maturity and good judgement

8 14 10 4.1

(b) 1 2 3 4 5

hesitant & unconvincing — competent — dynamic & very convincing

1 5 8 18 4.3

(c) 1 2 3 4 5

defensive & appearance of bias — objective — highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

7 6 19 4.4

1 2 3 4 5

unimpressed & confused — impressed — very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

3 10 19 4.5

1 2 3 4 5

no - highly technical & difficult to follow — adequate presentation — yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

8 9 15 4.5

1 2 3 4 5

easily intimidated, vacillating & unsure — responsive & direct — highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes 29 no 1 2 abstentions

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes 32 no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

U. S. Attorney

FBI/DOJ

Judicial District

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	4	(5)
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(a)

1	2	3	4	(5)
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	(5)
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	(5)
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	(5)
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

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6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? They understand investigative and courtroom techniques. They also are very helpful in developing leads during the investigation.

Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Please continue - special agents - experts who after case in either courts are not so helpful in the investigation, are not known to courts and able to explain certain situations to jury in understandable terms.

Vinson Dale McCarty
U.S. Attorney

Southern District
of Indiana
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	4	(5)
disorganized & unprepared		organized, prepared		very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a)

1	2	3	4	(5)
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	(4)	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	(5)
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	(5)
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	(5)
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	(5)
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why?

Why not?

Will effect end/effective law enforcement effort in support of U.S. Atty. field offices in case preparation and trial.

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Some or all — prior ~~FBI~~ civilian examiners miss up efficiency if tested with civilians, are not made as competent in presentation and testimony as witnesses, and cause great problem with not being available for trial. when U.S. Atty. Office has no control of trial schedule due to Speedy Trial Act.

William M. Hicks, Jr.
U. S. Attorney

E. Dist. of Virginia
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1 — disorganized & unprepared; 2; 3 — organized, prepared; 4; 5 — very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a) 1 — displayed lack of professional maturity; 2; 3 — sincere; 4; 5 — displayed maturity and good judgement

(b) 1 — hesitant & unconvincing; 2; 3 — competent; 4; 5 — dynamic & very convincing

(c) 1 — defensive & appearance of bias; 2; 3 — objective; 4; 5 — highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1 — unimpressed & confused; 2; 3 — impressed; 4; 5 — very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1 — no - highly technical & difficult to follow; 2; 3 — adequate presentation; 4; 5 — yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1 — easily intimidated, vacillating & unsure; 2; 3 — responsive & direct; 4; 5 — highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes X no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes X no ____

Why? This [illegible]

Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Preparing a [illegible] a free exchange & result [illegible] both the examiner & [illegible]

U. S. Attorney

FBI/DOJ

NDTexas
Judicial District

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

	1	2	3	4	(5)
(a)	displayed lack of professional maturity		sincere		displayed maturity and good judgement
(b)	hesitant & unconvincing		competent		dynamic & very convincing
(c)	defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	(5)
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	(5)
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

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easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings throu responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

Any scientific analysis must be viewed in the context of a total investigation, part of an investigative effort in which the examiner may supply valuable leads, suggestions, etc. His role is not necessarily circumscribed but rather, in many investigations, may be broad assistance and advice to the attorney and agents assigned to the matter

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

[signature]
U. S. Attorney

Connecticut
Judicial District

Investigative experience is a valuable asset because no laboratory work occurs in a vacuum, it must be seen in the context of the complete investigation. The possible sacrifice in quality of investigative assistance furnished by examiners, if they are replaced by civilians, is not worth the budgetary savings.

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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(b)

1	2	3	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ____ no ____

Why? Why not?

they made better witnesses and are more impressive to jurors than are civilian employees to the credit of U.S. Attorney

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

[illegible]

U. S. Attorney

FBI/DOJ

E.D. VA
Judicial District

J. GREENLEAF

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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(b)

1	2	3	4	(5)
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	(4)	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	(5)
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	(5)
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

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easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

See question 8.

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Investigative experience enables an expert witness to more effectively translate laboratory findings into understandable testimony. Additionally, it enables the expert to more readily relate his findings to the actual factual circumstances of the case at hand. Furthermore, the participation of Special Agent/experts in the investigative process, particularly in complex cases (such as the FALN) substantially contributes to successful conclusions.

Thos. P. Sullivan 4/21/77
U. S. Attorney

N.D. Ill.
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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(a)

1	2	3	4	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Know what WFO needs to present in connecting case at trial.

Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

See no. 7

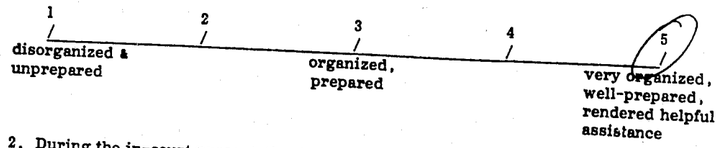
Robert C. Hazelton
U. S. Attorney

Middle District of Georgia
Judicial District

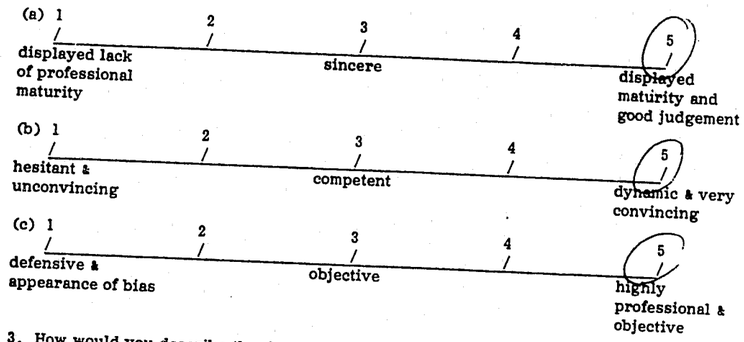
FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

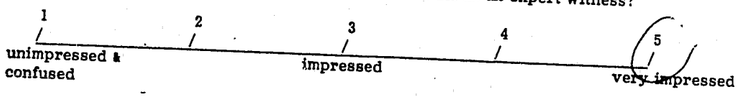
1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:



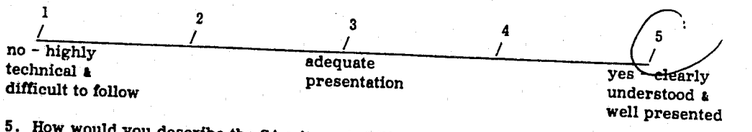
2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:



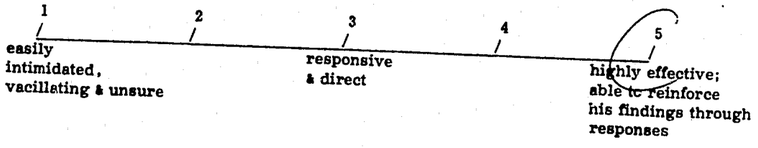
3. How would you describe the jury response to the SA as an expert witness?



4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?



5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?



6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

FBI/DOJ

FRANK J. Dicarlo
U. S. Attorney

CENTRAL DIST
Judicial District

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	4	5
disorganized & unprepared		organized, prepared		very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a)

1	2	3	4	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

The practical experience is beneficial when communicating with the field. Would like to see others.

[illegible]
U. S. Attorney

[illegible]
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	4	5
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(a)

1	2	3	4	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

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easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Donald F. Herrick
U. S. Attorney

Mass.
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1 — 2 — 3 — 4 — (5)

disorganized & unprepared — organized, prepared — very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a) 1 — 2 — 3 — 4 — (5)

displayed lack of professional maturity — sincere — displayed maturity and good judgement

(b) 1 — 2 — 3 — (4) — 5

hesitant & unconvincing — competent — dynamic & very convincing

(c) 1 — 2 — 3 — 4 — (5)

defensive & appearance of bias — objective — highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1 — 2 — 3 — (4) — 5

unimpressed & confused — impressed — very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1 — 2 — 3 — (4) — 5

no - highly technical & difficult to follow — adequate presentation — yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1 — 2 — 3 — 4 — (5)

easily intimidated, vacillating & unsure — responsive & direct — highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? They make better witnesses - They understand investigative needs

Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

The latter is totally unacceptable

J. R. [illegible]
U. S. Attorney

N. D. Ala.
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1 — 2 — 3 — (4) — 5

disorganized & unprepared — organized, prepared — very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a) 1 — 2 — 3 — (4) — 5

displayed lack of professional maturity — sincere — displayed maturity and good judgement

(b) 1 — 2 — 3 — (4) — 5

hesitant & unconvincing — competent — dynamic & very convincing

(c) 1 — 2 — 3 — 4 — (5)

defensive & appearance of bias — objective — highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1 — 2 — 3 — 4 — (5)

unimpressed & confused — impressed — very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1 — 2 — 3 — (4) — 5

no - highly technical & difficult to follow — adequate presentation — yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1 — 2 — 3 — (4) — 5

easily intimidated, vacillating & unsure — responsive & direct — highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Experience — Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Present practice is highly desirable.

R. E. Thompson
U. S. Attorney

New Mexico
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	4	5
disorganized & unprepared		organized, prepared		very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a)

1	2	3	4	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Because they'll have a very favorable impact on juries.

Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

U. S. Attorney

Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

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(b)

1	2	3	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes X no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes X no ____

Why? more well rounded & perceptive

Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

ALISA Middleton St. Attorney
For U. S. Attorney

Hawaii
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	(4)	5
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2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a)

1	2	3	(4)	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	(3)	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	(4)	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	(3)	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	(4)	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	(3)	4	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes X no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes X no ____

Why? Why not?

appear to be well equipped to perform well

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

FBI/DOJ

Carlos M. O'Malley, Jr.
U. S. Attorney

M. D. Penn
Judicial District

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

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2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a)

1	2	3	4	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

Short story -

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	(4)	5
disorganized & unprepared		organized, prepared		very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a)

1	2	(3)	4	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	(3)	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	(2)	3	4	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	(3)	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	(4)	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	(3)	4	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

(yes) ____ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

(yes) ____ no ____

Why? Why not?

Very effective jury presentation

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with nc investigative experience?

FBI/DOJ

U. S. Attorney

W. La.

Judicial District

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	(4)	5
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(a)

1	2	3	(4)	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	(4)	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	(4)	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	(3½)	4	5
unimpressed & confused		impressed			very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	(5)
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	(3)	4	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ___

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ___

Why? Why not?

Some idea of evidentiary issues

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Yes - lab generally does very well, but some matters, such as handwriting, are not uniform in ability to reach conclusion & definitiveness of conclusion

R. D. Dalton
U. S. Attorney

FBI/DOJ

USA, WD Ok
Judicial District

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

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hesitant & unconvincing		competent		dynamic & very convincing

(c)

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defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

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unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

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no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution? I am not sure -

yes ____ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes X no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

U. S. Attorney

S. Ohio
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

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(c)

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defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

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unimpressed & confused		impressed		very impressed

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easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ____ no ✓

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

James S Brady
U. S. Attorney

W D Mick
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	4	5
disorganized & unprepared		organized, prepared		very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a)

1	2	3	4	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes X no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes X no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

FBI/DOJ

Richard J. Gerace
U. S. Attorney

2nd Cir
Judicial District

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1 — 2 — 3 — 4 — (5)

disorganized & unprepared — organized, prepared — very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a) 1 — 2 — 3 — 4 — (5)

displayed lack of professional maturity — sincere — displayed maturity and good judgement

(b) 1 — 2 — 3 — (4) — 5

hesitant & unconvincing — competent — dynamic & very convincing

(c) 1 — 2 — 3 — 4 — (5)

defensive & appearance of bias — objective — highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1 — 2 — 3 — 4 — (5)

unimpressed & confused — impressed — very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1 — 2 — 3 — 4 — (5)

no - highly technical & difficult to follow — adequate presentation — yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1 — 2 — 3 — (4) — 5

easily intimidated, vacillating & unsure — responsive & direct — highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Harold D Finis
U. S. Attorney

Illinois (C)
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	4	(5)
disorganized & unprepared		organized, prepared		very organized, well-prepared, rendered helpful assistance

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(a)

1	2	3	4	(5)
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	(5)
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	(5)
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

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unimpressed & confused		impressed		very impressed

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no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

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1	2	3	4	(5)
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ~~✓~~

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Civilian examiners are regular also - There is no logic to ... keep and expect just because ... they have not been certified on ... FBI cases ... clearing ... tapes or clearing of ... Tapes can be done ... also at FBI/DOJ ... Houston letter that was ... FBI, but FBI does not ... want to do it. I do not ... argue & get good ... results. JAC

J. A. Canales
U. S. Attorney

Southern Dist, Texas
Judicial District

CONTINUED

8 OF 10

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

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1	2	3	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

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no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ____ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ____ no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

U. S. Attorney

Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

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(a)

1	2	3	4	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes X no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes X no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

EDWARD
U. S. Attorney

Nebraska
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	4	5
disorganized & unprepared		organized, prepared		very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a)

1	2	3	4	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

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no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

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easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

M. Kendall Shaw
U. S. Attorney

† John
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	4	5
disorganized & unprepared		organized, prepared		very organized, well-prepared, rendered helpful assistance

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(a)

1	2	3	4	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	5
defensive & appearance of bias		objective		highly professional & objective

DVER

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

In areas 1-5 mid, I would rate 4-5

U.S. Attorney

E. TX
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	4	(5)
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(a)

1	2	3	4	(5)
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	(5)
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	(5)
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	(5)
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	(5)
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	(5)
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Robert B. King
U. S. Attorney

S.D. WVa.
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

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1	2	3	4	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

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hesitant & unconvincing		competent		dynamic & very convincing

(c)

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defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
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no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

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easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ____ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ____ no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

T. A. Davis
U. S. Attorney

Miami
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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(a)

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displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	(4)	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	(5)
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	(5)
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	(4)	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	(4)	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Lee Pedrotto
U. S. Attorney

Southern District
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	(4)	5
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(a)

1	2	3	(4)	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	(3)	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	(4)	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	(3)	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	(4)	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

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1	2	3	(4)	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes X no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes X no ____

Why? Why not?

Generally the experienced expert can assist in case by pointing to evidence which may have been overlooked by the investigator or the attorney. Furthermore, the expert probably would have more sound appearance.

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

James K. Hamilton
U. S. Attorney

E.D Michigan
Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

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1	2	3	4	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

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defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
unimpressed & confused		impressed		very impressed

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easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? They understand elements of proof necessary

Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

NO

Joe D. Dolan
U. S. Attorney

Colorado
Judicial District

FBI/DOJ

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

April 17, 1980

Dear Sir:

You were recently contacted during a telephone survey and requested to furnish responses to several questions. Enclosed is the survey form marked as you indicated to the interviewer.

Please review the form and if you are satisfied the responses marked on the form represent your appraisal of the performance of FBI Special Agent Laboratory examiners, sign the form and return it in the enclosed self-addressed envelope. Please make any changes you feel are necessary and add any written comments as you deem appropriate.

It is the objective of the FBI Laboratory to provide the best possible service to the law enforcement community in support of the criminal justice system. Your opinions and observations are important to us and will aid us in assessing how well we are meeting this objective.

Thank you for your cooperation.

James W. Greenleaf
Assistant Director
FBI Laboratory

Enclosure

HALL

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

April 17, 1980

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Thank you for your cooperation.

James W. Greenleaf
Assistant Director
FBI Laboratory

Enclosure

27 State Prosecutors Surveyed

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1 — 2 — 3 — 4 — 5 — 4.96

1 disorganized & unprepared; 3 organized, prepared; 5 very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a) 1 — 2 — 3 — 4 — 5 — 4.93

1 displayed lack of professional maturity; 3 sincere; 5 displayed maturity and good judgement

(b) 1 — 2 — 3 — 4 — 5 — 4.78

1 hesitant & unconvincing; 3 competent; 5 dynamic & very convincing

(c) 1 — 2 — 3 — 4 — 5 — 4.89

1 defensive & appearance of bias; 3 objective; 5 highly professional & objective

3. How would you describe the jury response to the SA as an expert witness? 4.85

1 — 2 — 3 — 4 — 5

1 unimpressed & confused; 3 impressed; 5 very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury? 4.85

1 — 2 — 3 — 4 — 5

1 no - highly technical & difficult to follow; 3 adequate presentation; 5 yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination? 4.89

1 — 2 — 3 — 4 — 5

1 easily intimidated, vacillating & unsure; 3 responsive & direct; 5 highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes 24 no 3

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes 27 no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

U. S. Attorney

FBI/DOJ Judicial District

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	4	(5)
disorganized & unprepared		organized, prepared		very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a)

1	2	3	4	(4.5)	5
displayed lack of professional maturity		sincere			displayed maturity and good judgement

(b)

1	2	3	4	4.5	(5)
hesitant & unconvincing		competent			dynamic & very convincing

(c)

1	2	3	4	(5)
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	(4/5)	(5)
unimpressed & confused		impressed			very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	(4/5)	5
no - highly technical & difficult to follow		adequate presentation			yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	(4/5)	5
easily intimidated, vacillating & unsure		responsive & direct			highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes X no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes X no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Examiners with previous investigative experience possess an invaluable perspective that a civilian would not provide. The insights developed through personal investigative experience are not available to civilians through books & courses. It would be awkward & inviting to rule that Special Investigators & all their procedures to meet the hypothetical absence of investigative experience. The present examiners are highly respected in Delaware for their competence as scientists and skilled as their counterparts in analytical fields. To cause they standards to meet a specific dollar saving would, I think, be a foolish mistake.

