

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

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IN THE MATTER OF: :  
: TRANSCRIPT  
Oral Comments on : OF PROCEEDINGS  
Tribal Law and Order Act :  
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October 14, 2010

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R E P O R T E D B Y:  
VIRGINIA LEYENDECKER, Certified Shorthand  
Reporter, (NJ License No. 1701) and Notary Public, on  
the above date, commencing at 1:00 p.m. at the  
Wingate Hotel, Billings, Montana.

B E F O R E:  
  
Joe Little  
Tracy Toulou  
Michalyn Steele  
Carla Flanagan  
Charles Addington  
Rose Weahkee

1 MS. STEELE: Thank you very much for  
2 being here. My name is Michalyn Steele. I represent  
3 the assistant secretary today. I'm a counselor in  
4 the assistant secretary's office. I'm tasked with  
5 the issues of public safety and law enforcement.

6 With the passage of the Tribal Law and  
7 Order Act, we have a lot of tasks on our plate. We  
8 want to be in conversation with the Tribes from the  
9 beginning on this, about the new duties we've been  
10 assigned and new opportunities for Tribes that are  
11 contained in the Act.

12 I think it's always best to begin with  
13 a prayer, so we've asked Chairman Ivan Posie from  
14 Wind River to come up and offer the prayer for us.

15 (At which time opening prayer is  
16 offered.)

17 MS. STEELE: As I said, I'm Michalyn  
18 Steele. I'm Seneca. I'm from New York and from the  
19 Cattaraugus reservation in western New York. Growing  
20 up there, my grandmother used to say, "You know, we  
21 are not supposed to still be here," meaning in  
22 western New York. She said, "But we are survivors,  
23 so here we are."

24 I know that same spirit of survival is  
25 a common element that each of the Tribes share, that

1 in some ways we weren't supposed to be here. It  
2 wasn't the plan. But we are still here as a people  
3 and as Tribes. As I think often about my  
4 grandmother, I think the time of survival is coming  
5 to an end and I would really like to see a time of  
6 thriving, rather than just surviving.

7 As I hear Mr. Elk, who can speak around  
8 the country, he emphasizes three priorities: Public  
9 safety, education and economic development. And,  
10 really, public safety and law enforcement, getting  
11 those right are precursors. They are predicate  
12 conditions for us to be able to thrive as a people,  
13 for us to be able to do the economic development and  
14 for our children to be able to learn in a safe and  
15 productive environment.

16 So we really have important work to do  
17 and appreciate the Tribal leaders appearing, and  
18 others concerned about these issues being here today  
19 and taking time away from your homes and reservations  
20 and being here with us and providing us very vital  
21 feedback.

22 The proceedings are being transcribed,  
23 and this is one of a series of I think it's about six  
24 consultations around the country that is part of an  
25 ongoing process of consultation. This isn't the

1 beginning or the end. We had some public safety  
2 consultations over the summer. We are going to  
3 aggregate this process in ongoing as you see we need  
4 course corrections, we looked forward to hearing  
5 about those.

6 I'm joined today by a distinguished  
7 panel. We have Dr. Rose Weahkee, who is the director  
8 of behavioral health at the Indian Health Service.  
9 She has been a driving force in enhancing  
10 coordination between BIA and IHS. So we are talking  
11 to each other, coordinating, knowing what each other  
12 is doing. We are working together on some very  
13 exciting projects, including a very ramped-up effort  
14 to jointly respond to the suicide crisis that has  
15 percolated and flared up from time to time in  
16 different reservations. So she is a tremendous asset  
17 at the Indian Health Service, and we thank her very  
18 much for travelling here.

19 Charlie Addington is associate director  
20 of the Office of Justice Services. Charlie works  
21 tirelessly. I know he is there on the weekends. I  
22 don't know when he ever goes home. He has been a key  
23 force in ramping up the OJS efforts and reforms we  
24 have undertaken.

25 Carla Flanagan is the associate

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1 director for corrections at the Office of Justice  
2 Services, and she is there every day, also working  
3 hard to make sure our corrections programs are on  
4 track. And she's got a great vision for reform of  
5 how we house and also the reentry for those who are  
6 incarcerated.

7 We have Tracy Toulou, who is the  
8 director of Tribal Justice which would be made  
9 permanent under the Tribal Law and Order Act. He has  
10 been there a number of years and is an expert in all  
11 things law enforcement and represents the Department  
12 of Justice here today. We thank him for coming.

13 Joe Little is the associate director  
14 for Tribal Courts, Office of Justice Services. He is  
15 based in Albuquerque and has the -- Tribal Law and  
16 Order Act has a lot of implications for Tribal Courts  
17 and he has been thinking creatively about this and we  
18 want to hear your feedback on how we can best support  
19 Tribal Courts and move that program forward.

20 I think we also have Andy Caulum from  
21 the solicitor's office here and Dana Jackson from the  
22 U.S. Attorney's Office in Montana. Thank you for  
23 being here as well.

24 We've got the agendas. The way that I  
25 think those agendas typically go and how we will

1 follow the program today, we would like first to hear  
2 from elected Tribal leaders. Please state your name  
3 and your title for the transcriptionist. And we have  
4 roving microphones.

5 Once we have had an opportunity to hear  
6 from the elected Tribal leaders who are here today,  
7 then we will open the floor for anyone who would like  
8 to speak. We are here to listen.

9 And so we really will turn the time to  
10 you, unless anyone has any opening -- would you like  
11 to say some opening remark? I'm sure we will hear  
12 from the panelists through the course of the day. I  
13 want to recognize Matt Pryor who is here, who is the  
14 special agent in charge here in Billings.

15 With that, we will open the floor for  
16 elected Tribal leaders and look forward to hearing  
17 from you.

18 MR. WINDY BOY: I will start. My name  
19 is Jonathan Windy Boy, vice-president of the Chippewa  
20 Creek Tribe, and also state senator in Montana.

21 First of all, I want to thank you for  
22 the outreach that you have here, but I do have one  
23 question here, if I may. Do we have anybody here  
24 representing the U.S. Attorney's Office?

25 MS. JACKSON: Hi, Jonathan.

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1                   MR. WINDY BOY: There you are. The  
2           reason I ask that, there has been a disconnect in the  
3           past. So I thank you for being here. Because a lot  
4           of times one of the Tribes' roadblocks is some of the  
5           communication back and forth. Say, for example,  
6           domestic violence case that goes federal and  
7           sometimes on the Tribes' part, once the evidence gets  
8           to the feds, we never see it again. So I think that  
9           the communication needs to be more open so that, on  
10          the Tribal level, should the Tribe decide to proceed  
11          forth, which is accordingly to prosecute on a Tribal  
12          level, then we need to make sure the evidence is  
13          intact and can withstand the judicial system.