U. S. Attorney

Judicial District

4/21/82

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	4	5
disorganized & unprepared		organized, prepared		very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a)

1	2	3	4	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	5
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Thomas J. Difanis

THOMAS J. DIFANIS
U. S. Attorney

Sixth
Judicial District

THOMAS J. DIFANIS
STATE'S ATTORNEY

DAVID A. BAILIE
FIRST ASSISTANT

CRIMINAL DIVISION
TERRENCE J. CULLEN
JEFFREY B. FORD
MARK D. LIPTON
DONALD R. PARKINSON
CHARLES C. SMITH

OFFICE OF
STATE'S ATTORNEY
CHAMPAIGN COUNTY, ILLINOIS

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URBANA, ILLINOIS
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CIVIL DIVISION
KURT MCKENZIE
JOSEPH D. PAVIA
THOMAS P. SWEENEY

INVESTIGATORS
JAMES E. DAVIS
WILLIAM C. FREYMAN

April 22, 1980

Director
Federal Bureau of Investigation
U.S. Department of Justice
Attn: F.B.I. Laboratory
Washington, D.C. 20535

TO WHOM IT MAY CONCERN:

I am writing in response to the survey being conducted by the F.B.I. concerning the performance of F.B.I. Special Agent Laboratory examiners. Also enclosed is the survey form.

Over the past five years this office has had occasion to utilize the services of the F.B.I. Laboratory on numerous occasions. We have always found the laboratory analysis to be complete and competent. We have also found that the special agents are extremely cooperative and they make excellent witnesses when called to testify.

One of the biggest assets of the F.B.I. Laboratory is the professional quality of the special agents who perform the lab work and subsequently testify in Court about their findings. The special agents are in marked contrast to the civilian laboratory examiners used by the State Crime Lab.

The fact that the laboratory examiners have had previous investigative experience increases their effectiveness both in the laboratory and in Court. The investigative experience enables them to better appreciate and understand the efforts of the local police investigator and makes it easier for the lab examiner to communicate with these officers and compliment their efforts.

In talking with police detectives in the Champaign-Urbana area I have found that they unanimously have the highest regard for the F.B.I. laboratory and the individual examiners. Local law enforcement personnel always prefer sending evidence to the F.B.I. over the State Crime Lab. The reasons for this preference are two-fold. First, the F.B.I. always

does the requested analysis and secondly, the F.B.I. lab examiners are more proficient at their job and have better qualifications to be expert witnesses.

I believe that the F.B.I. should continue using special agents as lab examiners as opposed to civilian employees. Such a switch would reduce the effectiveness of the F.B.I. lab and hinder the working relationship and support between local police and the F.B.I.

Sincerely yours,

Thomas J. Difanis
State's Attorney

TJD/tah

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	4	(5)
disorganized & unprepared		organized, prepared		very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a)

1	2	3	4	(5)
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	(5)
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	(5)
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	(5)
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	(5)
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	(5)
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ____ no ✓

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

The Special Agent examiner, as an experienced investigator, is in a position to assess the significance of the findings as they relate to the investigation as a whole.

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

One of the strongest points in the FBI's favor, as opposed to the use of FBI work within [illegible] criticism, is the FBI Laboratory. It is recognized as the best, with many cases a proven effective agent.

James T. Ter...
~~U. S. Attorney~~
Assistant State's Attorney
Rock Island County Courthouse
Rock Island, Illinois 6120[illegible]
~~Judicial District~~

James T Ter...
Assistant State's Attorney

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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(b)

1	2	3	4	(5)
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	(5)
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	(5)
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	(5)
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	(5)
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

Provides an added dimension to the examiner by enabling him to go beyond just the examinations as requested by the investigating police officer.

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

The fact that the examiner can tell the jury "I am a Special Agent of the FBI", in addition to being technically trained and experienced lends added credibility to his testimony. As a practicing Trial Attorney, I cannot emphasize too highly the importance of credibility of witnesses.

Hartley Wells
Braeden Wells
~~U. S. Attorney~~
assistant District Attorney for
twenty-Sixth Judicial Circuit
P.O. Box 526,
~~Judicial District~~
Blountsville, Alabama
37607

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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1	2	3	4	(5)
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	(5)
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	(5)
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	(5)
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	(5)
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	(5)
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why?

Special Agents enjoy the confidence of the citizens and jurors that other experts wouldn't know and the public knows that when an F.B.I. special agent testifies he is not an advocate, but a person who is totally objective

Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

It is the belief of myself and my staff that if the Laboratory examiners were not special agents, the effectiveness of prosecutors would be greatly diminished.

XXXXXXXXX
Carl K. Kirkpatrick
District Attorney General
Twenty-Sixth Judicial Distri

Judicial District

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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1	2	3	4	(5)
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(a)

1	2	3	4	(5)
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	(5)
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	(5)
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	(4)	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	(5)
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Because they have the experience to relate the significance of their findings to the case at issue.

Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Examiners who have experience as Special Agents [illegible] can appreciate a crime scene in its totality and the importance of [illegible] because of this can [illegible] at crime scenes and evaluations rather than just a laboratory [illegible]. The fact that the examiner has an experience and specialized knowledge of the FBI adds to his credibility to the jury.

Paul Buckley
~~U. S. Attorney~~
First Assistant District Attorney
of Suffolk County
New Courthouse

~~Judicial District~~
Pemberton Square
Boston, Mass. 02108

Paul L. Buckley
First Assistant Dist. Atty.
Suffolk County, Boston, MA.

FBI/DOJ

MICHAEL F. OBRINGER 4/17/80

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	4	(5)
disorganized & unprepared		organized, prepared		very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

	1	2	3	(4)	5
(a)	displayed lack of professional maturity		sincere		displayed maturity and good judgement
(b)	hesitant & unconvincing		competent		dynamic & very convincing
(c)	defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	(5)
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	(4)	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	(5)
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

1. PRIOR INVESTIGATIVE EXPERIENCE ENABLES SPECIAL AGENT EXAMINERS TO MORE EFFECTIVELY TIE THEIR TECHNICAL KNOWLEDGE TO CASE.

2. OUR ARE IMPRESSED WITH THE FACT THAT SPECIAL AGENT EXAMINERS POSSESS BOTH TECHNICAL AND "STREET" EXPERIENCE & KNOWLEDGE.

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

8. STATE LABORATORY EXAMINERS IN FLORIDA ARE CIVILIAN EXAMINERS AND DO NOT POSSESS THE INVESTIGATIVE EXPERIENCE OF SPECIAL AGENT EXAMINERS. THIS LACK OF INVESTIGATIVE EXPERIENCE MAKES THE STATE EXAMINER LESS EFFECTIVE OVERALL THAN THE SPECIAL AGENT EXAMINER. THEREFORE I STRONGLY FAVOR THE CONTINUED USE OF SPECIAL AGENT EXAMINERS.

Michael J. Obringer
Assistant State Attorney
Special Prosecution Division
Jacksonville, Florida

U. S. Attorney

Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	4	(5)
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1	2	3	4	(5)
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	(5)
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	(5)
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	(5)
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	(5)
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why?

Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Investigative background is an extremely useful tool in enabling Special Agents dealing with the particular problems which local investigators often confront. Valuable agent time and efficiency would be wasted and local departments would suffer from the loss of such insight contributed by Special Agent laboratory examiners.

Harris Wixted
~~U. S. Attorney~~
Assistant Prosecutor
Chief, Homicide Division
~~Judicial District~~
Camden County
Prosecutor
Camden N.J.

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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(b)

1	2	3	(4)	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	(5)
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5 (X)
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	(4)	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	(5)
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? They offer experience & continuity. Private people will be lured away & cause serious trial problems.

Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

The investigative experience is invaluable! S/A's know what to look for because of that investigative experience & attention to detail often the police forget or overlook.

Michael Rosenberg
MICHAEL ROSENBERG
~~U. S.~~ Attorney
SOMERSET County (N. J.) Pros. Office

FBI/DOJ

Judicial District

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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no - highly technical & difficult to follow		adequate presentation		...s - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

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easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ (Absolutely) no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

The Special Agent who has worked the "street" definitely makes a better expert witness in the courtroom than a civilian. He understands the problems in the gathering of evidence, etc.

U. S. Attorney
State's Attorney
Judicial District of New Haven

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

I have been a prosecutor for almost 10 years. My experience convinces me that witnesses with police training are preferable.

Thomas J. Kapsak
Chief Trial Counsel
Office of the Prosecutor
Middlesex County, N.J.

U. S. Attorney

Judicial District

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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(b)

1	2	3	4	(5)
hesitant & unconvincing		competent		dynamic & very convincing

(c)

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defensive & appearance of bias		objective		highly professional & objective

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4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	5
no - highly technical & difficult to follow		adequate presentation		yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1	2	3	4	(5)
easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ without question no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

In this service by [illegible] to [illegible] in [illegible] and [illegible] in [illegible] to [illegible], the results would be devastating. MTO

W. J. PATTERSON, Jr.
Executive Assistant

U. S. Attorney

FBI/DOJ

Judicial District

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1 — 2 — 3 — 4 — (5)

disorganized & unprepared — organized, prepared — very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a) 1 — 2 — 3 — 4 — (5)

displayed lack of professional maturity — sincere — displayed maturity and good judgement

(b) 1 — 2 — 3 — (4) — 5

hesitant & unconvincing — competent — dynamic & very convincing

(c) 1 — 2 — 3 — 4 — (5)

defensive & appearance of bias — objective — highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1 — 2 — 3 — (4) — 5

unimpressed & confused — impressed — very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

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yes ✓ no ____

Why? Why not?

SOMETIMES THERE ARE SOME OBVIOUS AREAS WHERE THE INVESTIGATIVE EXPERIENCE WOULD NOT SIGNIFICANTLY CONTRIBUTE. HOWEVER, THERE ARE OTHER TIMES WHEREIN THE EXPERIENCE MANIFESTS ITSELF IN PRETRIAL DISCUSSION/CONFERENCES WHERE THE EXPERIENCE GIVES INSIGHT TO THE PROSECUTOR AND/OR THE INVESTIGATOR. SHOULD CONTINUE.

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Everett T. Dennis
First Asst. Prosecutor
~~U. S. Attorney~~
Ocean County Prosecutor's Office.

~~Judicial District~~

FBI/DOJ

MICHAEL GLUSHAKOW

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(a)

1	2	3	4	(5)
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	(4)	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	(5)
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	(5)
unimpressed & confused		impressed		very impressed

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5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

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easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

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yes ✓ no ____

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yes ✓ no ____

Why? Same as 8

Why not?

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The agents experience as an investigator IS USEFUL IN DETERMINING THE EXTENT [illegible] OF THE CONTRIBUTOR

Michael S. Glushakow

Michael S. Glushakow
Assistant State's Attorney for
Baltimore City
204 Courthouse
Baltimore, Maryland 21202

FBI/DOJ

Judicial District

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1 — disorganized & unprepared; 2; 3 — organized, prepared; 4; (5) — very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a) 1 — displayed lack of professional maturity; 2; 3 — sincere; 4; (5) — displayed maturity and good judgement

(b) 1 — hesitant & unconvincing; 2; 3 — competent; 4; (5) — dynamic & very convincing

(c) 1 — defensive & appearance of bias; 2; 3 — objective; 4; (5) — highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1 — unimpressed & confused; 2; 3 — impressed; 4; (5) — very impressed

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yes ____ no X

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yes X no ____

Why? Why not?

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Although all the laboratory examiners were exceptional, the special agent examiner makes a better witness. His investigative experience gives him a keener insight during his examination and the fact that he is an agent gives him added credibility before a jury.

George E. Hall
~~U. S. Attorney~~
State Deputy Attorney Genera

FBI/DOJ

~~Judicial District~~
State of Delaware
Department of Justice

83-073 O - 82 - 51

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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(b)	hesitant & unconvincing		competent		dynamic & very convincing
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TIM TETUMEGUE
ASSIST
~~U. S. Attorney~~
OFFICE OF
ANCHORAGE
Judicial District

FBI/DOJ

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Why? Why not?

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FBI/DOJ

Gary B. Wilson
U. S. Attorney
1st Asst. Dist. Atty
34th Judicial Dist. Ct.
Judicial District

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yes ✓ no ____

Why? Why not?

BECAUSE OF THE SUCCESS IN THE PAST WHY DECREASE QUALIFICATIONS.

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JOSEPH M. IACCVITTI

[redacted]ey

DEPUTY CHIEF OF TRIAL DIVISION

MONTGOMERY COUNTY Judicial District, PA

215-278-3390

FBI/DOJ

X BLAKE DUNBAR NO LONGER WITH COUNTY TRIAL DIVISION

Alan M. Rubenstein

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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yes X no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes X no ____

Why? Why not?

Yes. Every experience which I have had with the use of Special Agents has been excellent; I highly favor the continued use of Special Agents as FBI Lab Examiners.

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

As Chief of Trials in the Bucks County District Attorney's Office I have had many opportunities to call FBI Speical Agents as expert witnesses; among the matters testified to were tool marks, hair and fiber analysis, blood stains, etc, and in every case I as well as the Court and the jury were highly impressed with the competence and capability of these witnesses. I have found them to be the most well prepared witness that I have called to the stand, and they especially fair well under cross-examination; I believe that the FBI agents are as well, if not superior, to any of the expert witnesses who have testified in this courthouse.

U. S. Attorney

FBI/DOJ

Judicial District

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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yes ✓ no ____

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yes ✓ no ____

Why? Why not?

why they

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MICHAEL KANE

~~U.S. Attorney~~

ASSISTANT U.S. ATTORNEY

Judicial District

CHARLESTOWN WV

FBI/DOJ

HARLY

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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Why? Why not?

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SA'S COME ACROSS AS CONFIDENT, INTELLIGENT [illegible]
WHO KNOW WHAT THEY ARE TALKING ABOUT
JURY'S RESPOND WELL

Hardy O. Pickard
Asst. State Attorney

10th Judicial Circuit
Judicial District
Bartow, Florida

FBI/DOJ

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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yes ✓ no ____

Why? ENHANCEMENT OF HIS EXPERTISE AS THROUGH INVESTIGATIVE EXPERIENCE

Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

FEELS THAT ANY INDIVIDUAL WITH PRIOR INVESTIGATIVE EXPERIENCE WOULD BE MORE IN TUNE WITH CASE AT HAND

LOUIS LEAR
~~U.S. Attorney~~
DEPT STATE ATTORNEY

Judicial District

P O Box 151
ROCKVILLE, MD
20850

Tel # 840-2622

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Because as experienced investigators and technical trainers, examiners they can practice court advocacy; that is, interest, bias aside. They are able to present their testimony in a fashion which will help ensure that justice is done.

Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

The previous investigative experience is extremely valuable. It gives the examiner [illegible] matters other than purely technical and academic as civilian examiners tend to do.

Jack Sapuner
~~U. S. Attorney~~
Deputy District Attorney
Sacramento County
P.D. For 702
~~Judicial District~~
Sacramento, Calif 95814

FBI/DOJ

4-17

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Why? Why not?

WOULD NOT NECESSARILY RATE SPECIAL AGENT EXAMINERS OVER NON-AGENT EXAMINERS SO FAR AS BEING EXPERT WITNESSES. HOWEVER, THE INVESTIGATIVE EXPERIENCE OF AN SA EXAMINER WOULD PROBABLY BE OF GREATER

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

VALUE TO THE LOCAL LAW ENFORCEMENT INVESTIGATOR WHO GATHERS THE EVIDENCE AND PREPARES THE CASE, INASMUCH AS THE EXAMINER IS AVAILABLE TO THE INVESTIGATOR FOR GUIDANCE AND CONSULTATION — THE BETTER THE CASE INVESTIGATION AND THE EVIDENCE THAT CAN BE DEVELOPED, THE BETTER THE CASE THAT IS BROUGHT IN FOR PROSECUTION.

Asst L.R. Vance
U.S. Attorney

FBI/DOJ

Judicial District

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

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(b) 1 — 2 — 3 — 4 — 5

hesitant & unconvincing | competent | dynamic & very convincing

(c) 1 — 2 — 3 — 4 — (5)

defensive & appearance of bias | objective | highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1 — 2 — 3 — 4 — (5)

unimpressed & confused | impressed | very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1 — 2 — 3 — 4 — 5

no - highly technical & difficult to follow | adequate presentation | yes - clearly understood & well presented

5. How would you describe the SA witness' ability to support his scientific opinion particularly during cross-examination?

1 — 2 — 3 — 4 — (5)

easily intimidated, vacillating & unsure | responsive & direct | highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ✓ no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Because of professional qualifications of individuals, facts, FBI prestige and reliability.

Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Investigative knowledge is very helpful re: preparing testimony and assisting in preparation for trial.

Curtis Ludwig
Curtis Ludwig
U. S. Attorney ~~PROS. ATTY.~~

BENTON County, WASH.
Judicial District

FBI/DOJ

Called by
Bill [illegible]
4/17/80

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

1	2	3	4	5
disorganized & unprepared		organized, prepared		very organized, well-prepared, rendered helpful assistance

2. During the in-court presentation by the SA expert witness, would you describe his demeanor as:

(a)

1	2	3	4	5
displayed lack of professional maturity		sincere		displayed maturity and good judgement

(b)

1	2	3	4	5
hesitant & unconvincing		competent		dynamic & very convincing

(c)

1	2	3	4	5
defensive & appearance of bias		objective		highly professional & objective

3. How would you describe the jury response to the SA as an expert witness?

1	2	3	4	5
unimpressed & confused		impressed		very impressed

4. Did the SA translate the technical nature of his examination and results into terms easily understood by the lay jury?

1	2	3	4	5
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easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes X no ____

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes X no ____

Why? Why not?

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

Charles R Garrett
U. S. Attorney

FBI/DOJ

Judicial District

WILLIAM P. HOFFMAN 4/17/80

On the following scales, please indicate your evaluation of the FBI Special Agent (SA) examiner in his performance as an expert witness by circling the number on the lines below at the appropriate points:

1. With regard to pre-trial preparation and assistance rendered by the SA expert witness, would you describe him as:

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easily intimidated, vacillating & unsure		responsive & direct		highly effective; able to reinforce his findings through responses

6. Has investigative guidance been furnished by an SA Laboratory examiner to your office either directly or through the case investigator which assisted in bringing the case to prosecution?

yes ____ no ✓

7. Based on your experiences, do you favor the continued use of Special Agents with previous investigative experience as FBI Laboratory examiners?

yes ✓ no ____

Why? Why not?

I FAVOR THE CONTINUED USE OF SPECIAL AGENT EXAMINERS WITH INVESTIGATIVE EXPERIENCE AS FBI LABORATORY EXAMINERS BECAUSE IT MAKES FOR

8. Do you have any comments or observations pertaining to the continued use of Special Agents with previous investigative experience as Laboratory examiners as opposed to the use of civilian Laboratory examiners with no investigative experience?