14                   Another point that I would like to  
15          point out here as far as some of the legislation here  
16          on the federal level is there is -- a lot of times  
17          there are unfunded mandates that happen when a lot of  
18          these laws go into effect. And when these unfunded  
19          mandates -- and I applaud the administration for  
20          their outreach as far as getting some of the special  
21          law enforcement options to Indian Country. And  
22          giving an example, in our area, Chippewa Creek Tribe  
23          and the Northern Arapaho and Shoshone, Fort  
24          Washington Tribes are part of a demonstration project  
25          of a five percent reduction in crime. That being

1     said, those are only five Tribes that are part of  
2     this initiative and there are 565 Tribes. So there's  
3     a lot of issues that are going to be impacted with  
4     the other Tribes within our region that won't be a  
5     part of that.

6             As far as some of the jurisdictional  
7     issues, there has been some concern that was brought  
8     up from a couple of my colleagues as far as some of  
9     the local -- how would you call those, disposition of  
10    cases being subject to being open. And it's good  
11    that there are cross-jurisdictional informations that  
12    are happening as far as data entry and data control  
13    and whatnot, and some of those dispositions may  
14    somehow impede on some of the sovereignty issues as  
15    far as the local control stuff.

16            And I think there needs to be a  
17    parallel as far as coming to the table, rather than  
18    just assuming that we are going to give up everything  
19    that we have within our purview to the state  
20    jurisdiction, for example.

21            There are some things in here -- -- I  
22    could go on and on here. But I will leave some of  
23    the floor open for some of my colleagues. So that's  
24    all I have for now.

25            MR. TOULOU: While we are waiting for

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1 the next speaker, I want to address one point you  
2 made, Vice-Chairman, and that's about the exchange of  
3 information. One part of the Tribal Law and Order  
4 Act, Section 212, provides that the U.S. Attorney's  
5 Offices will communicate when there is a decision to  
6 decline prosecution, and investigative agencies will  
7 also let law enforcement know if they decide to  
8 terminate an investigation.

9 I understand the U.S. Attorney's Office  
10 here in Billings is undertaking a process of  
11 communicating twice a month with the Tribal  
12 prosecutors, to make sure that kind of information is  
13 sent out.

14 I know these things weren't always  
15 perfect in the past and that's why this law is here.  
16 I really applaud the U.S. Attorney's Office in moving  
17 to keep that going and make sure that law is  
18 implemented in the way it's expressed in legislation.  
19 Thank you for the comment.

20  
21 A SPEAKER: I would like to echo the  
22 remarks of my brother, Jonathan, in terms of the  
23 unfunded acts. At least in our reservation I think  
24 what really needs to be dealt with in terms of the  
25 coming changes is our infrastructure. We don't have

1 the jail space. We don't have the bodies to  
2 implement a lot of these things that come down. I  
3 don't know if that's the case with many Tribes, but I  
4 think right now, with our initiative, as Co-Chairman  
5 Windy Boy mentioned, we are still at a loss in terms  
6 of just holding people that are arrested right now.  
7 For long-term, we are sending them up to a base in  
8 Wyoming, which is about three and a half hours away.

9 So I think, with the unfunded aspects,  
10 it's what we really need to do. Obviously we will  
11 initiate some of the changes that come along with  
12 this Act. But we really need to have it have teeth.  
13 We can't continually have a court system that may  
14 arrest somebody, and, because it's a lesser charge,  
15 let them out and they are arrested two or three days  
16 later. I think it's really important to address the  
17 infrastructure and the sentencing guidelines. Thank  
18 you.

19 MR. TOULOU: While we are waiting, I  
20 think that's a really good point. One of the things  
21 Congress thought about when they passed the Tribal  
22 Law and Order Act, one of the things they called on  
23 the Department of Justice and Department of the  
24 Interior to do is. In the next year, we need to  
25 come up with a long-term detention plan for Indian

1 Country. That's going to be tough, but we need to  
2 come back and talk with you about that.

3 The other thing we looked at is a pilot  
4 project within the Tribal Law and Order Act where, if  
5 you decide to sentence people long term, then up to a  
6 hundred prisoners, as part of this pilot, can be sent  
7 to Bureau of Prison facilities. Now, it may not be a  
8 perfect fit for everybody, but at least Congress is  
9 starting to think about those things.

10 When we get into implementing that  
11 plan, we look forward to hearing what you all, who  
12 are dealing with it every day, have to say. Thank  
13 you.

14 MS. FLANAGAN: While we are waiting,  
15 just to dovetail into what Tracy said, there are two  
16 requirements for the plan. There's a requirement for  
17 an adult plan and requirement for a juvenile plan.  
18 Both of them have a year's deadline from the passage  
19 of the Act. So by on or about July 28 of 2011, that  
20 plan must be drawn up in consultation with the  
21 Tribes.

22 So we have started working with --  
23 "we," BIA, has started working with the Department of  
24 Justice's components on that. I don't really have a  
25 firm update on what is going to happen with that,

1 it's a little too soon for us to put out any  
2 information, but I can tell you that we have been  
3 working on the guidelines that have much shorter  
4 requirements, which is a six-month requirement.

5 But the plan will, as Tracy said, be  
6 quite complex and encompasses a lot; not just  
7 incarceration, not just use of Indian Country jails;  
8 it discusses the possibility of federal jails,  
9 discusses alternatives to incarceration and it talks  
10 about use of state and local in addition to the  
11 Bureau of Prisons pilot programs. So there is a  
12 substantial write-up concerning the plan in the bill  
13 and what the expectations are. Thank you.

14 MR. LaPOINTE: My name is Lawrence  
15 LaPointe. Good afternoon, elders, members of the  
16 DOJ, BIA, IHS; vice-chairman for0 the Puyallup Tribe  
17 in Tacoma, Washington.

18 BIA operational and maintenance funding  
19 for correctional facilities: The Puyallup Tribe has  
20 received ARRA funds for the development of a 42-bed  
21 adult correctional facility to be constructed by  
22 2012. We have a 10-bed facility which biweekly  
23 houses up to 10 people and we turn, depending on the  
24 charges, the court is asked to turn people away. So  
25 we have a problem with that.