SPECIAL AGENT EXAMINERS A MORE EFFECTIVE PARTICIPANT IN THE OVERALL JUSTICE PROCESS. THEIR INVESTIGATIVE EXPERIENCE ADDS A VALUABLE PERSPECTIVE TO THEIR WORK WHICH SERVES TO MINIMIZE MISTAKES AND MISJUDGEMENTS.

6. PREFERS SPECIAL AGENT EXAMINERS OVER CIVILIAN EXAMINERS FOR ABOVE REASONS.

William P. Hoffman
Ux~~Attorney~~
William P. Hoffman
Chief Asst. Dist. Atty.
County of Santa Clara

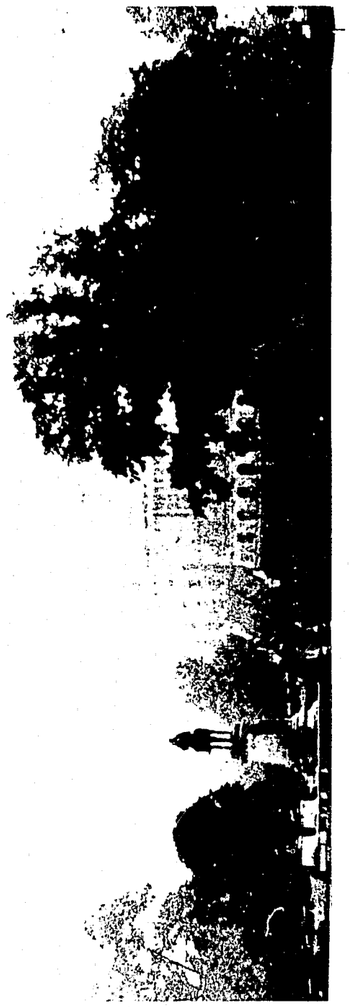
Judicial District

FBI/DOJ

- REPORT -

SECOND ANNUAL SYMPOSIUM

on Crime Laboratory Development



Together, we have a great reservoir of experience and talent.

Together, we must translate this reservoir of talent and experience into greater professionalism and cooperation; and by *working together*, we can solve our common problems.

The future success or failure of our mission will, to a large degree, be determined by the amount of wisdom, innovation, and flexibility we exercise *today*.

Clarence M. Kelley,
Director, FBI
From welcoming remarks
before Second Annual
Symposium on Crime
Laboratory Development,
Washington, D. C.,
September, 1974

- REPORT -

SECOND ANNUAL SYMPOSIUM

on

CRIME LABORATORY DEVELOPMENT

FBI ACADEMY

QUANTICO, VIRGINIA

September 23-27, 1974

The seeds for establishing a national organization of crime laboratory directors were planted in December, 1973, at the First National Symposium on Crime Laboratory Development held at the FBI's Academy in Quantico, Virginia.

The laboratory representatives agreed on the need for better communication and increased cooperation through the establishment of a formal national organization of crime laboratory directors.

This first symposium, sponsored by the Law Enforcement Assistance Administration and hosted by the FBI, was so successful that plans were soon made to hold a Second National Symposium. The second symposium was hosted and sponsored solely by the FBI.

Much was accomplished at the Second Annual Symposium held September 23-27, 1974. And after five busy days an important chapter in the history of forensic science in America had been written.

Fruitful panel discussions were held concerning ways legislation, management, communication, education and organization could best serve the future of crime laboratories in America. But the most important accomplishment was the adoption of a Constitution for, and the establishment of, the American Society of Crime Laboratory Directors, the first organization of its kind to embrace almost all crime laboratories in the Nation.

This is the report of that important symposium covering panel observations, questions and conclusions, as well as the approved Constitution of the Society. It reflects the interest and efforts of all participants. This work bodes well for the future success of the Society. I want to personally congratulate all who worked to make the ASCLD a reality.

I believe this signals the beginning of a new era in the history of Forensic Science. But it is just a beginning -- an important first step toward strengthening the ties between crime laboratories throughout the United States.

Briggs J. White

Briggs J. White
Chairman, ASCLD

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GOVERNING BOARD
AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS

CHAIRMAN
Dr. Briggs J. White
Assistant Director
FBI Laboratory
Washington, D. C.
20535

As the Society's first Chairman, Dr. Briggs, J. White combines an outstanding background of education, training and experience as a criminological scientist with proven ability as an administrator.

Dr. White, 62, a native of Colorado, received his Bachelor of Arts degree from Sterling College, Sterling, Kansas, and his Masters and Ph.D. degrees in chemistry from the University of Colorado, Boulder, Colorado. In 1965, Sterling College conferred upon him the honorary degree of Doctor of Civil Law.

After completing his education in 1940, he entered the FBI and was appointed a Special Agent in 1942. He has seen continuous service for the past 34 years in the Laboratory Division, and served as second in command under the Assistant Director from 1961 until August, 1973, when he was named Assistant Director of the FBI in charge of the Laboratory.

He is a fellow and Founding Member of the American Academy of Forensic Sciences and also a member of the American Chemical Society.

VICE CHAIRMAN
Mr. Richard H. Fox
Director
Regional Criminalistics
Laboratory
2100 North Noland Road
Independence, Missouri
64051

Richard H. Fox is presently Director of the Regional Criminalistics Laboratory for the greater Kansas City Region. Mr. Fox was previously Assistant Director of the Pittsburgh and Allegheny County Crime Laboratory and Instructor of Forensic Chemistry, University of Pittsburgh, Graduate School of Chemistry.

Among his several publications is the "Crime Scene Search & Physical Evidence Handbook". Mr. Fox is immediate past-chairman of the Criminalistics Section of the American Academy of Forensic Sciences and is a member of numerous professional organizations in the U. S. and abroad.

Mr. Fox has testified in courts in numerous states, is a noted lecturer and was the 1970 recipient of the International Chiefs of Police and American Express Award for Scientific Advancements to International Police Science Technology.

He is presently a member of the eight-man Project Advisory Committee for the Proficiency Testing Program of the Forensic Science Foundation and is a member of the Criminalistics Laboratory Information System (CLIS) Committee, Project Search.

Before his election as Vice Chairman of the American Society of Crime Laboratory Directors, Mr. Fox was the acting-chairman for the Steering Committee for the organizations of the Society.

TREASURER
Dr. Larry B. Howard
Director
Georgia State Crime
Laboratory
959 East Confederate Avenue
Atlanta, Georgia
30316

Dr. Larry B. Howard, 46, has been Director of the Georgia State Crime Laboratory since 1969. He was previously its Assistant Director beginning in 1956, with primary responsibilities in toxicology and medico-legal pathology.

Before his 18 years with the Georgia Crime laboratory, he was teaching and research assistant at the University of Minnesota Medical School, Department of Pharmacology. Later, he was a consultant toxicologist at Mount Sinai Hospital, Minneapolis. He has been a member of the visiting staff of Anatomy Department, Emory University. He was also LEAA consultant for forensic science research projects in 1973-1974.

Dr. Howard's education includes B.S., Bacteriology and Chemistry - University of Montana, 1949; Ph.D. Major: Pharmacology; Minor: Biochemistry - University of Minnesota, 1956; Post Doctorate: Pathology, Emory University, 1956-1957; Medico-Legal Pathology, Georgia Crime Laboratory, 1956 to present; Armed Forces Institute of Pathology, 1964; Georgia Medico-Legal Workshops since 1956; Infrared Spectroscopy, M. I. T., Summer Session, 1960; Optical Mineralogy and Petrography, Georgia State College, 1966-1967; and Neuroanatomy, Neurophysiology, Neuropharmacology Review Courses, Emory University, 1968.

He is a member of the American Association for the Advancement of Science; American Academy of Forensic Sciences, Chairman of Standards Committee; Toxicology Section, 1967 to present; Southern Association of Forensic Scientists, Program Chairman, 1966-1969 and 1973-1974; Atlanta Instrument Society; and Member Georgia Science and Technology Commission, September, 1969.

SECRETARY
Mr. A. Atley Peterson
Assistant Director
Technical and Scientific
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Bureau of Alcohol, Tobacco
and Firearms
Room 5202 Federal Building
Washington, D. C.
20226

Mr. A. Atley Peterson is currently the Assistant Director for Technical and Scientific Services of the Bureau of Alcohol, Tobacco and Firearms of the Department of Treasury. In that position he manages ATF's Laboratory System, Automatic Date Procession and the Technical Services for Firearms and Explosives.

He was selected for this position from his former assignment as Deputy Director, Office of Operations in the office of the Secretary of Treasury. He is a retired Rear Admiral of the Naval Reserve with a speciality in Intelligence. In 1972, he received the Presidential Meritorious Service Medal for his contributions to the Navy. In 1973, he received the Honor Award of the Office of the Secretary of Treasury.

Mr. Peterson graduated from the University of Wisconsin with an A.B. in Medical Sciences and the U. S. Naval Academy with a B.S. in Electrical Engineering. As a Reserve, he served on active duty in World War II and the Korean action. He has taught at the Naval Academy, the Naval Intelligence School and the Naval War College. Among other assignments in World War II, he served as Operations Officer, War Plans Officer and Intelligence Officer on the staff of Commander, 8th Fleet in the Mediterranean. During the Korean action he served with the Joint Chiefs of Staff.

In civil life, he has served with the National Security Agency, managed a construction company, established and operated an insurance brokerage and coordinated the intelligence programs of the Sperry-Rand Systems Group, Litton Industries, and L. T. V. Electro Systems Company. Since World War II he has frequently served as consultant to various U. S. Government departments and agencies.

Throughout his career he has sought to apply advancing technology to help solve Government problems.

MEMBERS OF THE BOARD

Society Board members are from left to right, back row: Mr. W. Jack Cadman, Dr. Louis William Nauman, Mr. J. D. Chastain, Mr. Theodore R. Elzerman. Middle row: Lieutenant Robert W. Pinnick, Lieutenant Joseph Barry, Dr. Carl J. Rehling, Mr. Edward Whittaker, Mr. Thomas M. Muller. Front row: Captain Stark Ferriss, Mr. A. Atley Peterson, Dr. Briggs J. White, Mr. Richard H. Fox, Dr. Larry B. Howard, Jr. Not pictured above is Mr. John W. Gunn, Jr.

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Alaska Medical Laboratories,
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207 East Northern Lights Blvd.
Anchorage, Alaska 99503

PANEL REPORTS

PANEL ON LEGISLATION

Moderators: Theodore R. Elzerman and Dr. Charles E. O'Rear

Participants were virtually unanimous in agreeing that legislation requiring "certification" of the various forensic scientists was not desirable now. However, should this need ever arise, it was generally accepted that a national organization such as the American Society of Crime Laboratory Directors should develop general criteria to assist qualified individuals in establishing uniform, minimum guidelines for certification.

A need was seen for the establishment of a Legislative Committee of ASCLD for the following specific areas of actions:

1. Research and recommend methods of using closed-circuit TV in grand juries, preliminary hearings, etc.

2. Establish liaison with the various groups which influence our interests, such as the International Association of Chiefs of Police, National District Attorneys Association, National State Planners Association, American Bar Association, etc. (It is noted that individuals were urged to become involved in their own state agencies which possess legislative influence.)

3. Follow legislative problems and identify and prepare proposed model legislation for consideration and passage in a given local entity. It was agreed that model legislation could initially be prepared concerning relatively non-controversial areas or issues.

4. Develop potential for lobbying influence and methods for exerting influence in legislative matters. This would, or could, include preparation of "position papers" by ASCLD.

At least, model legislation should be drafted and made available for consideration by local jurisdictions in the following areas:

1. Concerning the confusion now existing over the wide-spectrum of rules for certification in the various states for Breath Testing Operators and Blood Analysts, participants generally agreed that the ASCLD should, or, at least be prepared to, establish a set of suggested uniform "in house" guidelines to apply on a national basis. Eventually, these guidelines might be used for model legislation in the various states.

2. Disposition of contraband evidence such as guns, drugs, etc.

3. Utilizing laboratory reports in grand juries, preliminary hearings, licensing procedures, etc.

It was also determined that there is a need for a means of accumulating and rapidly disseminating information regarding testimonies, new laws and decisions, etc., which may be of mutual interest to the forensic science community.

PANEL ON MANAGEMENT

Moderators: Anthony Longhetti and Douglas M. Lucas

The Panel on Management, in order to provide recommendations as to possible courses of action for consideration by the American Society of Crime Laboratory Directors, initially defined its objectives as follows:

1. To identify common problems in the management of a crime laboratory;

2. To evaluate these problems and assign priorities to the search for their solution;

3. To identify individuals or organizations willing and able to develop possible solutions; and,

4. To receive, review, amend and adopt reports on solutions to problems.

Secondly, the Panel identified the following general areas of management wherein the majority of potential problems appear to exist:

1. Scientific and Technical Management

2. Personnel Management

3. Financial Management

Following the first session of the Panel on Management, it was determined that the scope of subsequent discussions would have to be narrowed considerably in order to allow the panel to produce some specific suggestions and/or recommendations. The general topic chosen for further discussion was -- the keeping of meaningful statistics, or more specifically:

1. Why keep statistics?

2. What statistics should be kept?

3. How should these statistics be collected?

As to question number one, <u>why</u>, it was agreed that statistics are kept, "to measure workload and to determine if the laboratory's objectives are being met." More specifically, they are kept to:

1. Aid in decision-making;

2. Enable evaluation of personnel;

3. Identify trends and provide an intelligence tool;

4. Meet governmental or administrative demands or needs; and,

5. Assist the public relations effort.

As to <u>what</u> data or statistics should be collected, it was decided that such data should concern the following general categories:

1. Cases

2. Items (exhibits, samples, specimens)

3. Examinations

4. Handling (time) of requests

5. Employee utilization and

6. Equipment utilization.

Concerning how such data can be collected, only two methods were identified, those being manual compilation and by computer.

It was the consensus of all panel sessions that since every crime laboratory keeps some types of statistics, it would be most helpful if these laboratories could utilize common terminology which would allow a crime laboratory director to compare his operations with other laboratories.

Since virtually all crime laboratories maintain data relating to cases, the following definition of that term was agreed upon:

1. A case is an identifier but not a measurement of workload;

2. A case can be used as a gauge of a crime laboratory's involvement in the criminal justice system; and

3. The term case should be used in the same sense as the submitting agency, e.g. and occurance, a death, etc.

A consensus was also reached regarding use of the terms item and examination. Item was subsequently defined as, "a piece of physical evidence which was examined and which was individually specified in a laboratory report." Examination was defined as "a process applied to an item which contributes to reaching a significant conclusion."

In summary, the Panel on Management did produce a consensus on the following points:

1. Statistics should be kept by a crime laboratory in order to measure workload and to determine if that laboratory's objectives are being met.

2. A common terminology among laboratories would be helpful for the purposes of evaluation and/or comparison.

3. The terms case, item and examination could be used by all crime laboratories using the aforementioned definitions, and

4. The American Society of Crime Laboratory Directors should pursue this matter of common terminology and definitions to expand the number of such terms to those necessary for the maintenance of meaningful statistics, and to subsequently seek their adoption by member laboratories at an appropriate future date.

PANEL ON COMMUNICATION

Moderators: Thomas M. Muller and Fred H. Wynbrandt

The communication panels discussed and agreed upon the following matters:

1. The Criminalistics Laboratory Information System (CLIS) was described as a nationwide computerized laboratory information system. Forensic data will be identified, collected and stored at a central location. Access will be through nationwide telecommunications lines for use by law enforcement crime laboratories. CLIS is now in the final stages of conceptual design. This phase will be followed by implementation, evaluation and modification.

There was unanimous agreement by participants in all communication panel sessions that there was a definite need for CLIS. After options for the housing of CLIS were discussed, it was unanimously agreed that the National Crime Information Center (NCIC) would be the most logical, efficient and economical system for the storage and transmission of CLIS data.

2. Exploration should be made regarding the feasibility of an interchange of personnel among interested laboratories in order to foster an exchange of ideas, techniques and experience.

In order to improve communication and understanding regarding laboratory problems, it was strongly urged that a glossary of laboratory terms be developed so that, insofar as possible, common and consistent terminology could be used by all crime laboratories, particularly at the management level.

4. Regarding written communication among laboratories, it was agreed that the "Crime Laboratory Digest" is a vital and useful communication vehicle. There was unanimous agreement that increased use of the "Digest" is of utmost importance. Increased participation by all crime laboratories will be initiated in the form of items for publication such as reports of regional forensic science meetings and news of ongoing research.

It was emphasized that the "Digest" is a major newsletter for crime laboratories and is a rapid fire means of information exchange among crime laboratory personnel.

5. Finally, it was agreed that "eyeball to eyeball" meetings among crime laboratory directors at annual national symposia are invaluable. However, in view of the fact that there may be limitations placed on some crime laboratories concerning interstate travel, expense, time and other commitments, it was recommended that regional meetings of crime laboratory directors be held in addition to an annual national meeting.

PANEL ON EDUCATION

Moderators: Dr. Arthur S. Hume and Charles A. McInerney

The Education Workshop of the Symposium was primarily concerned with identifying the desired educational background for persons seeking employment in a crime laboratory and their subsequent progression towards the goal of furnishing opinion in court as an expert witness. This progression phase dealt with the education/training combination which would make the goal a reality. In addition, the need to educate all members of the criminal justice system, including judges, attorneys, police officers and crime scene technicians was recognized. Each of these aspects of discussion are covered below.

1. Educational background. It was the firm consensus of the group that a bachelors degree in physics, chemistry or some other physical science was the desired minimum educational level for employment in any area other than latent fingerprint firearms, toolmark and document examinations. As acquired skill activities, these latter areas develop the necessary expertise primarily through on-the-job

training. Some members of the workshop were in favor of the American Society of Crime Laboratory Directors (ASCLD) establishing pre-requisites for employment and referred to the Canadian Laboratory System's standards. It was pointed out that such a single system was not being dictated to by an outside agency, whereas in the United States pre-requisites varied widely from jurisdiction to jurisdiction. While some form of licensing may eventually be developed, it was felt that it was premature for ASCLD to establish at this time pre-requisites which would in effect be forced on some laboratories.

2. Education/Training Phase. With a solid educational background, the employee could begin his training phase which would include familiarization with available literature, special courses such as those offered at the FBI Academy, advanced degrees and on-the-job training in specialized fields. Many in the workshop thought there was merit in an exchange of personnel between laboratories.

It was firm consensus that two-year Associate Degree programs offered in community colleges were inadequate as preparation for laboratory employment though conceding that such programs had their place within some areas of the law enforcement community. Even four-year degrees in Forensic Science were not desirable. The hazard involved in such courses lies in their creation solely through the availability of funding without having instructors capable of preparing the student for crime laboratory work simply because the instructors don't know what the laboratories need. The result is not only an ineffectual product, but the student, if he can't immediately find laboratory employment, has nothing in the way of a basic science to fall back on.

Some panelists thought that an internship program for senior science students using an LEAA stipend should be looked into or at least, that the area of criminalistics could be introduced into the regular senior year of a science program. In this fashion, laboratory directors would have the opportunity to observe the interest and competence of the student from the standpoint of a future employee. A consensus, however, was that criminalist training should start at the graduate level. In any event, the employee should be encouraged to continue his education and training. Even the holder of an Associate Degree should be urged to transfer to a university and endeavor to progress.

CONTINUED

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3. Additional Training Requirements. The need to educate other previously-mentioned members of the criminal justice system arises from the value to the laboratory on receiving evidence in the best possible condition and to insure that the attorneys and judges recognize the function and purpose of the expert witness.

One panelist cautioned against laboratories making comments about new techniques prior to their full evaluation. Without such self-discipline, the laboratory runs the risk of having to change its opinion with a subsequent lack of credibility in the eyes of the public and the courts.

A discussion on the merits of the "generalist" versus the "specialist" reflected the viewpoints of laboratories of different sizes. The large laboratory could afford the specilization while the intermediate-sized one needed flexibility to respond to the exigencies of the day (vacation, sick leave, court committments).

The workshops were frank, interesting and pointed out the need for continued efforts through the ASCLD to focus attention on the training of criminalists and to insure a constant policy of self-appraisal and self-improvement.

PANEL ON ORGANIZATION
OF THE
AMERICAN SOCIETY OF CRIME LABORATORY DEVELOPMENT

In December of 1973, forty-six crime laboratory directors selected on a representative basis met at Quantico, Virginia, at the invitation of the Federal Bureau of Investigation and sponsored by the Law Enforcement Assistance Administration. The purpose of this meeting was the exploration of the area of crime laboratory needs and requirements for future growth. As a consequence of this meeting, these directors came to the realization that there was a need for establishing a formal organization composed of crime laboratory directors.

The very important specifics of criminalistics and the forensic sciences seemed to be satisfied through the American Academy of Forensic Sciences and the regional associations that are presently in existence.

However, the problems and opportunities peculiar to the responsibilities and authorities that reside with the directorship of crime laboratories, whether large or small, require a distinct level of communication.

Additionally, it was felt that the crime laboratories of America had reached a level of growth and sophistication that required a structure for the exchange of ideas at the managerial level.

Even further, this structure, as an organization of those who are primarily responsible for the day-to-day operation of crime laboratories, could provide input and expertise at the highest levels.

From all of the above and more has come this attempt to forge an instrument whose primary thrust shall be the establishment and maintenance of an organization of those particular individuals charged with the responsibility of directing the crime laboratories of America.

PREAMBLE
TO THE CONSTITUTION
OF THE
AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS

Whereas:

The American Crime Laboratory Directors-

-recognize the need for better communication between the Crime Laboratory Directors of America in the areas of planning, implementation and control as they relate to crime laboratory matters;

-state the purpose of this organization is to direct our collective resources and experience to assist in the continuous improvement of the criminal justice system;

-wish further to influence the criminal justice system for the optimum use of the forensic sciences through the proper management of crime laboratory facilities;

-recognize the need for a realistic appraisal of the present state of the art, physical facilities and personnel across the continent both generally and specifically;

-believe, further, that the above can be realized by planning, implementation, direction and advice at both the local and national level, recognizing the face of regional differences;

-therefore, we do hereby establish The American Society of Crime Laboratory Directors with the following constitution and by-laws.

AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS
CONSTITUTION

ARTICLE I - NAME

The name of this organization shall be American Society of Crime Laboratory Directors.

ARTICLE II - OBJECTIVES

Section 1 - To foster the development and interchange of crime laboratory management principles and techniques.

Section 2 - To foster an increase in the effective utilization of crime laboratories in the criminal justice system.

Section 3 - To foster the continuing improvement of the quality of services offered by the crime laboratory.

Section 4 - To offer advisory and consultant services in the forensic sciences in support of the criminal justice system.

ARTICLE III - ELIGIBILITY FOR MEMBERSHIP

Section 1 -

(a) Membership shall be open to all individuals whose major duties include the management, direction or supervision of a crime laboratory, a branch crime laboratory, or a crime laboratory system.

(1) A crime laboratory is a laboratory which employs one or more full time scientists whose principle function is the examination of physical evidence for law enforcement agencies in criminal matters, and who provide opinion testimony to the criminal justice system.

(b) Each member shall have a single vote. A member may designate, for any particular meeting function, or time period, any member of his organization to serve in his place. Such representative shall have only one vote regardless of the number of members he represents.

Section 2 - Termination of Membership

(a) The Secretary shall forward to the Board the name of any member who has failed to attend or participate in one of four consecutive regular annual meetings. Such member shall then be automatically dropped unless the Governing Board votes to renew the membership.

(b) A member will be automatically dropped from the Society on failure to pay the annual dues assessment for three consecutive years if dues are not paid within sixty days after notification of this failure by the Secretary.

(c) Any member who no longer meets the eligibility requirements will be dropped from membership.

(d) The Board may offer emeritus membership without voting rights in recognition of distinguised service and experience. Emeritus members shall be exempt from payment of dues.

Section 3 - Each laboratory director, whose laboratory was represented at the initial meeting in Quantico, Virginia, in December 1973, or September, 1974, shall be considered a charter member of this organization if his annual dues are received by the Secretary within one year of acceptance of the Constitution by the Society.

Section 4 - Additional members may be accepted at any time by the Secretary on receipt of a letter of application and verification of eligibility by the Secretary and membership committee. Membership status, however, will not be conferred until 120 days after receipt of the completed application. This application shall include the name, address, position, education and experience of the applicant and shall include two letters of recommendation by members of this Society.

ARTICLE IV - DUES

An annual dues assessment payable to the Treasurer of the Society will be due and payable on January 1 of each year.

(a) The Governing Board may set the amount of the annual assessment appropriate to the modest needs of the American Society of Crime Laboratory Directors at any annual meeting.

(b) The annual dues assessment shall be $5.00 until such time as it may be changed by the Governing Board.

ARTICLE V - MEETINGS

The Society shall hold at least one annual meeting at a time and place to be selected by the Governing Board. Every member shall have mailed to that member a notice of the time, date and place of the annual meeting. This notice will be mailed so that it will be received at least 90 days before the annual meeting.

ARTICLE VI - OFFICERS

Section 1 - Officers of this Society shall consist, after the initial election, of a Governing Board of fifteen voting members. This Board shall elect from its membership a Chairman, Vice Chairman, a Secretary and a Treasurer, each for a term of one year. No two members of the Governing Board shall be of the same state, province, territory or agency.

Section 2 - The election of a full Board shall be the first order of business at the first meeting following the adoption of a Constitution. The Steering Committee shall serve as the initial Nominating Committee, with additional nominations being called for from the floor. In the event two or more members of such city, county, state and federal province or agency receive a sufficient number of votes to place them in the area of eligibility for seating on the Board, the member receiving the highest number of votes shall be seated on the Board. In the event two or more such nominees receive the same number of votes, a run-off election shall be held.

Section 3 - Initially the five Board members ranking first through fifth in number of votes received from the voting membership present at the meeting shall serve a term of three years. Those ranking sixth through tenth in number of votes received shall serve a two-year term and those ranking eleventh through fifteenth in number of these votes shall serve a one-year term. All subsequent members elected to the Governing Board shall serve a three-year term. All Board members shall be elected by secret ballot. No Board member shall serve two consecutive three-year terms. In case of ties in positions five, ten and fifteen, run-off elections shall be held.

Section 4 - For each subsequent election a Nominating Committee of five members shall be selected by the Chairman with Board approval. This committee shall consist of two Board and three non-Board members. This Committee must nominate at least two candidates for each of the five vacant Board positions that occur annually. There shall be no numerical restriction against further nominations from the floor.

Section 5 -

(a) In case of absence or incapacitation of the Chairman, the Vice Chairman shall serve as Chairman as necessary for the remainder of the unexpired term.

(b) In the absence of Chairman and Vice Chairman, the Board shall elect an Acting Chairman.

(c) In case of a vacancy on the Governing Board, it shall remain vacant until the next regular election. At that time, an election shall be held to fill the vacancy for the balance of the term.

Section 6 - Subsequent to each meeting in which there is an election of officers, the Governing Board shall meet at that meeting and elect a new Chairman, Vice Chairman, Secretary and Treasurer and conduct other necessary business of the Society. The new officers will assume their duties at the close of the elections. This session shall not preclude other meetings of the Governing Board as deemed necessary by the Chairman. All meetings of the Governing Board will be open to the general membership and shall be announced prior to the meeting of the Governing Board.

ARTICLE VII - GOVERNMENT

Section 1 -

(a) The general management of the Society shall be the responsibility of the Governing Board. A quorum shall consist of at least 60 percent of the members of the Board. Voting privileges may be exercised by mail at the discretion of the Chairman.

(b) The voting membership may, at any business meeting, override the Board provided no contractual agreements or obligations have been made as a result of Board action. The Board may at any business meeting submit unresolved or controversial questions to the voting membership.

Section 2 - The Chairman shall preside at the meetings of the Society and the Governing Board and shall perform such duties and parliamentary responsibilities as necessary or as the Governing Board shall require. This shall include approval of disbursement of such funds which are in addition to the normal operating expenses of the Society.

Section 3 - The Chairman may at any time appoint such committees as he may deem necessary in order to make recommendations to the Society. The following committees are constitutionally authorized:

(a) Committee on laboratory evaluation and standards

(b) Committee on forensic science programs

(c) Committee on new developments and research

(d) Committee on ethical practices

(e) Committee on membership

(f) Committee on law enforcement liaison

(g) Committee on legislative matters

Each committee member shall serve at the discretion of the Chairman of the Governing Board. There is no prohibition against reappointment of the various committee members. No committee member or officer of this Society shall receive any remuneration for his service as a member of the Society.

ARTICLE VIII - AMENDMENTS

The Constitution may be amended by a 60 percent vote of the voting members responding, provided that a copy of each proposed amendment has been mailed to all voting members at least thirty days in advance of the vote. Mail votes shall be accepted.

ARTICLE IX - FUNDS

Section 1 - A Treasurer's annual report, in writing, shall be given once a year at that meeting in which there is an election of officers. The expenditures of any funds other than those accrued to the Society through dues must be approved by the Governing Board.

Section 2 - The financial books and records shall be audited prior to the annual meeting by a Committee appointed by the Board.

Section 3 - In the event of dissolution of the Society, the funds remaining shall be distributed to the Forensic Science Foundation, Incorporated, or similar scientific organizations approved by the Board of Directors.

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FBI AUTHORIZATION REQUEST FOR FISCAL YEAR 1982

WEDNESDAY, APRIL 8, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, at 9:30 a.m., in room 2237 of the Rayburn House Office Building; Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, Washington, Hyde, Sensenbrenner, and Lungren.

Staff present: Catherine A. Leroy, chief counsel; Janice S. Cooper, and Michael Tucevich, assistant counsel; and Thomas M. Boyd, associate Counsel.

Mr. EDWARDS. The subcommittee will come to order.

Good morning. This morning we conclude our authorization hearings for the Federal Bureau of Investigation for fiscal year 1982.

Over the past few weeks, the subcommittee has held a number of hearings on a wide range of FBI activities. They include the FBI's career development program, crime labs, jurisdiction on Indian reservations, and undercover operations. In each of these areas, FBI and non-FBI witnesses alike have recognized that, despite the outstanding job the FBI is doing, there are areas for change and improvement.

We hope to share the information we have learned in previous hearings with our witness today, in the expectation that, by working together, we can enhance the FBI's contribution to the country's law enforcement effort. I have also asked our witness to address some concerns of mine in the area of computerized record-keeping.

We are very pleased to have with us this morning the distinquished Director of the FBI, William H. Webster. In his brief tenure, Director Webster has done much to restore morale and momentum to the Bureau, restore public confidence in it and reach out to minorities to win their confidence.

He has continued his predecessor's shift in emphasis to quality cases, no longer focusing on stolen cars and bank robberies, but on organized crime, white-collar crime, and foreign counterintelligence.

We applaud all of these efforts and look forward to working with the FBI and its Director in the years to come. Judge Webster, we welcome you, and you may proceed.

TESTIMONY OF THE HONORABLE WILLIAM H. WEBSTER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, ACCOMPANIED BY WILLIAM BAYSE, ASSISTANT DIRECTOR FOR TECHNICAL SERVICES

Mr. WEBSTER. Thank you very much, I appreciate your remarks and hope to live up to them.

I would like to introduce Mr. Al Bayse, Assistant Director for Technical Services, who will assist me in answering any of the questions the committee might have in the more technical area.

I have a short or summary statement which I would like to make, and with your permission, we will file a more formal statement in the record.

Mr. EDWARDS. Without objection, it is so ordered.

[The complete statement follows.]

PREPARED STATEMENT OF THE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION, WILLIAM H. WEBSTER

Mr. Chairman and members of the subcommittee, I am pleased to appear before you today to discuss FBI automation.

Automation is playing an increasingly important role in support of the FBI's investigative and law enforcement services missions and vital resource management activities. Underlying our use of automation—particularly computer-based information systems—is the recognition that information in the FBI is an important organizational resource which must be efficiently managed. Over the past 3 years, the automation program of the FBI has been completely revised. Extensive organizational changes have been completely revised. Extensive organizational changes have been put into place to establish and adequate base of resources—human, fiscal and capital equipment—to take full advantage of automation. New, highly skilled personnel have been assigned to key managerial and technical positions. Modern computer hardware with improved price performance has been acquired to replace obsolete, unreliable equipment.

In this regard, I wish to express my appreciation to the subcommittee for encouragement and support of our acquisition of a new host computer and communication controller for the National Crime Information Center (NCIC). I can report that based on your support and that of other interested committees, the FBI was able to procure competitively the new host machine for NCIC and other essential computers for less cost than replaced equipment. The new NCIC host has resulted in unprecedented levels of service and reliability to the nation's criminal justice community.

To set the stage for enhanced automation support of FBI missions, a new long-range approach has been formulated. Accordingly, our budgetary requests reflect a multiyear outlook for information systems development. Further, I have established a formal executive steering group to set priorities for major automation enhancements. This group is composed principally of assistant directors with recent field experience.

As a consequence of these and other actions, the FBI is involved in a broadly based, long-range program to apply state-of-the-art information technology—based on advances in computer science, automatic data processing and telecommunications—in a cost-effective manner across virtually all functional areas, including investigation, law enforcement services, resource management, and executive decision making.

Systems such as NCIC and aids are undergoing review and change. There is substantial interest in the concept of file decentralization of computerized criminal histories (CCH). The NCIC Advisory Policy Board has formed a subcommittee to analyze the prospect of CCH decentralization. As you are aware, we are working with the State of Florida to test the feasibility of decentralizing CCH single state offender records. A comprehensive study by the Jet Propulsion Laboratory (JPL) has provided new insights and specific recommendations toward cost-effective implementation of fingerprint automation.

While the FBI's newly formulated program is aimed at improved operational effectiveness and productivity across-the-board, principal focus has been on application of advanced computer-based information systems and analytic techniques in critical investigative mission areas such as foreign counterintelligence, organized

crime, white collar crime and international terrorism. The influence of the executive steering group is evident in this increased investigative orientation. Pacing the new investigative applications of automation are three distinct, comprehensive information systems now collectively serving one-third of the FBI's field offices with direct, on-line computer support. Two of the systems support FBI national-level program management in investigation of organized crime and hostile foreign intelligence activities. A third system supports major investigations of white-collar financial crimes, organized crime, international terrorism, and significant crimes of violence; currently, over twenty major cases are being supported across 15 FBI offices. Each of these information systems has consistently produced cost-benefits and investigative results. Our information system capabilities go far beyond simple search and retrieval operations. The case support system can assist investigative information management activities from case opening through trial preparation. This system has been particularly effective in reducing time in preparation for prosecution and in improving interdivisonal coordination for investigation of far-reaching violations such as labor racketeering. The organized crime information system provides unprecedented capabilities to trace and analyze complex associations among organized criminal activities.

In addition to these key investigative support information systems, a fundamental component of our automation plan involves the emerging office-of-the-future concept. A pilot information system project in two selected field offices is being employed to test and evaluate the effectiveness of word processing, data processing and telecommunications systems integrated to provide automation capabilities in the FBI field office business environment. Activities supported by the office automation system range from routine correspondence and record keeping to complex investigative and resource management tasks. Our goals for office automation include paperwork reduction and improvements in productivity of all personnel in the office—from clerical staff to street agents to special agents in charge. Under this concept, almost all personnel will have direct access to computers to assist in perforing office functions. This pilot approach has demonstrated increased productivity and potential cost-benefits in a number of office functions common to all FBI field divisions. Results to date indicate that office automation in the FBI is at a stage of development and cost-effectiveness to realize economies of scale through expanded implementation. Consistent with these findings, we are preparing to extend the capabilities of this information system to a full regional complex of eight interconnected field divisions in the Northeast United States. Importantly, our pilot models provide for secure intradivisional communication links between resident agencies and their respective field division headquarters.