1           And then Indian Country crime data. We  
2           are probably the most urban Tribe in the whole  
3           country. And any period of time we have 128, 132  
4           gangs traversing our reservation. We have 28 active  
5           gangs on the reservation. So that's within a  
6           ten-mile radius. So we do have many problems on our  
7           reservation. Our reservation is only 18,000. And we  
8           do have 30 officers. I can understand some of the  
9           larger Tribes that have over a million acres and only  
10          have one or two officers. So that's a big problem  
11          for them.

12                        We have mutual aid agreements with the  
13          City of Tacoma and County of Pierce, but a lot of  
14          times the mutual aid agreement, if we are first  
15          responders, then we turn it over, if it's a  
16          non-Indian violation. The four police officers that  
17          were killed in Lakewood, one of our lieutenants was  
18          one of the first responders. That's quite a ways up  
19          our reservation. We do see a lot of things there.

20                        The questions we have are, will  
21          subsequent DOJ Notice of Funding Availability include  
22          the opportunity to apply for development, including  
23          construction of law enforcement and courts? We were  
24          fortunate to get ARRA funding for the detention  
25          facility, but Tribal Court and law enforcement was

1 left out. Currently we are in a modular building  
2 that we lease. And it's like on a busy street on the  
3 way to the casino, and anybody can go shoot right  
4 through. But that's what scares me as a council  
5 member.

6 Can the existing DOJ grants for the  
7 development of correctional facilities be amended to  
8 include law enforcement and courts? We don't know  
9 that, if we can ask for more money to develop that  
10 and probably await funding, like we always do, like  
11 unfunded mandates that was mentioned before. It's  
12 been going on since Clinton was president.

13 Can DOJ-funded correctional facility  
14 grants be amended to include either DOJ or BIA, ARRA  
15 or non-ARRA funds for the completion of justice  
16 centers?

17 What are the DOJ/BIA requests in the  
18 fiscal year 2011 and '12, federal budget process for  
19 law enforcement and court construction funding?

20 Has the BIA considered operational and  
21 maintenance budget implications for longer-term  
22 incarceration, now at two years, as authorized by  
23 Tribal Law and Order Act?

24 The original draft of the Tribal Law  
25 and Order Act provided for the Bureau of Prisons to

1       incarcerate individuals who were sentenced to serve  
2       greater than one year. The Act now changes the  
3       period to two years.

4                 We do appreciate the ARRA funding  
5       received for our facility and we hope additional  
6       funds can be moved through the Bureau to help with  
7       operations and maintenance in drafting our ARRA grant  
8       request.

9                 Tribal correctional programs: Funding  
10      to operate, trust responsibilities, size, would have  
11      made changes/bigger if we had been aware of the BOP  
12      two-year minimum.

13                Juvenile detention and treatment  
14      center: Huge need, even if it becomes a regional  
15      facility in the state, should be operated by BIA at  
16      no cost to Tribes.

17                Pilot project for transferring  
18      prisoners to Bureau of Prisons facility: Would like  
19      to be part of the BOP pilot project.

20                Then, requirement for coordination of  
21      DOJ, BIA and IHS services: I think the biggest  
22      problems most Tribes face would be substantial  
23      funding for mental health as well as substance abuse.  
24      Many Tribes already receive that funding, but I think  
25      it should increase. I think what we want to as part

1 of our detention facility is a cultural aspect of our  
2 Tribe to our Tribal members as well as other natives  
3 who find their way into our court system so that the  
4 problems that existed before for them can be treated  
5 prior to their release back into society. That's all  
6 I have.

7 MR. TOULOU: That was a lot. I think a  
8 lot of it is probably something we should talk about  
9 separately because it's going to be specific to your  
10 Tribe.

11 But one of the things you brought up  
12 was the multi-use facilities. I wanted to mention  
13 that because that's something that's changed. In the  
14 past -- and the ARRA funds may be different because  
15 they were specially set aside -- but in the past,  
16 when the Department of Justice received funding to  
17 build a detention facility, because the way the  
18 statute was structured, it allowed us to do that. We  
19 can only build lock-ups. That was it.

20 This bill, the Tribal Law and Order  
21 Act, has changed that. We can do multi-use  
22 facilities which could include courts and some of the  
23 law enforcement components through dispatch and  
24 things like that. There is also a focus in the bill  
25 on substance abuse.

1 All of us up here worked together to  
2 come up with a plan to deal with the issues that  
3 you've talked about. That said, one of the things  
4 that we are doing internally and referred to in this  
5 bill but really isn't the focus is the Department of  
6 Justice, we build a lot of jails. We understand the  
7 jails have a place in the system, but there are a lot  
8 of needs that Tribal communities have around the  
9 criminal justice system that won't be cured in the  
10 jail, like halfway houses and rehabilitation, using  
11 that jail funding. So that's something we are going  
12 to be looking at more in the future. And this bill  
13 helps us do that because of the multiple-use  
14 facilities.

15 There's a lot of other things and,  
16 again, I'm happy to talk to you more afterwards.

17 MR. LaPOINTE: Is there a pilot project  
18 anywhere in the country coordinated by IHS, BIA?

19 MR. TOULOU: On substance abuse?

20 MR. LaPOINTE: On incarceration versus  
21 substance abuse. Is there someplace?

22 MR. TOULOU: One of the things the bill  
23 calls on is for us to come up with the plan with the  
24 Tribes. That's what led to part of this bill. But  
25 to my knowledge, certainly from the justice

1 perspective, we are not involved in that. But it  
2 should happen and it's called for in the bill.

3 MR. RED EAGLE: Darryl Red Eagle. I'm  
4 representing the Fort Peck and Sioux Tribes and I  
5 will be speaking on some issues that are directly  
6 affecting our Tribe and other Tribes that I know of,  
7 as I work with Montana -- (inaudible), here also with  
8 Vice-Chair Windy Boy, Chin King over there and Sharon  
9 Black Eagle.

10 These are issues that affect us, and  
11 I'm speaking right now of things that affect Fort  
12 Peck and Sioux Tribes. We have our funds up with the  
13 jails and are very thankful.

14 At the same time, where is the plan?  
15 There is supposed to be a plan in place. How can we  
16 open up a jail without a plan in place? There are  
17 things we have to follow under our funding.

18 And also, with the people in our jail,  
19 where are the services we provide? Our Tribe  
20 provides over \$900,000 to our Tribal Courts. That  
21 comes out of our Tribal conference. That takes away  
22 from the services we provide. We have a contract  
23 with IHS for the treatment center. Right there we do  
24 not have a detoxification facility.