To complement the systems for investigative support and field office automation, efforts have been initiated to consolidate and modernize all information systems related to management of FBI human, fiscal, and property resources. This work is particularly significant in that it involves a concentrated effort to combine the functions performed by a number of individual, outdated information systems into an efficient, intergrated system using new scientific design and development methodologies and state-of-the art data base management techniques. The resulting information system will support organization-wide resource management for all personnel, funding, and equipment. This system will be linked through a secure telecommunications network with the field office automation system to improve efficiency of information flow and storage and reduce operating costs for the functions performed. Our top and middle-level managers will interact directly with this system to take maximum advantage of automated analytic and decision support capabilities to manage and allocate critical FBI resources.

Other automation projects involving information systems or scientific computation are progressing in the areas of records management, laboratory support—including the FBI national stolen art file—and field office special data processing tasks currently supporting over thirty investigations of crimes such as fraud against the government, check kiting, and bribery.

The FBI's fiscal year 1982 automation budget request includes major information systems enhancements and expansion, with related funding for advanced data processing and telecommunications technologies to support secure, cost-effective implementation. The fiscal year 1982 appropriation will fund seven installations of the organized crime information system; by the end of fiscal year 1982, this important system will be fully deployed in twenty-three field offices and seven resident agencies. Five new installations of the case management system are included, along with a number of initial or expanded installations of the foreign counterintelligence system. Following the application of fiscal year 1982 funds, approximately one-half of the FBI's field divisions will have secure, on-line access—commensurate with workload requirements—to one or more of these key investigative information

systems. During fiscal year 1982, the office automation pilot project will be extended to the FBI's largest field division. This expansion marks the beginning of our long-term approach to regional automation.

Our new direction has placed the FBI at the threshold of organization-wide exploitation of automation technology. The outlook for the eighties includes field-wide office automation and further advancements in investigative support information systems.

In the area of law enforcement services, we foresee implementation of the automated identification division system and a new system for the national crime information center to provide expanded capabilities for the criminal justice community.

Building on recent information systems developments and enhancements, 1982 is the major take-off point for our long-range program; therefore, fiscal year 1982 budgetary resources are pivotal in achievement of potential benefits of automation technology.

Mr. EDWARDS. I recognize Mr. Kastenmeier.

Mr. KASTENMEIER. Mr. Chairman, I move that the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary permit coverage of this hearing, in whole or in part, by television broadcast, radio broadcast, and still photography or by any of such methods of coverage pursuant to committee rule V.

Mr. EDWARDS. Without objection, it is so ordered. You may proceed, Judge Webster.

Mr. WEBSTER. I am pleased to appear before you today, to discuss FBI automation. Automation is playing an inceasingly important role in support of the FBI's investigative and law enforcement services missions and vital resource management activities. Over the past 3 years, the automation program of the FBI has been completely revised. Extensive organization and personnel changes have been made and modern computer hardware with improved price performance has been acquired to replace obsolete, unreliable equipment.

I wish to express my appreciation to the subcommittee for encouragement and support of our acquisition of a new host computer and communication controller for the National Crime Information Center [NCIC]. I can report that based on your support and that of other interested committees, the FBI was able to procure competitively the new host machine for NCIC and other essential computers for less cost than replaced equipment. The new NCIC host has resulted in unprecedented levels of service and reliability to the Nation's criminal justice community.

To set the stage for enhanced automation support of FBI missions, a new long-range approach has been formulated. Accordingly, our budgetary requests reflect a multiyear outlook for information systems development. Further, I have established a formal executive steering group to set priorities for major automation enhancements.

Our planning actions have led to a long-range program balanced to include new emphasis and priority resources in the application of automation technology in principal investigative areas—organized crime, white-collar crime, foreign counterintelligence and international terrorism.

Pacing the investigative applications are three new information systems now collectively serving one-third of the FBI's field offices with direct online computer support. Two of the systems support FBI national level program management investigation of organized crime and hostile foreign intelligence activities.

A third system supports major investigations of white-collar financial crimes, organized crime, international terrorism, and significant crimes of violence; currently over 20 major cases are being supported across 15 FBI offices. Each of these information systems has consistently produced cost benefits and investigative results.

Systems such as NCIC and AIDS are undergoing review and change. There is substantial interest in the concept of file decentralization of computerized criminal histories [CCH] to the originating States. The NCIC Advisory Policy Board has formed a subcommittee to analyze the prospect of CCH decentralization.

As you are aware, we are working with the State of Florida to test the feasibility of decentralizing CCH single-State offender records. A comprehensive study by the Jet Propulsion Laboratory [JPL] has provided new insights and specific recommendations toward cost-effective implementation of fingerprint automation.

A fundamental component of our automation plan involves the emerging office-of-the-future concept. A pilot information system project in two selected field offices is being employed to test and evaluate the effectiveness of automation capabilities in the FBI field office business environment.

Activities supported by the office information system range from routine correspondence and recordkeeping to complex investigative and resource management tasks. Our goals for office automation include paperwork reduction and improvements in productivity of all personnel in the office—from clerical staff to street agents and to special agents in charge.

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system for the National Crime Information Center to provide expanded capabilities for the criminal justice community.

Building on recent information systems developments and enhancements, 1982 is the major takeoff point for our long-range program; therefore, fiscal year 1982 budgetary resources are pivotal in achievement of potential benefits of automation technology.

I would be very pleased to respond to your questions and questions of other members of the committee.

Mr. EDWARDS. Thank you. I recognize the gentleman from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. I have just a few questions. The automated systems that you have been describing, are these what used to be called the old FBI data bank, several years in the past?

As I recall, these data banks raised the concerns of some civil liberties groups. Or is this something different?

Mr. WEBSTER. It covers the whole range of records, Congressman Kastenmeier. Talking about the development of an organized crime information system, which deals with information relative to organized crime activities, and information systems developed to expand our foreign counterintelligence capabilities, the activities of foreign espionage agents in this country.

Another system deals with what we call specials, like the Atlanta situation, Judge John Woods murder, the Unirac case, major cases where literally hundreds and thousands of transactions are entered into the computer to collect data and provide for ready retrieval and analysis.

Other aspects of the budgetary program deal with our own internal housekeeping. The ability, with some 436 resident agencies, of satellites to 59 field divisions to retrieve information rapidly and put information into the system rapidly and avoid mountains and mountains of paperwork.

Other systems involve aids such as in fingerprint identification, computerization, and automation of the processes of searching for fingerprints.

Art treasures is an example I mentioned in my report. The system we have is one which I think is a couple steps ahead of the one that Scotland Yard has, it facilitates identification of known stolen art.

If you are referring to the domestic security program, by your question, there is nothing special about automation that has anything to do with our terrorist program other than enhancing our ability in the international terrorist activity field particularly.

We collect no different data, no new data that is any different than the guidelines require. It simply facilitates our ability in a modern world to collect greater numbers of facts in an orderly way, rather than through cards and serials and where we are pounding through hundreds and thousands of pages looking for the straw.

Mr. KASTENMEIER. Will you be collecting data of the known criminal aspect, that is to say data such as the FBI collected for years, fingerprints of millions of citizens, irrespective of any nexus to any crime they have may committed?

Mr. WEBSTER. On fingerprints, our policy is that we have two set types of fingerprints, criminal fingerprints, those supplied to us in connection with criminal cases. Then the civil cases in which fingerprints are supplied to us for various reasons. Boy Scouts used to send them in, fingerprints are extremely useful in emergency situations requiring quick identification of an individual.

For instance, one of the things that we are encouraging is a project for the future dealing with the collection of fingerprints of children which might have been useful in the Atlanta situation, had we had it.

Fingerprints are extraordinarily useful in disaster situations where airplanes go down, the Jonestown tragedy, if you recall, and other situations. Those are supplied on a voluntary basis or as required by statute and we do retain them. They are not for dissemination except under rules and guidelines, however.

Mr. KASTENMEIER. The thrust of my question is, will you be acquiring other civil information, that is known criminal information?

Mr. WEBSTER. The criminal history program, which is a part of the NCIC system which is a law-enforcement community project, which we manage, has—the criminal history section of NCIC undertakes to collect matters relating to criminal history, not just to any one's history, but criminal history from arrest through incarceration, probation, parole, which was intended to be available to those who had a legitimate interest in knowing: the judges, the probation officers, and so on.

That system has not functioned well because of the—some of the limitations and concerns about it, particularly the old code word "message switching."

And we have been trying to develop an alternative to that which would not require the FBI to be the conduit for information.

And I think I have made a number of reports, including a report to this committee on our final project in Florida to see if we could use the inlet system for having States communicate with each other on these matters so that the criminal history system CCH records will in effect be decentralized out of the FBI.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

Mr. EDWARDS. The gentleman from Illinois, Mr. Hyde?

Mr. HYDE. Thank you, Mr. Chairman.

Judge Webster, last week Treasury Secretary Regan testified that the Secret Service was unaware of the Nashville arrest last year of John W. Hinckley, Jr., for possession of three handguns while President Carter was in town.

Can you explain to us why the Bureau failed to refer information pertaining to his arrest to the Secret Service for inclusion in its file on potential Presidential assassins?

Mr. WEBSTER. I would like to put that in context. It's my understanding that Secretary Regan was responding to a question that in the course of his testimony he emphasized the high level of professionalism and cooperation between the FBI and Secret Service, and I would not want it assumed that there has been any lack of effort to cooperate between Secret Service and the FBI.

The same testimony was given later in the day by Stuart Knight, the head of Secret Service, and I certainly subscribe to that. We make every effort to ascertain the needs of the Secret Service and to supply those needs.

We will continue to do that and if this event is identified as an area where we should be supplying more information, we shall certainly do so.

In October, at Nashville, then-President Carter was speaking at the Opry House Center. During the time that he was speaking at the Opry House Center, a young man appeared at the airport, was late for his plane, according to the records tried to check his bag, and was told to take it instead to the boarding counter.

The Federal privacy statutes do not make it an offense to check a bag containing unloaded weapons. At the loading counter his guns were, of course, detected, and he was taken into custody. He was taken—he was turned over by the Metropolitan Airport Police to the Nashville Police.

He was in custody until about 5 p.m. that night, long after the President left the area. He was then released on a $50 bail and about $12 costs and took an airplane to New York, and then to New Haven.

This man had no known arrest record, that we are aware of, even at this date.

There are about 2,000 such incidents each year at airports throughout the country. I am told that by FAA statistics—in the last year, 1980, 1,900 of these 2,000 were referred to various law-enforcement authorities and about 1,000 prosecutions resulted.

The Federal piracy statute itself is a misdemeanor. Operating under what were understood to be the guidelines of the U.S. attorney, the airport police turned this young man over to the city police for local prosecution.

I have described the $50 bail forfeiture that was involved, plus $12 in costs.

Our agreement with Secret Service, which was written in 1973, calls for the dissemination of certain kinds of information. It does not explicitly call for the dissemination of this kind of information.

However, it's been our practice and our procedure, in our manual, to distribute information on cases that we handle to Secret Service. Local cases that are not prosecuted are to be handled locally.

I should mention that it has been the practice of the Secret Service not to routinely notify headquarters of the movement of the President, but to send advance men and contact local agencies and that includes the local FBI office if the President is due in the city.

I believe that was done in this case. I have been so informed by Stuart Knight and have no reason to think otherwise. These cases were considered at the time—this case was considered by the clerk who took the call to be one of those minor police cases—so minor it was handled locally rather than being turned over to us and it was not disseminated.

Most information of this kind is disseminated. It would be speculative for me to say what the consequences of notifying or not notifying the Secret Service would have been in this particular case.

I have had a top executive at the Bureau, a Deputy Assistant Director travel to Nashville to ascertain the facts. He just returned

and is making his report to me at this time so that those facts will be in the record as to who knew what in Nashville.

I think the emphasis in response to your question is this, there has never been a time when the FBI and Secret Service worked closer together. There has never been an accusation that the FBI failed to disseminate something that was understood that we should disseminate, and agreed to disseminate.

There have been differences in the past involving the Justice Department as well as the Bureau over what the FBI should collect on behalf of the Secret Service. An effort to resolve that is reflected in the current draft charter of the FBI in which there is a special section on what the FBI may be asked to do by the Secret Service on its own behalf.

I asked Executive Assistant Director Francis Mullen with Stuart Knight's approval to meet with his designate Robert Snow, and they have been meeting to determine in this particular area if our guidelines and procedures should be expanded to include additional information.

All of us recognize that it's possible to garbage the Secret Service with excessive data. We don't want to do that. On the other hand, I recognize that the Secret Service should be the judge of what it believes that it needs to know and when we know that clearly, I can assure this committee that the FBI will supply it.

Mr. HYDE. I thank you. I am certainly not critical of the FBI or the Secret Service. But as all of us learned from experience and from what might be characterized as a mistake, it would just seem to me that a person leaving town or coming into town, contemporaneous with a Presidential visit, whether it's Nashville or New York, who has guns—he's obviously an outsider.

He's coming in for some purpose or leaving—following some purpose. He really ought to have a pretty good explanation of why he's carrying the guns. Maybe he did, adequate for whomever questioned him.

But I just—it's just an unfortunate situation. As I say, we learn from experience.

May I ask one more question. We are talking about computer data processing, automated data processing. Following the assassination attempt, there has been a burst of activity concerning gun control legislation.

It seems to me, to be effective in the Federal sense, we are going to need a lot of computers. We are going to need a data processing system that permits the cranking into it of applicants for permits to buy a gun and cross indexing as against whether they have a criminal record, whether they are under mental treatment or treatment for mental illness, whether they have a history of narcotics involvement.

In other words, all of the things we don't want—all of the types of people we don't want to have guns, we are going to have to know when they apply to purchase one and that is going to have to go somewhere, and information is going to have to be produced in the time length. It's much easier said than done.

It seems to me that this is a colossal undertaking for any computer system. Could you comment on that?

Mr. WEBSTER. In terms of recordkeeping, I think we probably should deal with that in two ways, with task, tasking, who's responsible for keeping records under existing or future laws, and then what is the responsibility for dissemination of that information.

We are really very good at that in the intelligence communities. We are trying to get better at that in law enforcement communities. It was, I think, less than 18 minutes between the time we had the serial number of the gun and the time ATF had identified the manufacturer and the source of purchase in Texas, which is quite good.

James Q. Wilson has pointed out in a recent article that there are a number of laws on the books which if properly enforced would further add to the security of citizens against this sort of thing.

The ability to recognize that a person is ineligible to purchase a gun is one of those. I think that the NCIC system presents one of the vehicles that might well contribute to that kind of rapid-fire information.

We get about 300 inquiries a year—pardon me, a day, 300 inquiries a day, come into the NCIC system.

Mr. HYDE. They tell us there are 50 million handguns out there. If we register all 50 million federally, with data about their owners, it's still a colossal undertaking, and it will cost a colossal amount of money.

Is that a fair statement?

I'm not saying we shouldn't do it, but I think we ought to realize the dimensions of the problem.

Mr. WEBSTER. Unquestionably. And I take it I'm not being asked to express a position on this subject?

Mr. HYDE. No, no, no. Just an expert's view on a situation that is very current.

Mr. WEBSTER. I will tell you, unquestionably, we are talking about a lot of weapons; you're talking about a lot of transactions.

Mr. HYDE. Thank you.

Thank you, Mr. Chairman.

Mr. EDWARDS. I think you are being kinder to the Secret Service than they are to the FBI. This morning on NBC's Today Show, Secretary Regan, when asked a question such as Mr. Hyde asked you, his response was that—I was watching very carefully—that the FBI as yet does not have regulations that provide for the forwarding of this kind of information as to the gun that Hinckley was arrested with, and the Secret Service is working with the FBI to make it possible to obtain that information.

Mr. WEBSTER. We do have such regulations. There was a convergence of a local guideline that was utilized by local police, known to the U.S. attorney in this particular situation, the results of which caused the FBI local office to conclude from its own regulations that no further dissemination was necessary. In most cases, dissemination does occur.

What we want to be sure is that our regulations are sufficiently clear, not only to us but to Secret Service, that both sides of the house, working together, know what is expected, so that we deliver

what Secret Service assumes that we are delivering, and that we do so without fail. We are working to try to make that happen.

Mr. EDWARDS. It's also hard to imagine how the Secret Service would have the facilities and would be able to avoid the constitutional problems involved in arresting or keeping people under surveillance with no prior criminal record or who are charged with no offense. There are implications there of the kind of society that we are not very much in favor of; isn't that also correct?

Mr. WEBSTER. I think that is a fair statement, Mr. Chairman.

Mr. EDWARDS. I will ask one more question before I yield, with regard to the question Mr. Hyde asked you about gun control.

With decentralization of criminal records that we all hope will someday take place, so the FBI doesn't have to have 3,000 employees doing the work of cities and States, then the problem of checking within a period of 21 days whether or not the applicant for a gun has a criminal record would be a local problem and would be just a request for the index in Washington as to whether or not the applicant might have a criminal record in any of the 50 States; isn't that also true?

Mr. WEBSTER. Yes, I think that is—if that decentralization approach is fully implemented, we would be indexing rather than collecting.

Mr. EDWARDS. Except with regard to some Federal offenders.

Mr. WEBSTER. Yes.

Mr. HYDE. Would the gentleman yield?

Don't we want to know if this applicant not only has a criminal record, but don't we want to know whether he is under treatment for mental illness, all of the various things that an applicant for a gun—we want to know about not just previous criminality, but whether he's an addict. And isn't that going to take an awful lot of information? Every criminal record in the country being put into a computer system, and narcotic history, and things like that.

I just think we are underestimating the dimensions of the problem. Not that we shouldn't do it.

Mr. EDWARDS. I respectfully disagree with the gentleman. The Kennedy-Rodino-Kastenmeier bill contemplates only criminal records, records that are public already, a matter of public knowledge.

To try to put into a computer or any kind of a recording system the kind of information that the gentleman from Illinois suggests would be strongly resisted, I believe, by all of us on this committee. It would be horrendous to get that kind of thing started in our country.