25 Again, all of these things are things

1 that we deal with. Although there is funding  
2 available to house our people, we house the people.  
3 Where are the services that come with this?

4 When we talked about this earlier, I  
5 was under budget formation for IHS. Every time  
6 there's a mandate that comes down, it's not funded,  
7 but yet we have to follow those rules and the  
8 policies and we are regulated by those. We are one  
9 of the most regulated people in the United States.  
10 And not only that, but once we build this facility on  
11 our reservation, we are going to be under -- we are  
12 not going to have the manpower to do this.

13 Not only that, we are regulating to  
14 send our people to IPA to get those services and that  
15 costs us a lot of money. One of the things we are  
16 looking at, why can't we send our people to the state  
17 and get them certified? Why can't we take these  
18 training courses back to our community college?  
19 There is some 31 community colleges nationwide. Why  
20 can't we train our people there, build our own  
21 facility training courses and then go over to the IPA  
22 for a week and get the final pass?

23 These are things we are thinking out of  
24 the box, but yet we are regulated by certain  
25 policies. But the plan we are supposed to follow we

1 don't have a copy of yet. We don't know what we need  
2 to do. Again, are our hands are tied.

3 But not only that, the gentleman  
4 touched on the issue. Once the facility is there,  
5 who is going to take care of the charges? Is that a  
6 responsibility of the Tribes again? Because we build  
7 an 80-bed facility, we have to operate that and we  
8 have to maintain that. Where are those dollars  
9 coming from? We already kicked in 900,000 to the  
10 courts. Where are the other dollars? Are the Tribes  
11 going to be responsible for all that also? Thank  
12 you.

13 MR. ADDINGTON: One quick response on  
14 the basic training. The Tribes can use state  
15 academies to train their tribal police officers.  
16 They do not have to send those to the Indian Police  
17 Academy if they are one of the 22 states that is  
18 recognized.

19 MS. FLANAGAN: I think this is for  
20 corrections, if I could, Mr. Addington. We did have  
21 an earlier discussion, for the benefit of the group.  
22 We understand that there had been application to the  
23 Indian Police Academy, sometime back, to use a  
24 reciprocal agreement to use Montana training or the  
25 training from Montana. And it was rejected or

1       declined for some reason.

2               As we discussed earlier in our meeting,  
3       we will take a look at that. We will re-look at  
4       that. We will re-look at any of the other state  
5       agreements and work with IPA to see if conditions  
6       have changed, and that either the Montana state  
7       training has changed or any other state that we don't  
8       currently recognize.

9               Todd Woolworth, who is our director of  
10       training, hasn't joined us here today. That is kind  
11       of his area of purview. And he has to follow the  
12       requirements of the federal training certifications.

13               But we will certainly take a look at  
14       that. If anybody else from another state has that  
15       issue, if you let me know, we will work out how we  
16       can retake a look at that and see if we can't modify  
17       it to get that reciprocal training taken care of.

18               MR. BLACK EAGLE: My name is Cedric  
19       Black Eagle. I'm chairman of the Crow Nation.

20               I hope we are at the elected Tribal  
21       leaders' opening comments section. I walked in late.  
22       I apologize for that.

23               Some of the key points that we have  
24       been looking at with the new Tribal Law and Order  
25       Act: First of all, we want to applaud the United

1 States Congress and Obama administration for passing  
2 this landmark legislation. Recognizing the impact  
3 that crime and violence against women in Indian  
4 Country has on our people is an important first step  
5 in bringing true justice to our communities and to  
6 our citizens.

7 I also want to thank the Department of  
8 Justice for holding this Tribal consultation hearing  
9 here in Crow Country -- you're in Crow Country. I  
10 wanted you to know that -- for bringing the  
11 opportunity to address key points in this legislation  
12 and how it can be most effectively implemented to  
13 address the needs of Tribes around this region and  
14 around the country, as well as the Crow Nation.

15 The Tribal Law and Order Act does many  
16 important things. It brings new resources to the  
17 Department of Justice's programs to combat and  
18 prosecute crime in Indian Country. We applaud the  
19 addition of new prosecutors to the United States  
20 Attorney's Office serving Indian communities. This  
21 is needed. We are also grateful for the mandate that  
22 U.S. Attorneys respond to the concerns of Tribal  
23 communities when prosecution of reported offenses is  
24 declined, and to provide Tribal governments with data  
25 on the prosecutions and criminal activity on our

1       reservations.

2                   The Tribal Law and Order Act provides  
3       the opportunity for Tribes to increase the criminal  
4       sanctions and sentences against convicted offenders  
5       in Tribal Court, including sentences of up to three  
6       years, where the current limit is one year. This is  
7       a good first step. However, many Tribes, and it's  
8       been talked about here just a few minutes ago,  
9       including the Crow Nation, do not have the  
10      infrastructure or funding to implement this expanded  
11      authority. The requirements that all defendants have  
12      access to a licensed attorney in order for the Tribes  
13      to exercise this authority is admirable, and I  
14      understand fully the rationale behind it. We would  
15      like to see funding opportunities for Tribes with  
16      fewer financial resources to get federal assistance  
17      to hire defense attorneys for defendants in Tribal  
18      Court cases.

19                   Additionally, the authority to sentence  
20      offenders up to three years is meaningless if there  
21      are no correctional facilities to house them. In  
22      Crow, like many of the other Tribes, our detention  
23      facility is woefully out of date and widely  
24      acknowledged to be substandard at best. We have been  
25      talking with the BIA and Department of Justice over a

1 year for ways to utilize the unused Two Rivers  
2 Detention Facility, within a stone's throw of the  
3 Crow Reservation boundaries, to meet this need. We  
4 see the Tribal Law and Order Act as providing  
5 additional potential uses for this facility and we  
6 are still waiting to hear back from the federal  
7 government about how we can work together to put the  
8 facility to use, to serve the needs for Indian people  
9 in the federal corrections system.

10 Substance abuse remains a major issue  
11 in Indian Country crime. Our Tribal Court prosecutor  
12 estimated that approximately 98 percent of the  
13 complaints handled by her office in the past year are  
14 alcohol-related. Any long-term detention programs  
15 implemented pursuant to this Act need to address  
16 treatment in order to reduce recidivism and to begin  
17 to heal inmates, rather than simply housing them for  
18 a period of time and returning them to the community,  
19 where they will fall back into the same unhealthy  
20 habits without having built life skills to change  
21 upon reentry.

22 Mental health is also an issue. Many  
23 substance-abuse issues reflect longstanding,  
24 untreated mental health problems. People should work  
25 with the DOJ to ensure these programs are adequately

1     staffed with qualified professionals, and better  
2     funded and become integrated into any treatment  
3     program in correctional facilities serving Indian  
4     people pursuant to this legislation.

5             To summarize, the Tribal Law and Order  
6     Act is a long overdue recognition of the unmet needs  
7     of Indian Country. However, funding to assist Tribes  
8     in fully implementing the programs and opportunities  
9     it provides is equally important. We see the risk of  
10    wealthier Tribes exercising greater criminal  
11    jurisdiction simply because they have more money to  
12    fund corrections, law enforcement training  
13    requirements and the criminal defense initiatives  
14    within their own governments. Many of the larger  
15    Tribes and Tribes with a larger land base to protect  
16    are simply not in a position to fund these mandates  
17    independently. We will need financial assistance in  
18    order to fully realize the benefits that this Act  
19    envisions.

20            And I think that goes for a lot of  
21    large land-based Tribes across this country. A lot  
22    of the eastern Tribes, a lot of the smaller  
23    California Tribes, not to put any Tribes down, but  
24    they have access to a lot of their own funding. And  
25    unfortunately, large land-based Tribes don't.

1                   And I want to thank you for allowing me  
2                   to speak. Thank you.

3                   MR. TOULOU: Thank you for your  
4                   comments.

5                   One of the things he talked about is  
6                   the enhanced sentencing, three-year sentencing  
7                   provisions. That is something we are talking about a  
8                   lot internally. I think it's an important  
9                   development and I think it provides Tribes some  
10                  additional tools. We want to make sure that we  
11                  provide the support, as you implement that, to make  
12                  sure it doesn't impact Tribal sovereignty. Because  
13                  with all the new requirements, those are new  
14                  requirements on some Tribes and potentially could  
15                  have a bad effect. I think you correctly identified  
16                  that we need to help provide the technical assistance  
17                  to make sure you have people who can provide the  
18                  defense counsel required under the Act and still be  
19                  able to use that sentencing provision. And we look  
20                  forward to working with all the Tribes to figure out  
21                  how we can do that consistent with Tribal law and  
22                  sovereignty.

23                  MR. JIM: Good afternoon. My name is  
24                  Bruce Jim. I'm from the Columbia River. I'm the  
25                  chairman of the Inter-Tribal Fish Commission. Also I

1       happen to be chairman of the fish and wildlife  
2       committee on the Warm Springs Indian Reservation.

3               I'm here today to provide some  
4       testimony for you. For the last three years, law  
5       enforcement committee has met regularly to address a  
6       mandate the commission adopted in 2007. We were  
7       charged to: Clarify Tribal jurisdiction along the  
8       Columbia River, particularly at fishing sites owned  
9       by the United States and set aside for exclusive use  
10      for this commission's members' Tribes; implement  
11      communication strategies to improve relations with  
12      the fishing Tribal community; assess the consistency  
13      of Tribal and state fishing codes; consider the need  
14      for enforcement authority to address criminal  
15      activities at these fishing sites and elsewhere along  
16      the Columbia River.

17              In the last three years, we have met  
18      important milestones. Our member Tribes have  
19      extended their criminal codes to the Indian Country  
20      along the Columbia River. The state and Tribal  
21      parties to the U.S. government are now committed to  
22      reviewing the consistency of their fishing codes.  
23      Our member Tribes have each passed resolutions  
24      authorizing BIA to issue special law enforcement  
25      commissions to CRITFC enforcement.

1           In the course of this work, we have  
2           learned a great deal of law enforcement needs of our  
3           Tribes and their members who are exercising their  
4           treaty rights on the Columbia River. In this regard  
5           I want to address two matters: First, there is a  
6           need for regular community-oriented law enforcement  
7           services on the Columbia River to serve Tribal  
8           people. Our member Tribes have asked the commission  
9           to take on this responsibility. To do so we have  
10          asked BIA for law enforcement commissions and  
11          resources. We are pleased to be making progress in  
12          this regard, but we urge BIA to make the process for  
13          obtaining the SLECs simpler with fewer bottleneck at  
14          key decision points. Even the U.S. Attorney for the  
15          district of Oregon echos this need.

16                 Second, many Tribes in the Columbia  
17          River area have no choice but to contract with the  
18          state and local jurisdiction to house and treat  
19          native youth. For Tribal administrators, this  
20          circumstance raises important questions: Could  
21          Columbia River Tribes and communities benefit from a  
22          regional juvenile education, detention and treatment  
23          center for native youth? Could such a facility allow  
24          Tribe governments and community organizations to hold  
25          and treat native youths in an atmosphere more

1       conducive to native custom, beliefs and traditions as  
2       a way to hold accountable, heal and assist native  
3       youth?

4                       Since most Tribes lack the necessary  
5       resources to individually establish a youth detention  
6       and treatment center, could a regional facility allow  
7       Tribes greater access in the rehabilitation and  
8       recovery of native youth involved in crime, gangs,  
9       drugs and alcohol? Finally, what would it take the  
10      federal government to support such an approach?

11                      You know, these words that we speak  
12      today and come before you, we always remind you guys  
13      of your responsibilities towards the Tribes. And you  
14      look at all these Tribes sitting here today and  
15      coming forward and having to ask for law enforcement  
16      needs and stuff. You know, not too long ago on the  
17      Columbia River there was a need because of poaching  
18      and everything, in which I was basically involved at  
19      one time. You know, it shows how important the law  
20      enforcement area is and how we could take care of our  
21      reservations without jeopardizing or losing our  
22      sovereignty that we have.

23                      You remember, when we made these  
24      treaties, these things were reserved by our people.  
25      But along the way we need a helping hand, a helping

1 hand that comes from the law enforcement department.  
2 We can't do everything ourselves without no  
3 resources.

4 You look at each reservation, how  
5 trespass is on there for the game-hunting and stuff.  
6 You look at seated-area usages that each Tribe has  
7 set aside, where they have a hard time trying to  
8 maintain that sovereignty set aside by their Tribes'  
9 sovereignty. You know that we have to come up before  
10 you and ask for this help. So I really appreciate  
11 you guys being here today. Thank you.

12 MR. TOULOU: Thank you. As Carla  
13 pointed out earlier, one of the things we are tasked  
14 with in this legislation is to look at juvenile  
15 detention and treatment facilities, and you mentioned  
16 regional facilities. And in a lot of areas, that  
17 makes sense and is something that we are encouraging.  
18 And I'm glad that is something you're thinking about  
19 with the Columbia River Tribes. Thank you for your  
20 thoughts.