Mr. HYDE. I have no desire to debate the issue. But I know in local jurisdictions, that is information they like to know about whether someone should be eligible to purchase a gun. And I may have been painting the worst-case scenario, but I thank the gentleman.

Mr. EDWARDS. I'm sure the proper committee will have hearings on this subject.

The other gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. I want to join the Chairman and panel in welcoming you, and I wish you a long and fruitful career and much

success, particularly in the field of protection of civil rights for people throughout the country, which leads to my first question.

And that is that there has been a tremendous amount of concern relative to the Atlanta situation and the disappearance and death of about 22 young children. The Government has been called upon.

I myself have not focused on just what form that call has been, but I would like to know, one, can we be privy to an answer as to whether or not the FBI is involved? If it's not, why not? What are the criteria and standards by which your agency would become involved in such a situation?

Mr. WEBSTER. Congressman Washington, the FBI is very much involved in the Atlanta investigation.

As you no doubt are aware, there was a period of time in which the police department of Atlanta did not recognize that it had an unusual problem, largely because many of the first children were not reported missing. As some—as the public, through the press and otherwise, became aware that it was a problem, some of those reported missing were then examined to see whether they were runaways or in fact might be part of this chain of tragedy.

The FBI provided earlier liaison with Atlanta, believing this to be at most a local homicide situation, but offering at once the facilities of our laboratory, of our forensic science experts, behavioral scientists, visual investigative analysts, anything that we could offer in behalf of support of local community projects.

We looked into it from the standpoint of civil rights. Assistant Attorney General Drew Days concluded that there was absolutely no basis for a civil right investigation such as the one that had been authorized in Buffalo.

The Attorney General authorized us to conduct an investigation predicated upon our kidnaping jurisdiction to determine whether, from any of the missing people, any of those who were not missing—if there was anything we could determine whether there was anything interstate in character. In other words, we assumed the jurisdiction. Admittedly, it has been a tenuous jurisdiction, but we did not hesitate to act once the Attorney General had authorized us to do so.

We currently have 30 FBI agents functioning on a full-time basis in support of the Atlanta effort, compared with about 35 Atlanta investigators working full time. We have contributed to a number of the very positive leads. We have worked together.

Assistant Director Thomas Kelleher, head of our laboratory, was down there just about 10 days ago to work with the laboratory experts, the coroners, and others, to provide a better coordinated effort to assist all of the local law enforcement components that are participating in this effort.

I assure you, this is on the top of our list. And we are in there to stay, until a solution or solutions have been found.

As you can imagine from the focus on this, there has been substantial evidence that we—that there is more than one person responsible for some of these tragic deaths, although we have every reason to believe that there are from 12 to 16 of these incidents that are closely connected. The Department of Justice has sent representatives of the community relations service to Atlanta. I have been to Atlanta three times, twice at airport conferences and

once in Atlanta proper, and talked to the chief of police and the mayor. I have spoken to other interested citizens of Atlanta.

I am vitally interested in seeing that this case is solved. It's national in scope, in the sense that it is having a national impact, not only upon the city of Atlanta but upon our country. It needs to be solved.

Mr. WASHINGTON. It's certainly not healthy. There are all kinds of theories, the conspiracy theory being just one of many.

Could you hazard a prognosis as to just when—what possibility you have of resolving this thing in the future?

Mr. WEBSTER. I wish that I could. Crimes of this sort don't have a ready solution date. I can tell you that the information has been collected in an orderly way. The analytical effort has been made. The door-to-door effort has been made, and continues to be made.

What we are waiting for now, and what will solve this case, is some form of break. Now, I'm not talking about luck. I'm simply talking about someone who sees something and reports it, someone who leaves something behind that is significant to us because of the investigative effort that has already been placed there.

We have had a number of such leads. Some have been disappointing; they were so good, and they turned out not to be the answer.

We simply will stay at it until it's solved, and we hope the sooner, the better.

Mr. WASHINGTON. Thank you. I will yield.

Mr. EDWARDS. The gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. I would like to add my voice to those who have extended their congratulations earlier in this hearing on the job you have been doing as director of the FBI.

My questions will relate to international terrorism and the capability to respond to terrorist incidents which might occur in the United States. We all know that terrorism has become a worldwide problem.

During the Christmas recess last year, the subcommittee had occasion to visit two countries intimately affected by this problem, West Germany and Italy. At that time, we spoke with several individuals who suggested that European terrorists are interconnected politically and, in fact, trained by the PLO or Communist sponsors.

What are your views on the involvement of the Communist bloc in international terrorism?

And is this country prepared to anticipate terrorist activity and react appropriately should it occur here?

Mr. WEBSTER. In answering your question, I would like to first say that you understand that international terrorist activities are investigated under our foreign counterintelligence guidelines, so I'm somewhat prohibited to give you full disclosure of what we are doing.

We had 29 terrorist incidents in this country last year, both domestic and international. That compares favorably with 42 in 1979 and about 55 in 1978 and about a hundred for previous years.

What that means is that we have been successful in identifying some of these groups who are recidivist in nature. If we can put a

bomber away, that means we can reduce the number of bombing incidents in this country.

While those numbers are small, what remained was quite serious. There is a noticeable trend in the last very few years to disregard the value of a human life as evidence by the type of terrorist incidents. You have the shooting of Rodriguez by the Omega 7 group in New York, the slaying of Tabatabai here in Washington, the attempted assassination of a Libyan dissident in Fort Collins, the shooting of naval employees at San Juan, the attempted shooting of Army employees in San Juan. There have been a whole range of activities in which people are getting killed.

Our computer technology is being employed to develop, just as we do in organized crime cases, a part of our intelligence information system, capability of knowing the movements, goals, objectives, personnel involved in these types of activities. We have been—we have had some successes. The Croatian group that was arrested in New York just a month or two ago is a good example of intensive investigative efforts, surveillance of all kinds, the best of our techniques, court-authorized techniques, and so on.

I find it difficult in an open session to really answer your question about connections with Communist countries. We do have information as to training afforded by certain Communist block or satellite countries of others, not themselves nationals of those countries. There has in the past been ammunition and weapons manufactured in the Soviet—or Soviet block territory. There have indeed—some years back, been clear evidence of training inside Soviet Russia.

We have found, also, that a number of these groups which do not share identical ideologies—in fact, many of them don't seem to have ideologies at all; rather, it's a tear down and see what happens with what's left basis. They have cooperated with one another in some of the manners that I have described, and in other manners.

I cannot say with clear confidence that all of this forms a fabric of a single international conspiracy. A conspiracy is one of those things that we talk about and analyze and study and try to put facts together to see what exists. You can weave a web of coincidence in some things that are too coincidental to be accidental.

There are national movements afoot that result in terrorist activity. The Croations are one example. The Armenians are still protesting Turkish violence in 1915 by acts of terrorism in this country. The Philippines are going through a period in which the United States becomes a forum for examples of terrorist protest. The Irish Republican Army has been known to have connections in this country with respect to armament, although no acts of terrorism have taken place in this country that I know of. The Libyans and Iranians continue to war among their own factions in this country. And so it goes.

The computer and the gathering of data by means I have suggested in my opening statement provides an almost necessary vehicle for us to keep track of the movements and the comings and goings. They assist us in countless other ways in the gathering and collection of court-authorized, sensitive information about these terrorist organizations.

Mr. SENSENBRENNER. In a speech before the Contemporary Club of St. Louis on November 7, 1980, you indicated the Bureau is interested in domestic groups who practice terrorism as an instrument of polical political. So far as you know or indicate, do any of these groups have any contact, either formal or informal, with European terrorist groups?

Mr. WEBSTER. I think the answer to that has to be no because if a domestic organization is found to be an agent or satellite of a foreign power, taking instructions from outside of the United States, then we investigate them under our foreign counterintelligence guidelines and they would not be included in the list of eight or nine that I mentioned at that time. This list goes from 8 to 12 to 14 at various times, depending on whether we open or close those cases.

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

Mr. EDWARDS. The gentleman from California, Mr. Lungren.

Mr. LUNGREN. Thank you, Mr. Chairman. Judge Webster, as you know, we have had testimony about the foreign capability of the Bureau recently. In that regard, I would like to direct a question to the subject of devastator bullets used in the attack last week.

If one were to merely rely on reports that one received from the press, one might get the feeling that perhaps the FBI did not identify the type of ammunition used as soon as it could, and information was not relayed to the medical authorities such that they had to be surprised in a sense as to the type of bullet that the officer from the District of Columbia had. Could you briefly outline for us what the FBI did in the search to identify the particular ammunition used, and your judgment as to whether it could have been done more quickly?

Mr. WEBSTER. I will start by saying I am very proud of the work our laboratory did in this case and I think the record will bear it out as it comes out into the record.

Almost immediately as the evidence was made available, the forensic analysis included the spent shells, the fragments of the shells, the bullets that were removed from the bodies of the injured persons.

It also included examination of certain items which were recovered under court-authorized search warrants in the early hours of Tuesday morning and brought directly to the laboratory. I can't discuss the contents of the search because they are currently under seal, but I can tell you that in terms of the bullets, the bullets were quickly identified as 22-caliber bullets, manufactured by Cascade under the trade synonym CCI, which is stamped on the back of the shell.

And all six spent cartridges were still in the gun that was recovered at the scene. There is no reason to believe that Cascade had produced an explosive-type bullet. In fact, Cascade has never produced a 22-caliber explosive-type bullet.

The fragments were identified. At first we were able to account for five bullets and subsequently, we have been able to account for six bullets. I am talking about the slug itself. There was nothing in the shape or form of the spent bullets which would indicate when they were delivered to us that there was anything unusual about them. You will probably recall that the one that hit the President,

that entered the President's body, is believed to have first struck the automobile, closing it over entirely. And this is true of all of the intact bullets.

Due to one piece of evidence which came into our possession, but which did not in and of itself provide any information, we acquired the devastator bullet from the manufacturer. We had—agents went to the manufacturer directly, obtained samples of the bullets and they were flown back to Washington with information about their capabilities.

It then developed that the manufacturer was not really a manufacturer. The manufacturer simply took the Cascade bullet, drilled a hole in the top of the bullet, inserted an aluminum small—very small aluminum canister or container, which contained a substance known as lead azide, and sealed it over and put it in in the bullet, and sold 12 of those cartridges in a regular-sized bullet package under the name devastator at a cost of approximately $7.20 compared with—I understand about 50 regular cartridges sell for about $3.50, I am told.

And when we found those—and there were no other bullets found on the suspected perpetrator, and when we found those, we realized for the first time that the Cascade cartridge may have been modified. That it may—that the Cascade cartridge had been used—might have been used to be modified—and might have been one of these devastators.

We then undertook some tests of the bullets that we had to determine whether or not they in fact had the lead azide. That called for real expertise in order to preserve the forensic value of the bullets themselves for purposes of the trial, which was our foremost responsibility, particularly since, I suppose, 5 years from now books will be written about how many people were shooting at the President that afternoon. And so we devised a method of determining that the McCarthy bullet was a devastator.

We then were of the view that there was at least a possibility that other bullets were devastators. In fact, if I could interject one more comment here, the devastator bullet is not—does not create a big explosion. That is not the function. The purpose is to cause the shell fragments to open up—that is the bullet to open up as it makes contact with the target and thereby create more damage inside and perhaps not penetrate outside.

Law enforcement people use whole-end bullets to protect the public from having bullets go through one person and hit another person. So this is not unknown. This explosive thing, the purpose is to make it open up. It is not a big explosion. It doesn't do any—it is not in and of itself like planting a time bomb. It's simply to create a different kind of impact on the target.

At that point, we felt we had an obligation to inform the doctors who were taking care of Officer Delahanty that the bullet that reposed in the back of his neck, close to his spine, might be such a bullet and that our literature which was supplied only by the manufacturer—who had himself never field tested his product and who stopped making it in March 1980, a year ago—said that it explodes on heat impact or shock.

So we reported that to the doctors. I want to make it clear we made no recommendations to the doctor other than to tell him

what we understood the problems with the bullet were. We made no requests that the bullet be removed.

There was—I have heard some talk that we were trying to gather evidence. I want to put that entirely to rest. I think that is the most scurrilous thing I have heard in all of the things that have been said. We made that recommendation—we made no recommendation, simply trying to get those facts to the doctor so they could make their decision. We subsequently confirmed that all of the intact bullets were devastators and it's our view that the others were as well, although that must wait for further proof.

In the case of the projectile that struck the President, it was compressed and all of the lead azide remained intact, inside the bullet. The same is true in the McCarthy bullet. So that it seems to me that the laboratory acted professionally with due speed, and gave the doctors prompt notification when we found out the nature of the bullet. You must understand that the devastator is not well known. I am told, although it's only third-hand, that even Bob Dickerson, the head of ATF, had not even heard of one.

Mr. LUNGREN. Could I ask a question on that? Is there no requirement for ammunition manufacturers to either file reports or somehow make the FBI or the Treasury Department aware of the fact that this type of ammunition is being sold?

Mr. WEBSTER. It would not be our jurisdiction. The ATF has certain regulations it enforces. I have been told there are regulations dealing with higher caliber explosives but there is no regulation currently pending with respect to a 22-caliber cartridge.

Mr. LUNGREN. Under current rules and regulation statutes, you have no authority to have gathered that information, prior to being confronted with this situation?

Mr. WEBSTER. If it had been given to us, we would have had it in our literature. We spent several long hours searching out literature to see if we could find it.

Mr. Kelleher has just joined me at the desk, and makes a point I thought I had made. The manufacturers are required to report the characteristics of their bullets, but the devastator, producer, is considered a modifier, rather than a manufacturer. And he was not under obligation to report what he was doing.

Mr. LUNGREN. You think that perhaps this is a loophole in the law we should try to close?

Mr. WEBSTER. I think it's a regulation and it can be broadened to cover that.

Mr. LUNGREN. What was the period of time from the attack on the President to the point in time that you were able to conclude this quick investigation and give the information to the medical authorities?

Mr. WEBSTER. It's my understanding—the President was shot on Monday afternoon, about 2:25 and the bullets began coming to the laboratory as they were made available to us from the crime scene. The information on the devastator from the modifier, as now correctly recalled arrived at FBI headquarters Thursday morning.

Preliminary examinations were made, comparisons were made and by early Thursday afternoon we had formed the judgment that there was at least a possiblity that because of the presence of—because some of them were devastators, the possibility existed that

the bullet in Officer Delahanty was likewise a devastator. The doctors were informed late Thursday afternoon.

Mr. EDWARDS. In yesterday's paper, there appeared accounts of training schools in Florida where terrorist groups—and El Salvadoran guerrillas were being trained, to be then sent back, I presume, to those countries. What should the FBI's and the U.S. Government's response to that activity be?

Mr. WEBSTER. There currently are no laws against martial arts training. Many organizations engage in this for a variety of reasons, all the way from thinking the world is coming to an end or about to be invaded, to various groups, Ku Klux Klan—one Ku Klux Klan group is actively engaged in this sort of thing. Various groups that feel law enforcement is inadequate, and they do it on a vigilante basis. Those in the Cuban National Movement have likewise participated for some time. You will recall it was encouraged in connection with the Bay of Pigs so it's not surprising that it continues.

Our concern in the past has been the laws under which we have jurisdiction. Are there any conspiracies to violate the laws of the United States? Those laws would include the plans to infringe upon anyone's civil rights. If they have, we immediately conduct and start an investigation.

It might include of necessity a sustained period of undercover efforts to make our case clear on what is going on.

Our responsibility with respect to monitoring the training in the Cuban Nationalist Movement group has to do with the violation of American neutrality laws, which would preclude the use of our resources for the preparation or engagement of our people against other nations. We have indicated one such exercise intended for Cuban shores.

Mr. EDWARDS. We were discussing earlier the collection of criminal records by the FBI. And under the Paperwork Reduction Act of 1980, the FBI, along with the Department of Justice, were required to reduce their paperwork by 25 percent in a prescribed period of time. It's obvious that the duplication that we have had for many years in the FBI is an obvious target. You have the NCIC people keeping criminal records, and you have the other people keeping criminal records on different floors. I am sure it's been clear that there has been competition between the two portions of the FBI for a long time. One division doesn't want the other to have all of the criminal recordkeeping.

It certainly doesn't make sense to have duplication, I am sure anybody would agree. For a long time, also, the Department of Justice has felt that there should be an ongoing program to decentralize these records, which would result in a huge saving of money. I believe there are 2,800 employees in Ident alone. It would be a better idea to have most of the criminal records kept within the States with an index in Washington.

To the credit of the Bureau, there is a pilot program going on in Florida that is having some difficulty, and I am afraid there might be some roadblocks with regard to that program.

How is it going? How are these problems being resolved? I am sure you have seen the 1978 Blue Book plan for decentralization that was published by the Department of Justice. Is the Bureau

fashioning or beginning plans to implement the recommendations in the Blue Book of 1978?

Mr. WEBSTER. I believe that the answer is correct, but since I am not an expert on the Blue Book I have trouble giving you an unequivocal answer. I know that with respect to the Florida project, we have been giving it our full effort and expect it to be on board by July of this year.

It will provide a vehicle for determining whether or not the inlet system can be utilized to transmit information without Bureau involvement, other than as an indexing point of reference.

There are other areas that I would like to see function in similar ways, but we have got to make that Florida one work first, before we start abandoning what is presently the only collection system that has integrity in the sense that it has—standards that have been followed.

There is such a mishmash of State policies and practices that until we can satisfy ourselves that the State system can adequately and fully carry the load, I think it would be a mistake for us to give up the collection efforts in the identification division.

I agree with the chairman that any form of unnecessary duplication is wasteful and undesirable. You also have a certain amount of conscious parallelism as you try to move into the new project and preserve the integrity of the old in case the new fails; but there is no desire on my part to operate both systems indefinitely.

Mr. EDWARDS. Well, thank you. The old system really hasn't changed much for 50 years, and I am sure that it will be modernized.

My last question this round, Judge Webster, is regarding the laboratory. We had two hearings on the forensic lab of the FBI and it really did get high marks. It certainly is the best in the country. However, witnesses did indicate that any forensic lab should have some form of internal quality control testing program, and I believe it was Mr. Kelleher who testified that the FBI lab does not have any internal quality control testing program.