21 MS. STEELE: Any other elected leaders  
22 who would like to speak or are here representing the  
23 Tribe?

24 MR. KING: My name is Tracy Chin King.  
25 I'm the president of Assinboine and Gros Ventre

1 Nations. I have here with me our at-large Gros  
2 Ventre representative, Mr. Mike Fox, who has been in  
3 the field of law enforcement. I'm glad to see Rose  
4 sit on a few committees that deal with SAMSA and all  
5 that.

6 I'm going to have a hard time  
7 sometimes, when all we think about is locking up our  
8 own people. Before Columbus, tell me if there are  
9 any ruins of prisons or youth detention centers or  
10 insane asylums or whatever. Show me anyplace where  
11 there is.

12 Speaking of ruins, after World War II,  
13 the marshall plan, the United States spent 30 billion  
14 dollars building up Europe. I think two billion went  
15 to Japan, a billion here and there, whatever. I  
16 guess, in today's money value, it's probably close to  
17 as much as the 800 million dollar bailout.

18 So it seems like these unfunded  
19 mandates us Tribes have to struggle. We have put up  
20 with the government bureaucracy so much that Tribes  
21 throw their hands in the air and say the hell with it  
22 and give it back. And it seems like things are  
23 funded right after they give up their 638 contracts.

24 I see a lot of that. I worked for the  
25 BIA. They couldn't clone me, so I quit. So they

1     tried to fire me for about eight years. I decided  
2     that the hell with it and go on my own because I  
3     can't be supervised.

4                     But one of the things that I see is,  
5     working with a lot of youths and their families,  
6     there's a lot of alcoholism and drug abuse. But  
7     nobody likes to talk about the sexual abuse or other  
8     violence that was committed in parochial schools,  
9     boarding schools. Nobody wants to do that. So in  
10    the parochial schools, they beat the hell out of you  
11    so you don't say anything as a young child, and you  
12    end up in prison. My brother, he came out -- my  
13    brother is 61 years old. He came out against the  
14    Catholic church last year. And he's now, I think  
15    there is like 40 people behind him that just took  
16    that one step. And knowing all the problems we had  
17    with that, looking the other way doesn't help. It  
18    just gets you in more trouble.

19                    But I really believe, with reentry,  
20    work with SAMSA, behavioral health and other ways of  
21    trying to get our people help. I always say, if  
22    those ways helped, I wouldn't be sitting here. Maybe  
23    I should be in Rome as an alter boy with a different  
24    hat and a dress on, holding a candle instead of a  
25    staff. But don't get me wrong. Christianity,

1     there's nothing wrong with it.  It's the people.  I  
2     think our cultural ways will help us to become better  
3     people, and practicing our culture.  Because you look  
4     at a lot of your foster homes.  There's a lot of  
5     abuse.  And sometimes there's abuse in them homes and  
6     so a lot of kids in the foster homes become -- at a  
7     young age, they are teetering.  So they go into  
8     residential homes and pretty soon they don't want  
9     them and they go to Miles City or Riverside in  
10    Montana where the majority of them are Indian kids.

11                 So in my lifetime, I have never ever  
12    seen a child fail, but I seen us fail as Tribal  
13    leaders, as parents, grandparents, judges, law  
14    enforcement schools, we all fail our children, our  
15    future.  So I really believe that working together  
16    and having SAMSA, IHS, BIA the schools in our law  
17    enforcement, whether it's 638 or BIA, we have to come  
18    together to find ways to implement policies so that  
19    it gives direction to helping our families rather  
20    than destroying them.

21                 And I would sooner be home working with  
22    kids like I used to do, tough kids -- nobody likes to  
23    work with tough kids -- than to be here wondering  
24    what the hell is going to come out of this meeting,  
25    if we are going to have barriers or are we going to

1 break them down; or are we going to bring IHS over or  
2 are we just going to continue to do like those  
3 tomcats, marking our territory. Nobody wants to come  
4 around because they can't stand our smell.

5 So I think that, looking at ways, we  
6 don't have to like one another. We really don't.  
7 But let's work together to better the lives of  
8 people.

9 I remember what my mother said. She  
10 told me I'm no better than anybody else, not even the  
11 people on the street. She said, "You don't know.  
12 You've never walked in their shoes."

13 So I always have to remember that when  
14 I see people on the streets or in jail, that they are  
15 someone's son, mother, father, grandchild; that  
16 there's a lot of Indian people on the streets here in  
17 Billings and other places, Browning and even at home.  
18 So what are we doing when our people have broken  
19 spirits? Are we ashamed of them? Don't want to talk  
20 to them? Or do we give them a dollar or just visit  
21 them, to make them feel like they are someone?

22 I really think that we need to set  
23 deadlines on one another, to see what kind of a  
24 program we can come up with. Department of Justice,  
25 in 1997, Fort Belknap had the program to work with

1 alternatives to incarceration. A lot of kids were  
2 being locked up. And some of us took that risk and  
3 worked with them. And they were ready to go to Pine  
4 Hills, but someone believed in them, not only me but  
5 others. And I seen, about two years ago or last  
6 year, when a lot of them served over in Iraq rather  
7 than serving in prison. So if we really truly  
8 believe in our people, no matter whether it's in  
9 Billings area or Phoenix area or California, we will  
10 truly come up with a real good plan to help our  
11 people rather than destroy them.

12 My goal is to put law enforcement and  
13 social services out of business so we will have  
14 better kids. That's my goal. Thank you.

15 MR. TOULOU: I think we share that  
16 goal.

17 MS. JUSTICE: If I don't look like a  
18 Tribal leader, I'm not. I have been asked to appear  
19 on behalf of the Northern Arapaho Business Council by  
20 Business Councilman Ron Old Man who could not be here  
21 today. And I have some remarks, for the record, from  
22 the Northern Arapaho Business Council.

23 Full funding is needed for the Tribe  
24 justice system, not just for Tribal Courts. While  
25 the 2009-2010 BIA funding to the Tribal Court is very

1 much appreciated, it simply provides backfill of  
2 funds for programs and personnel that were previously  
3 funded from federal grants.

4           The Tribal justice system is more than  
5 the court. Separate budgets and funding are needed  
6 for the components of this system -- Tribal  
7 prosecutors, court staff, public defender's office,  
8 probation and parole -- to ensure adequate operations  
9 and lower competing and conflicting interests  
10 surrounding these funds for these purposes.

11           Some additional funds are needed for  
12 full-time judges, creation of special dockets such as  
13 a family court docket, law training, full-time  
14 prosecutors and, also, as you've heard from some  
15 other Tribes today, public defenders, warrants  
16 clerks, to help process all the law enforcement  
17 arrests. Because, thank you very much, we are now  
18 getting up to full speed on our law enforcement;  
19 Tribal police investigators, even though there's been  
20 an increase in special agents for federal crime and  
21 also FBI, there's still a lack of police  
22 investigators for Tribal crimes that funding is  
23 needed for; professional court administrators and  
24 technology that goes along with that in order to  
25 fully implement the Tribal Law and Order Act, and

1 also, as these Shoshone have already commented on,  
2 facilities, infrastructure; there is desperate need  
3 for new jails, courthouse. The Northern Arapaho  
4 greatly appreciates funding from the Department of  
5 Justice for our youth community assessment center,  
6 the first part of the prevention through  
7 intervention, one-stop multiple-facility campus.  
8 Additional monies, however, will still be needed for  
9 that.

10 And finally, and this is my comment  
11 added to those of the business council, as a  
12 prosecutor on the reservation, I echo very much some  
13 of the comments that have already been made in  
14 regards to the need for coordination with Indian  
15 Health Services for healthcare and mental healthcare  
16 and substance abuse treatment for persons in BIA  
17 correctional facilities. This has become a critical  
18 need on our reservation and I'm sure on others. As  
19 we look at longer incarceration periods and even,  
20 hopefully, new jails, we really do need the access to  
21 comprehensive prisoner care in order that they do not  
22 become simply warehouses.

23 thank you very much.

24 MR. LITTLE: We appreciate that. It's  
25 been an ongoing battle to acquire additional funds

1 for Tribal Courts for the last several years. In  
2 fact, it's been within the last three that we have  
3 actually had increases in the Tribal Court system.  
4 Prior to that, money was on a downhill slide.

5 So based on Congress and our requests,  
6 we are getting there. You're exactly right. We are  
7 still about -- we are still catching up. We started,  
8 with most Tribal Courts, with about a quarter of  
9 their actual need being funded. We are not getting  
10 up to half on some of these, but it's moving in that  
11 direction. Up to now, many Tribes have been  
12 supplemented with their own monies or Department of  
13 Justice funds, which are temporary at best.

14 So we are trying to build that base.  
15 It's been a long progress. We have had three years  
16 fighting to get the increases. So I think the  
17 administration is committed to those increases, but I  
18 don't know how long it will take to catch you up.

19 These aspects in the bill, you're  
20 right, they have increased some of the needs without  
21 increasing any of the base funding to get it there.  
22 So it's a long drive. We are still getting there.  
23 We have the ear of Congress in the sense of the  
24 Department of Justice is now involved. We have had  
25 some good meetings with them. I think they

1 understand our funding limitations and it's going to  
2 take years, really, to get to some of these points.

3 As you can tell, a lot of Tribes have  
4 their own resources, have just made it up and paid  
5 for it themselves and moved along. That's kind of  
6 how they are getting along. It's unfortunate, but  
7 that's how it is. We are concentrating on those  
8 Tribes who actually have shortages and are unable to  
9 make it up on their own. We have had an impact in  
10 the last three years that hadn't happened before. We  
11 are still pushing the issues.

12 In terms of the facilities, I think  
13 it's a good move that the Department of Justice is  
14 now considering the judicial complexes we call them,  
15 including courts and law enforcement and the  
16 detention. As you know, prior to that, you just  
17 covered detention and the cops and the courts were  
18 stuck where they were stuck, in most instances,  
19 lockup houses and whatever else. It's nice they are  
20 going to that emphasis. Again, it will be a long  
21 time to catch them up.

22 I might say that in preparation for  
23 this we were working with facilities management and I  
24 think it was precipitated by the Pine Ridge center  
25 that was built. And we actually do have kind of

1 criteria for courtrooms, set them up with what the  
2 basics are as well as the law enforcement side of it  
3 so that, as we get involved in these things, we can  
4 apply those so we are not trying to invent new  
5 formats and new arrangements.

6 So we are getting there. It's a very  
7 slow process. We appreciate the Tribes' support to  
8 Congress on this. Without that, we wouldn't be  
9 getting a lot of this done. But we will continue to  
10 fight and see about increasing the amounts to get up  
11 there.

12 One of the big things I find is that  
13 you really have to pursue Congress to explain to them  
14 the difference between, well, where the Tribal Courts  
15 systems are or have been in relation to the services  
16 they provide and where everybody else is.

17 The state system, it's nothing to run  
18 into the hundred of thousands in the regular  
19 operations. Of course they have tax bases and other  
20 things. But to explain to them we are going from a  
21 \$20,000 base to a hundred thousand in a year because  
22 that's what the need is is pretty hard to sell. But  
23 we are trying. Thank you.

24 MR. STEWART: I greet everyone here.  
25 My name is CJ Stewart. I'm a senator for the Crow

1 legislative branch.

2 And it's kind of hard that you ask a  
3 houseful of natives to speak when you have men in  
4 sidearms and you have so many law enforcement  
5 officials. It takes a little bit for the standard  
6 normal Native American man to kind of speak up, even  
7 if we didn't do anything wrong. We kind of buckle up  
8 when we see the cops come around.

9 I'm throwing that out there. It kind  
10 of loosens the air in here a little bit.

11 But I appreciate all the comments and  
12 different comments here concerning treaties and  
13 concerning areas of funding and mandates that aren't  
14 being funded. You know, these areas are very  
15 important for not only just one Tribe or another, but  
16 all of us. If it wasn't, we wouldn't be here. And I  
17 appreciate this panel up here. I appreciate  
18 everything that is going on with this Tribal Law and  
19 Order Act. It's a very important issue. It's  
20 something that has been a long time coming. And like  
21 our chairman has stated, we appreciate everything  
22 that is being done here.

23 One question I had concerning Crow  
24 Country is we have a problem with nonmembers coming  
25 on our reservation bringing alcohol into our

1 reservation. And we all know about the Big Horn  
2 River and we all know about the Elk Tail Dam and how  
3 they would go out, and some people enjoy boating on  
4 that area of the Big Horn Lake. I have a boat myself  
5 and I've been out there, one of the rare natives in  
6 our area that are able to go back there and look  
7 around and enjoy what we have.