Other labs do. The ATF and DEA labs. Are there any plans to institute such a quality control program in your lab?

Mr. WEBSTER. Most quality control programs eventually talk in terms of blind testing, supplying a laboratory technician or speciality with a set of facts and seeing how well he arrives at an accurate analysis of what he's assigned to do.

We have not, in the past, employed such testing methods because of what we considered to be an extremely thorough method by whichever analysis of an FBI technician is reviewed by another analyst, not just occasionally, but every one.

However, I think the question of quality control is so vital that we are exploring it. We approach it with an open mind and if some form of spot testing is indicated, I can assure the chairman that I will support it and see that it is carried through.

Mr. EDWARDS. Thank you. Mr. Washington.

Mr. WASHINGTON. Yes, Mr. Director. In reference to hiring and promotional policies and the career development program, are any special efforts being made to recruit, promote, and upgrade minorities under the career development program, and how is that program compared to other agencies?

Mr. WEBSTER. I will be glad to try to answer that question, although I don't know if I brought the exact specifics, but I can certainly supplement the record. I am very pleased with the record of the FBI to enhance its affirmative action program in the 3 years I have been on board. Of course, we both have within our headquarters an equal opportunity office.

We have a vigorous affirmative action recruiting program throughout the United States. We have a rather limited hiring capability at the present time because of current freezes and the static budgets and a relatively low turnover of FBI agents.

I think we have about a 1-percent efficient rate. To the extent that we have had about 400 openings a year, we have been running somewhere between 35 and 45 percent minorities and females of all new employees coming into the Bureau.

The number of female agents has gone from 93 to over 330 in the 3-year period. There has been a very substantial increase in the number of blacks, Hispanics, and although the numbers are small, American Indians and Asian Americans. We need them and welcome them to our organization.

In addition to that, increasing numbers of supervisory personnel are being made up of minority and female agents who have earned the right to promotions. Within the last 3 years, the first two inspectors were appointed who were black. We currently now have on board, for the first time during this period, appointments to field commands.

The field commander or special agent in charge in Atlanta is a black special agent, John Glover. The field commander in Detroit is a black special agent, Wayne Davis. Both of these men have had previous commands under my appointment.

Glover came from Milwaukee and Davis came from Indianapolis, all of Wisconsin, all of Indiana.

We have a Hispanic special agent in charge serving currently in San Juan. We have a Hispanic assistant special agent in charge in San Antonio, Asian American assistant special agents in charge in Albuquerque. And we have a section chief working for Mr. Al Bayse, who is one of the most accomplished experts in data processing and automation in government, came to us from Defense Department and she's a minority female. So there is good progress being made, and not only is it being made, but it is being welcomed and assimilated within the Bureau.

Mr. WASHINGTON. Could you supply the committee with an EEO profile?

Mr. WEBSTER. Yes, indeed. I can also give you percentages. Six or seven percent of the current ratio are minorities and about 38 percent of our overall employees are female, and I will be glad to supply that.

Mr. EDWARDS. Without objection, it will be received.

Mr. HYDE. Harkening back to our earlier discussion about this hypothetical gun control legislation which is not yet in place. Under any projected program such as the one suggested by the chairman, where only criminal records are cranked into the computers, would the conviction that Mr. Hinckley underwent in Nashville, the misdemeanor where he was fined $50 and $12 court costs,

would that be the sort of criminal information put into the computer, would you imagine?

Mr. WEBSTER. That really calls for speculation because I don't know what the bill says and the charge was a local charge for going armed—let's see, it is a strange charge I never heard of before. It was something like being—carrying weapons with the purpose of being armed, I think that is what it is, a misdemeanor.

If you go to Pheonix, you will see banditos, members of the motorcycle gangs with holsters and guns riding motorcycles up and down the town, and there is nothing illegal about it there.

But what I am saying is that I don't know what the registration business would have been, but what is subject to a misdemeanor in one area may be something entirely different in another.

Mr. HYDE. My point is, and I think it is fairly obvious, that the Hinckley situation, I guess Lennon's assassin would not have been picked up by this elaborate and quite costly proposal which is being offered as an answer to violence in America.

I think we have to go much deeper and maybe in other directions. That is my only point, and I hoped to bring it out by this question.

Let me ask you this. Your budget request contemplates a deferral of $3.7 million in automated data processing and telecommunication sources. Now, you have got problems, too. The administration philosophy is to cut back. But are you going to be able to continue to upgrade the computer system by deferring this $3.7 million?

Mr. WEBSTER. That was one of the things that we had to contribute in order to make sure that the integrity of our personnel resources were unimpaired. So much of our budget, as you know, Congressman Hyde, from previous years that I have testified, are people, 80 cents on every $1 is people. If we don't want to lose people, we have to look for something else.

Deferral puts projects at risk. The studies that have been laid on us from time to time on various projects have got to do with automation, have deferred and increased the cost and in the end, created substantial problems for us. I am not saying they weren't justified, I'm talking about the realities of cost.

With rising cost, deferral means that probably this thing we can buy for today at one price will be at a different price later on. Nonetheless, it was our judgment that if we had to give up something, deferral was better—we keep the promise——

Mr. HYDE. Deferral is better than rescission.

Mr. WEBSTER. Yes.

Mr. HYDE. Thank you, I have no further questions.

Mr. EDWARDS. Mr. Lungren?

Mr. LUNGREN. Thank you, Mr. Chairman.

Attorney General Civiletti stated at the time of the promulgation of the Attorney General guidelines on FBI undercover operation, they were for a large part reaffirmation of "existing Bureau practices and procedures in this area." Do you agree?

Mr. WEBSTER. That is true. They were largely a result of procedures that were in place at the time. A few things have been added.

We are now taking a hard look at some of the things, I met with my field commanders last week from around the country to see if they could identify any problems, if any of their men had identified any of their problems. That is the idea of a guideline. You put it in place with care but you are prepared to change it if it isn't working properly.

There are a couple of areas that we are watching closely in terms of handling informants, payment to informants, matters of that kind, whether the requirements are not necessary in terms of the problems they create.

We will be back to the Attorney General for modification if that is our judgment on it.

Mr. LUNGREN. Can you tell me whether those practices and procedures were in effect during the period when the Abscam investigation was underway?

Mr. WEBSTER. Undercover work in the last 4 to 5 years has been a relatively new process for the Bureau, and we have been putting procedures in place during much of that period of time.

Some of those were in place during the Abscam investigation, some were not. But most of them were put in place during the Abscam investigation. That ran about a year and a half in the process, and as we saw ways to improve our undercover technique and protect the integrity of it and be accountable for it, we put the procedures in place.

A great deal of credit goes to our Undercover Review Committee which reviews the guidelines we have in place. Committee membership includes three attorneys from the Department of Justice as well as our own legal counsel division and other substantive divisions.

Through an ongoing monitoring process, we identify the need for procedures and changes in procedures and we put them in place and most of them are reflected in the undercover guidelines. They are rather detailed.

I worried about the extent of the detail in terms of the street agent wondering whether we were loading him up with more than he could understand. But I have been convinced by those in my own Bureau that most of the undercover guideline requirements fall on the special agent in charge. They are supervisory requirements. They don't overload the special agent himself.

Some complaints about some of the provisions with respect to interviewing informants and secondary receipts for payments, things that are highly technical, that we could deal with ourselves.

Mr. LUNGREN. One last question. I have some members of the Banking Committee who came to see me yesterday. They are concerned about the fact that evidently there was a decision in the last administration to get the focus of Federal investigation and prosecution in bank robbery cases shifted back to State and local authorities. They expressed a concern about that.

I am not sure I share that concern, but I would like to know in what way has that decision, that change of direction, affected the manner in which the FBI has participated in investigations of bank robberies over the past several years?

Mr. WEBSTER. In more recent years, bank robbery has not been considered one of our three top priorities which are organized

crime, white-collar crime and foreign counterintelligence. At the same time, the FBI responds to every bank robbery. The difference is in many parts of the country we will send two agents rather than ring the firebell and empty the house and everybody be there.

Experience tells us that not every bank robbery is serious enough to warrant the interruption of our other major programs. Frequently, they are note cases, someone hands a note to a teller at a branch bank, in which there is no deterrence, no policy of deterrence, no bandit screen, nothing, and they carry very little money and they reach in their drawer and pull out $1,000 to $4,000 and don't call the police until the robber is out of the bank. That is not nearly as violent of a situation as a grocery store robbery in which mom and dad aren't anxious to let the money go out of the grocery place and they get engaged with trying to resist. I mention that only by comparison.

Statistically, currently five times as much money today—when I first started, it was three times, five times money is going out the back doors of banks as bank employees' embezzlement as is being taken out the front door by robbers. We have to work closely with local law enforcement. Many have good bank robbery capabilities, as good as ours.

In those cases, we work out with the local police officers what their responsibility will be and what ours will be.

In New York City last year, when we were having a lot of problems with bank robbery, we formed a joint task force that has functioned well, consisting of crack police detectives and FBI agents. In North Carolina, where I visited our field office on Sunday and Monday morning, the bank robberies are up in North Carolina, and 91 percent of them are violent in nature. So, we are increasing our bank robbery commitment in that State.

We have to do it on a local capability basis. We train, we provide field training for local law enforcement on bank robbery matters, and we will continue to support the bank robbery program.

There have been some tradeoffs. Solution rates are down from previous years. We are now studying conviction rates in State courts to see whether they are commensurate with Federal courts. But we also have to accommodate ourselves to U.S. attorney guidelines in various parts of the country.

The U.S. attorney in San Francisco does not want to handle bank robberies except on a very selected basis. The U.S. attorney in Los Angeles wants to handle all bank robberies. So, there is not much point in our chasing bank robbers in a jurisdiction where the prosecutor will refer them elsewhere.

Mr. EDWARDS. Judge Webster, the subcommittee has held several days of hearing on the general issue of undercover operations, and we have had some witnesses who indicated that this technique not only raises serious legal questions such as entrapment, but also profound social and economic questions. They suggest that it is something new to American police—Federal police activities. It is borrowed from the European police practices.

They question whether police in Federal investigatory agencies really have the data to determine whether or not these techniques produce more harm than good. What is the FBI doing to assess the costs and benefits of this technique?

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Mr. WEBSTER. As you know, it's been a relatively new thing for us the last 4, 5 years, where we seriously addressed it.

I would welcome the help of the committee in laying down some protocols for assessing effectiveness. We know what it costs. We know what it has yielded. In 1979, it cost $3½ million and that is in addition to salaries and overhead attributable to agents involved, special expenses, and it yielded $160 million in actual recoveries of stolen property.

In 1980, the yield was down, but it was still something like $60 or $70 million, I could supply that figure for the record, far above the $4 or $5 million that were involved in undercover expense, in terms of cost benefit.

In addition, how do you measure the identification of breaches of public trust at all levels of government throughout the United States? How do you measure the impact on our society of a docking industry so pervasively corrupt that you could not do business from Miami to New York unless you were prepared to participate in paying people off for the privilege of doing business as a docker, or a warehouseman or shipper.

Now, those are things that are hard to measure. They could not have been, in my opinion, identified and the 112 convictions we obtained in that one case would not have been possible without the use of the undercover technique.

There are limitations on the use of undercover operations. I believe that the scholars, and the law enforcement people, and the prosecuters need continually to address this issue, to help us keep our own vision clear. We have tried to address it effectively.

We are conscious of the issues of entrapment. We are conscious of the policy problems that relate to targeting—the whole question of targeting. The difficulty is that when we have a major undercover operation go down or become public, everyone wants to know all about it before we can—before the cases can be presented in the courtroom and those issues identified.

And we are heavily constrained about the amount of specification that we can use for purposes of responding to committees and to others as to the nature of it.

The Abscam cases still have a long way to go, and those cases, some of which will be appealed. It's certainly clear that to date they have provided evidence of a conviction nature to juries.

And we must await the outcome of legal issues which will be fully presented and will be presented in subsequent appeals.

Mr. EDWARDS. Thank you. I am glad that you are sensitive to the implications of the undercover activities. They are certainly an effective means of controlling crime.

But they do have their problems. Opening up the Star building down on Pennsylvania Avenue might incur—if it's known on the street that the price that will be paid for a stolen television set is very high, it might encourage an awful lot of television sets——

Mr. WEBSTER. There are many that feel that way about it and there are others that say we might have to face that there might be a temporary stimulation of activity. Whether that causes someone to break the law for the first time or shift his business to us remains to be seen.

I can tell you about the undercover operation in Boston, Operation Lobster, targeted toward thieves who were stealing whole shipments of goods in large tractor trucks, distributing the cargo, chopping up the truck and selling the parts.

So there is a whole thing that would disappear. We are talking about hundreds of thousands of dollars in each shipment. When that operation came down, and arrests were made, and prosecutions commenced, there wasn't as I understand it, another hijacking in that area for about 7 months.

So I am sure the deterrent factor fully outweighed any momentary stimulation of activity, at least in that situation.

Mr. EDWARDS. This subcommittee had several days of hearings on FBI agents on Indian reservations and the future of your involvement on Indian reservations. The Civil Rights Commission made a report, gave us a report, and they were critical of the manner in which the FBI currently handles allegations of agent misconduct.

They contend the individual who registers a complaint on an Indian reservation is never notified of the result. The Civil Rights Commission felt that such a policy leaves an impression that the FBI doesn't discipline its agents and we know it does.

Mr. WEBSTER. I don't know how to respond to that practice of what we do, because I have personally signed many, many letters—perhaps they have been to Congressmen or perhaps they have been to interested public officials advising them as to what action was or was not taken. With respect to trying—to let a member of the public who filed a complaint know if no action was taken.

I think the specific action taken, if in fact one is taken, implicates some privacy issues as to whether we should outline to anybody what happened to somebody else in an internal administrative matter. There are real privacy questions there.

Now, I made one change—I got the Justice Department to approve a change about a year ago. It was on a question-and-answer radio program where people were calling in questions and a police officer called in and he said: "You know, we understand the FBI has to investigate police officers on charges of violation of civil rights. But why do you just leave us hanging?"

So we were getting it from the other side, too: "Why do you just leave us hanging? You don't tell us whether anything is going to happen."

That was due to a Justice Department policy that would not authorize dissemination of a "No further action" letter. And I took it up with Drew Days, who agreed with me that something should be done, and we worked it out so that now the department will routinely notify police officers when the matter has been concluded.

If there is some interest on the part of an American Indian on a reservation about a complaint, I would like to know about it so that we can deal with it. Among the police officers it was suggested it would require 12,000 letters a year.

I don't know what we are talking about on the Indian reservation, but it can't be so much that we couldn't deal with it through the local field office, and I would be glad to try.

Mr. EDWARDS. Thank you. Another example cited by the Civil Rights Commission of a questionable FBI policy was the investigation by the field office in Minneapolis of its own agents where misconduct was alleged.

As I recall it was a famous case where misconduct was alleged, and the Minneapolis office had its own agents investigate other agents. It was pointed out at the hearing that it doesn't seem a very good practice if an agent is having lunch with another agent and the next day he has to investigate misconduct.

So my question is: Why don't you have an outside office do the investigation, especially in big cases like Pine Ridge?

Mr. WEBSTER. I must be careful in discussing Pine Ridge, because I sat as judge in review on some of these cases, and our current practice, I think, does exactly what our chairman suggests.

Our Office of Professional Responsibility which reports through our Planning Inspection Division directly to me is charged with investigating any major allegation of any kind.

Sometimes the complaints are circumstantial or so minor that it can be handled by the special agent in charge, particularly if he himself is not involved in it. Any major item—we send inspectors to the scene to conduct extensive investigations, the OPR makes a report back of what it found and then that report is referred to the Administrative Services Division summary unit, which tries to apply a certain level of consistency for discipline, then makes—it makes recommendations and on all major matters, I personally sign off on and am aware of the discipline.

Mr. EDWARDS. Thank you. But in a case in California, that we have been discussing with your office likely, and in the same case that you are talking about on Pine Ridge, the Office of Professional Responsibility delegated the investigation to the agents.

In other words, back in the same office?

Mr. WEBSTER. They will only do that if the nature of the circumstance is such that they believe that the special agent in charge, who is a supergrade executive of the Bureau who has management responsibility, can develop the facts.

Coming into the Bureau, as I did, it was interesting to me to see how hard we are on ourselves. And we make numerous trips throughout the year, inspectors, going out to run down what I would have considered to be relatively minor infractions in order to maintain the level of discipline.

Interviews are taken. Those interviews are reviewed. If they are unsatisfactory, they are reinterviewed. If there is any reason to believe that anybody responsible for the investigation has failed to do a thorough one, our chief inspector orders additional investigative efforts.

And then, of course, we report to the Office of Professional Responsibility of the Department of Justice and it can, on its own, run an investigation or require us to do more.

So we don't have the last word on it. It's—what we do is reviewed again.

Mr. EDWARDS. Thank you.

The gentleman from Illinois, Mr. Hyde, again?

Mr. HYDE. I don't want to continue the ordeal, Judge, of you answering our questions ad infinitum, but I detect a breakthrough

on the part of the chairman here. Because as you know we in Congress investigate our own misconducts, short of criminal activity, we have our own in-house ethics committee.

And maybe the chairman is saying by implication we should create somebody outside of Congress with investigatory powers to look at our misconduct, and I would join him in helping create such a record.

Mr. EDWARDS. The Hyde-Edwards bill?

Mr. HYDE. Or Edwards-Hyde bill. Somebody else's name first helps it along. Just a comment, not a question on undercover activity. I think we all realize sometimes that very dangerous work indispensable to solving crimes of certain natures, particular organized crime and it reduces itself to the good judgment of the people instituting it.

And I for one think it's a very useful and indispensable tool of law enforcement and I have full confidence in the judgment of the people who are now exercising that authority.

Last, Sting operations, the hue and cry against them increases, does it not, in proportion to the level of the target? In other words, when street people are being stung, I think you get complimentary headlines. But as it ascends the social and political scale, sensitivities concerning entrapment and civil rights somehow become exacerbated.

That is a comment, not a question.

Mr. WEBSTER. Thank you.

Mr. HYDE. As far as Sting operations stimulating crime, I don't think an honest person would be stimulated to a crime by the fact that someone was buying television sets for $100 apiece down the street.

A dishonest person might be stimulated and the deterrent effect of their exposure, I think, is well worth the stimulation.

Just a comment, thank you.

Mr. EDWARDS. Mr. Lungren?

Mr. LUNGREN. Since we are all commenting, maybe I will make one. This is the first time I heard the suggestion made, even facetiously, that perhaps the increase in crime is due to Sting operations.

I don't think many people would believe that. We have plenty of crime around and I don't think it's pushed along by the FBI or other Sting operations.

It's my understanding that the GAO has recommended a reduction in the level of laboratory services, et cetera, provided to State and local agencies.

As one who's cheered by the focus on violent crime which is evidently occurring in this administration, and yet one who believes we should not have anything close to a Federal police force, I don't think anyone from the FBI would ever suggest that, and acknowledging that the primary responsibility for pursuit of violent criminals is in local and State jurisdictions, it strikes me that a phased reduction in those ancillary-support activities which are now provided, perhaps at less than costs, to local and State agencies, is a good thing—I mean, a bad thing if we have a phased reduction, and that we should not even consider that type of thing at the very outset.

If we are concerned about violent crime, it seems to me the FBI has been in the forefront of assisting local and State jurisdictions in fulfilling their primary responsibility.

I wonder if the FBI has any policy at present or made any decision or made any recommendation to shift responbibility to local and State jurisdictions as was suggested by the GAO?

Mr. WEBSTER. I subscribe to everything you have said. That is my view. I believe that the—never before has the training that we now provide in the field been more important to state and local law enforcement, since the effect of dismantling LEAA, there is virtually no place for local law enforcement to go to.

Last year we reached 168,000 police officers in the field through our police training instructors, specialty agents assigned to help them deal with issues of violent crime including newer and effective techniques for so doing. The Academy, the FBI Academy trains 1,000 leading police officers every year, many of whom have waited for 6 or 7 years to get appointments to the national Academy. The success of that program, I think, is reflected in the fact that one out of seven of those graduates now head a law enforcement agency somewhere in the United States.

We do the same thing with the National Executive Institute for more senior executives in multipopulation areas, 200,000 and above. Of all of the things we do, that training is vital to local law enforcement in terms of dealing with violent crime.

When we come to hard choices of what to give up, logic compels us to give up, if we are directed to give up, those areas where we have consent jurisdiction or simply support services.

So, training always seems to be a candidate for reductions. I would hope that that ceases to be the case, that there is real support reflected for the kind of efforts that we are making, not to become a national police force, but to train local people to be more effective in their spheres of jurisdicton.

It is a very important linkage in area law enforcement and national, not only in professionalism, but the way we work and cooperate with each other. Therein lies the real thrust to improve the Federal contribution against violent crime.

Mr. LUNGREN. On that point, there have been suggestions—and frankly, I hear it every time I go home from local pharmacists that one of the solutions to the increase in crime, burglaries and robberies of pharmacies, would be a Federal jurisdiction. They talk about that based on the fact that there is an increase in robberies of pharmacies based on people going after drugs.

Since the Government has open responsibility for that, we ought to do that. Without a significant increase in the number of personnel that you have and DEA has, how practical is that type of solution?

Mr. WEBSTER. That would be one of the areas that would fall very much in the area such as bank robbery, where we are already trying to see what we can contribute. It would significantly increase our responsibility and without having studied it, I would not think that it would warrant our involvement at a Federal level.

The peacekeepers are the city police officers and they know the community and they are patrolling the beats and they are much

more likely to be in a position to deal with pharmaceutical robberies.

You have opened up a subject that I think needs to be explored and that is the Federal role in narcotics and all of us are talking at the present time. Our people are having ongoing discussions with DEA and other agencies to see what the legitimate Federal role of the FBI should be in this area, it is an attempt to see if we can make a greater contribution, particularly through our organized crime program.

Mr. LUNGREN. Let me ask one last question that that opens up. When I was home recently and talked to some people in law enforcement, they said we are concerned about the possibility that DEA would be absorbed into FBI or there would be some sort of thing where the FBI would have major responsibility for drug operations and so forth.

He stated to me: "If you do that, you are not going to get the cooperation of local jurisdictions because frankly, we are very wary of the FBI." I suspect that comes out of the fact that the FBI is charged with responsibility of investigating police-abuse cases or violations of trust, where it involves police departments or local, elected officials.

Is that an insurmountable problem? Is there a way that we can bridge that gap? Or is that one that is always going to occur to some extent, sometimes greater, sometimes less, when you have an agency such as yourself which is charged with the responsibility of investigating some of the people that in other cases you may be asking cooperation from and you may be giving cooperation to?

Mr. WEBSTER. I suppose there will always be that problem in some areas and some quarters. Often it is on an individual or office-by-office basis. We are making a concerted effort to make sure that our relationships with local law enforcement are at the highest professional level.

And with all of the retraining sessions, with all of the policy instruction, we make a lot of progress because those issues come up and we evaluate them. I assigned one assistant law director to be in charge of all law enforcement services and that includes the relationships between the Bureau and the various police departments to try to identify problem areas and to improve them.

I would say across the country our relationships are good and continue to improve. I am sure there are, from time to time, places where there are memories of tensions because of our responsibility to uphold Federal law with respect to police conduct. But we work at it hard and we continue to do so.

Mr. LUNGREN. Thank you, Judge Webster. Let me just observe that I am very impressed with the job that you have done with the FBI. I hope we may get to use you as a model of the type of individual we need to shore up another agency within the Justice Department, the INS, which I think would love to be in the situation that your department is—your agency is in with respect to computers and every other thing.

I would like to get into the 20th century. Maybe we could learn from some of the things your agency has done.

Mr. WEBSTER. Thank you for the compliment. I assure you I am not looking for a new appointment. [Laughter.]

Mr. EDWARDS. Counsel?

Ms. LEROY. I wonder if your commitment to increased training reliance to State and local law enforcement applies also to instruction on Indian reservations.

The subcommittee has had several hearings and I know you participated in hearings of the Civil Rights Commission where it was suggested that the role of the FBI on Indian reservations be reduced.

In some cases where this has happened, local authorities have organized their own patrol forces and local prosecutors have relied on them. I wonder how you feel about that?

Mr. WEBSTER. In general, I support any effort to improve the quality of those who have local responsibility. The Indian tribe, the tribal police, the Bureau of Indian Affairs, all have interrelated responsibilities in this area. Again, it is like some of our duplication problems, we want to be sure that the capability is there, before we withdraw or pull back from our responsibilities.

Frankly, we took—I think it is safe to say we took a little bit of a beating during those days in Wounded Knee period and afterwards. It was quite a day for me when the Red Lake Indian uprising occurred and both sides of that dispute demanded that the FBI come on the reservation and investigate. That is exactly what we did. We came on as investigators. We did not come on in battle fatigues or armed Swat teams. We came on in ordinary investigator's clothing. We came onboard two at a time and conducted the investigation and pulled out at night and came back the next day.

And while that may have created some tensions among some of the other people responsible for law enforcement, it was, in my view, an appropriate response in that situation, and we served the country and we served the community on that reservation well by doing so.

We are investigators. I keep saying that in terms of Indian reservations. We are not peacekeepers. Our Swat capability was developed to help us with fugitives and terrorists and not with American citizens who are feuding with each other.

And I hope that we will never again be asked to undertake that kind of a role. I hope the community relation services and other groups concerned with Indian affairs will prevent that type of thing from ever happening again.

But our role should be an investigator's role, not a peacekeeper's role.

Ms. LEROY. I would like to suggest that part of the FBI's responsibility in that Indian reservation area is also to do whatever it can to enhance the capability of the tribal police to take on the law enforcement responsibility, and I guess my next question is: What are you doing to accomplish that?

Mr. WEBSTER. I do know that our police instructors, such as the Minnesota division, do provide police training for them within our budgetary limits. And we will continue to do so.

Without opening up the whole subject, there are substantial differences in educational background and training at the tribal police level from what you would find in the ordinary community elsewhere in the United States. And that presents an extra schooling.

I would like to see—and we have seen in this country, the standards for employment as a sworn officer, whether it is a city, or a State or a Federal agency, increasing the level of education, training, and ability should be enhanced. But because of a very depressed economic situation on the reservations, they are getting by with many people who lack that threshold level of training and education and ability that I would want to have in my community looking after me.

Ms. LEROY. I suppose what I am suggesting is that the FBI might review its own policies in terms of accepting tribal police into the FBI academy, that the people that subcommittee spoke to in previous hearings suggested that type of training was invaluable but that there wasn't enough of it.

Mr. WEBSTER. We do have, I know we have had, because I have personally handed their diplomas to them, representatives from the BIA. I am not certain on numbers from the tribal policemen. I will discuss this with the training division to be sure that qualified applicants are given preference, I would be willing to give them preference, but I must insist that they be qualified or they would not make it through the Academy if they were not.

Ms. LEROY. I would like to return to a few of the questions that the chairman was asking you about undercover operations. My question is how people on the outside such as this oversight committee, can appraise those operations?

You raised the Operation Lobster example. I wonder if you or anyone else in the Bureau have studied other operations in a similar fashion to determine a decrease in the level of crime or whether you have gone beyond that initial 6-month survey in Operation Lobster to determine whether hijackings in that area are still down or where they are with respect to the level before the operation?

Mr. WEBSTER. I don't know how extensive our data is on these matters. We try to develop reasonable data which can be reviewed.

In Operation Lobster, subsequent to the 6 or 7 months there has been a renewal—not an increase, but a renewal of hijacking activity in the Boston area and certainly nothing like it was at the time that Operation Lobster came into place.

We seem to have a short memory. I don't know whether it's the 30-minute TV syndrome or not, but it did have a deterrent effect, and it did put in prison people who deserved to be there.

Our undercover involvement is about one-half of 1 percent of our total field resources, so it's not something that we can maintain on an ongoing basis, and I think there are policy reasons why one would ask whether we should have operations that does not end.

I think operations have to come to an end at some point. By the very nature of them, we are going to prosecute the people that we are doing business with in an undercover capacity.

Ms. LEROY. One statistic the Bureau provided us in terms of assessing the impact of undercover operations is that in fiscal year 1980, there was a total of $480 million in potential economic loss avoided. I am puzzled at how you arrived at a figure like that, what it means, and how the subcommittee can assess a figure like that?

Mr. WEBSTER. You will rarely hear me talking about economic losses averted because there is a kind of iffy element about that figure, which is why we separated economic losses out of our computer processing system.

Our clerk separates real accomplishments, our computer separates the two. You can look at the hard stuff, and that is there.

For example, in Abscam, we recovered about $1 million of stolen art treasures in the first year. Those are real recoveries. We also recovered $592 million in bogus securities. Now they are not worth $592 million, probably nobody would have paid $592 million for them.

But somebody would have been defrauded of a very substantial amount of money, so we have to try to come up with an educated figure as to what kind of economic loss was averted.

Certainly, a substantial economic loss was averted when we got hold of $592 million worth of bogus securities. I don't use that term much, though I am trying to explain it to you. It's not a hard figure, it's an educated estimate.

Ms. LEROY. I suppose I am suggesting that it's hard for the subcomittee to get an idea as to the meaning of those statistics and even more important, to get an idea of the value of those operations to law enforcement.

Mr. WEBSTER. On that, let me say, any time we get into that situation and a member of the committee or staff wants an analysis of the bottom line figure, I would be glad to say—consistent with our other guidelines in working with you—that you see how we got to that figure and assess the reliability, in other words, break it out.

Ms. LEROY. Also, in terms of assessing cost, in addition to benefits, over the last couple of years, I think 2 years ago, you asked for $3.9 million, and last year it was $4.5 million, and this year I think you are asking for $6 million.

Do those figures represent the total amount spent on undercover operations or are there significant costs that come elsewhere in the FBI budget?

For example, I believe that there were newspaper accounts that the FBI set up or supplied millions of dollars to create Olympic Construction in one of your undercover operations. I am wondering if the total budget was only $3 million, where did those funds come from?

Mr. WEBSTER. Those represent cost outlays, not show money, it doesn't represent money that comes back to us.

Ms. LEROY. What do you mean by show money?

Mr. WEBSTER. If we are dealing with an organized crime figure or some other person, and the person because of his cover has to be affluent.

We supply them with a bank account but that doesn't mean the bank account is gone out the window. We have control over that money. It's supplied through other—not even—frequently not even out of our own funds.

So it's through other government facilities made available to us. It's never lost. So it's spent. The figures we give you for undercover work are specifically identifiable with an undercover program. They do not include the salaries of the agents.

You start building overhead and the automobile and so forth. You would come up with a different figure. But in terms of the additional resources that we need in connection with an undercover operation, that is what they are. And moneys do not come back to us.

Often we operate a business at a profit because it is a business and that money offsets expenses that we are incurring.

Ms. LEROY. Thank you. I have no further questions.

Mr. BOYD. I would like to refer to the question of Indian jurisdiction. During the hearings which were held before the subcommittee, mention was made of the creation of a certain pilot program, properly monitored of course, which would allow designated Indian reservations to exercise control over their own criminal justice programs, and which would include jurisdiction over non-Indians in Indian country.

Do you have any views on this?

Mr. WEBSTER. I don't know that I am prepared to give you any views on it. I recall that there—I recall some actual incidents in which that type of position was asserted, I believe in the Northwest when a truckdriver got in a struggle with somebody.

Had an altercation on a reservation and was promptly slapped in jail and tried under circumstances that suggested maybe less than due process, and there were some cases that went up over the right of the tribal courts to try nonmembers of the reservation on the reservation.

I frankly don't recall the outcome of it.

Mr. BOYD. They don't have that jurisdiction——

Mr. WEBSTER. I think those convictions were upset on appeal to the Federal court.

Mr. BOYD. Mr. John Otto came before us to discuss some of the problems the Bureau has been having. He mentioned during his testimony his intention to refer to you some recommendations which you would in effect refer to the Attorney General.

Have you had a chance to review the recommendations and if so——

Mr. WEBSTER. I am not prepared to detail them because my mind has been on other things. But yes, he made them, and I approved them, and they were referred to the special committee in charge the week before last.

They involve efforts to find alternatives to some of the policies which necessitated transfers and movement within the Bureau, shifts in the technique for the progress through the inspection stage of the chain of development of management steps.

And recognizing certain kinds of career specialties that would not require certain types of training that would take two or three or four years to achieve and providing meaningful career alternatives for those who go into these specialties.

I have signed off on all of those and they do not have to go to the Attorney General, as I recall, or none need to go. They are being put into effect at the present time.

Mr. BOYD. Thank you. I have no further questions.

Mr. EDWARDS. Mr. Lungren?

Mr. LUNGREN. I have just one. It sort of follows on the last point that was made. What is the rationale at the present time behind

the rotation system in effect in the FBI? The reason I ask that is having met some agents and knowing from my own knowledge the difficulty in the housing market, particularly in Washington and Southern California and places like that, I have run into a couple of agents who have three houses they are trying to juggle around with the mortgages required.

In light of that type of difficulty, and in light of the fact that we are under a budget squeeze as far as the Federal Government is concerned and can't adequately compensate for that difficulty, do the changes that you have suggested take into consideration that perhaps we ought to make some adjustments in the rotation system in light of reality?

If you have got a wife and children and you are trying to make it, you can barely afford half a house, much less three houses.

Mr. WEBSTER. Yes, they do. This is an important subject for us. It has some facets that I want to be sure we are not mixing them. Talking about the career development program, we are talking about management and training and shifts in responsibility to take on new positions just as you would in General Motors, military, diplomatic, and so on.

In terms of transfer of nonsupervisory personnel, we have another set of problems. All of them have the same real problem. When they are transferred, as you point out, they are looking at higher mortgage costs, higher housing costs, and maybe not even the ability to sell their house where they are, and long periods of separation from their family before they can be put in place.

We are trying to eliminate any move that is unnecessary. But many of the moves are necessary. First because retirements create vacancies and they must be filled and they must be filled by competent personnel, particularly at the executive level.

When a special agent in charge of the field retires, we have to make a judgment. Now, contrary to the past, we will look at the assistant special agent in charge and see whether he's ready for that responsibility in place.

He's considered along with other candidates in the career development program for that position, no preference, but at least considered.

The same is true with field supervisors and other levels of the process. We are trying to eliminate positions that are unnecessary, but we have a national agency which is trained on national standards and the last thing we want to see it do is develop a series of parochialisms in different parts of the country where we are simply feeding people from the neighborhood into the office and it's not responsive as the FBI has always been responsive to national leadership.

These changes will help, they won't answer all of the problems, but even internally I have a kind of ombudsman who has an FTS line which anybody can use to contact him on any transfer issue, if he thinks the transfer was meaningless or unfair or failed to take into account the office of preference policy or hardship request.

We have an office of preference policy which you may not be acquainted with in which we try to put the nonsupervisory people in the offices where they want to be. But they have to wait their

turn because maybe people want to be in some of the more attractive offices.

We also have a hardship policy where if due to a particular personal problem an agent needs to be in another city rather than the one he's assigned in, we try to accommodate those.

Mr. LUNGREN. Thank you very much. In addition to what I said before, in nominating you for another position, after I heard your undercover operations make a profit, have you ever thought of Chrysler? [Laughter.]

Mr. WEBSTER. Are you sure we are not there?

Mr. EDWARDS. Thank you very much. Incidentally, with regard to the career development program, we are very much in favor and I would also like to be, if at all possible, of assistance.

We are winding up now. The subcommittee has had quite a number of hearings on this authorization process. Probably more in depth than ever before. We do have more questions, can we submit them to you in writing?

Mr. WEBSTER. I would be pleased to respond.

Mr. EDWARDS. You were a splendid witness and we are delighted to have you be here.

[Whereupon, at 11:50 a.m., the hearing was adjourned.]

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