8 And I always tell my kids, just like  
9 you leaders tell your children, "You guys enjoy your  
10 land. You're sitting in your water on your boat  
11 looking at your beauty, breathing your air in your  
12 land. And you can say that," I said. I say that to  
13 my children because I want them to say that to their  
14 children.

15 And the preservation of those areas are  
16 very important. We have a dry reservation. Federal  
17 government recognizes we have a dry reservation. And  
18 yet nonmembers are still bringing alcohol in. I  
19 understand the U.S. Attorneys have been deputizing  
20 these areas and it extends to areas such as this. I  
21 know Mr. Matt Pryor has been a great help. Him and  
22 Mr. Addington has come down to legislative branch to  
23 visit with us.

24 Good to see you, Charles. We had good  
25 meetings concerning these areas.

1                   And some of the areas have been  
2 extended in that fashion. How can a nonmember come  
3 on my reservation, and when we say no alcohol, we  
4 mean no alcohol. But they come and bring their  
5 alcohol. And I find beer cans in my canyons up in  
6 the picnic areas way back there, trash cans pumped  
7 full of beer, beer cans, bottles, whatnot, people  
8 sitting at the docks drunker than heck. And  
9 nothing's being done.

10                   Every day that National Park Service is  
11 breaking the law, the way I see it, when they allow  
12 nonmembers to come and bring their alcohol onto my  
13 reservation, onto our waters, in our canyon, to enjoy  
14 our beauty. And they are the ones that get hurt,  
15 doing all matters of wrong.

16                   So you know, who's building a jail for  
17 them? Who is building this law for them? Or does it  
18 extend to those areas of importance?

19                   I'm speaking on behalf of my Tribe. I  
20 serve as the infrastructure chairman pro-legislative  
21 branch as well as chairman for Fish and Wildlife  
22 Parks and Recreation. These are some of the concerns  
23 that we have. We see it every day. We see them  
24 pulling into the gas stations in Hardin right on the  
25 border town of our reservation. They gas up. They

1 get all their food. But they never forget the beer.

2 And so that's something that I wanted  
3 to ask this panel, if that's anything.

4 And I'm always, I was always taught by  
5 my grandpa, "Don't be afraid to ask a stupid  
6 question. If you don't ask that stupid question now,  
7 you will be stupid for the rest of your life. Better  
8 to be stupid for two seconds and then you will know  
9 the answer and you will understand and then you will  
10 be able to give it to someone else."

11 MR. ADDINGTON: Thank you, Mr. Stewart.

12 We have come down and met with the  
13 Tribe on that very issue, and I know Mr. Pryor has  
14 also gotten some things put in place, got some  
15 equipment to help address that problem down on the  
16 water. And we are with you and all the Tribes in  
17 protecting your resources out there.

18 The waterways, you know, people come in  
19 from the outside and are disrespecting the Tribal  
20 property. We are with you there in helping to  
21 address that problem, and we will be happy to meet  
22 with you afterwards and let you know some of the  
23 things we are doing out there to help alleviate that  
24 for you.

25 MS. STEELE: Let's take just a quick

1 10-minute break, give the court reporter a break.

2 (Brief recess.)

3 MS. STEELE: Our reporter has asked  
4 that when you speak that you say your name nice and  
5 slowly and clearly so we can correctly transcribe who  
6 is speaking.

7 Some folks have asked about the  
8 transcript and we will get that in an electronic  
9 form. It will be part of our consultation record  
10 online at [bia.gov/consultation](http://bia.gov/consultation). You will be able to  
11 find that when we get that.

12 I really want to thank each of the  
13 participants who have spoken thus far. I think it's  
14 been very productive in the true spirit of  
15 government-to-government consultation. I'm hearing  
16 you loud and clear. I know the panel is as well. I  
17 think we have some clear feedback to give to the  
18 assistant secretary and to the leaders of the  
19 programs that we represent. I'm hearing loud and  
20 clear on the unfunded mandates issue. I'm hearing  
21 loud and clear about the services for the people. I  
22 appreciate the description. A lot of this is not  
23 just something that we need to lock our people up,  
24 but of course we need to provide the services to heal  
25 those broken spirits, as the leader from Fort Belknap

1 said. We hear that.

2 The Tribal Law and Order Act is an  
3 incremental step. It's not going to solve all the  
4 problems and I don't think it's the end of the  
5 legislation on this issue, but it was an important  
6 first step. But I hope we will continue to shape.  
7 And I've heard the folks at the Senate and House talk  
8 about this as well. This is what they could get  
9 passed now, but it's not the final word on this.

10 And certainly that message that  
11 mandates they have given both to the BIA and to the  
12 Tribes did not come with funding and the Department  
13 of Justice, IHS and SAMSA did not come with funding  
14 in this round, so there is more work to do. And I've  
15 heard the staff from the Bureau of Indian Affairs  
16 committee say as much. There is more to do. But  
17 this is an important incremental first step. Looking  
18 forward to your comments this afternoon as well.

19 Did we have any other Tribal leaders  
20 who did not get a chance to speak yet? We have got  
21 guys with the microphone. Once we have heard from  
22 the elected Tribal leaders, we will move on to the  
23 DOI update and Department of Justice, IHS updates and  
24 then open the forum for anyone else who would like to  
25 speak.

1                   Just a reminder to state your name nice  
2                   and clearly for the court reporter.

3                   MS. GARCIA: Good afternoon. My name  
4                   is Tonya Garcia. And I'm a council person for the  
5                   Nez Perce Tribe. I'm also a Columbia River  
6                   Inter-Tribal Fish Commission commissioner and I'm on  
7                   the Law and Order Subcommittee for our Tribe.

8                   I welcome you here and I'm really glad  
9                   you're out here and conducting this consultation with  
10                  the Tribes.

11                  One of the things I would like to say  
12                  about the consultation and about Tribal Law and Order  
13                  Act is the SLEC process seems to be pretty onerous  
14                  and time-consuming to get through. On my reservation  
15                  we have a lot of trespass issues by non-Indians  
16                  because we are in public law 280 state but we have a  
17                  mixed-jurisdiction reservation. It's a checkerboard  
18                  area.

19                  We have received a planning grant,  
20                  thank you, for a juvenile facility, but along those  
21                  lines, we don't want it to be just a correctional  
22                  facility. We want it to be a rehabilitative center  
23                  and much more than just a correctional facility. We  
24                  don't want people coming out of these places harder  
25                  or more mean or being taught more about bad things

1 than learning about the good. And I do think  
2 cultural components have to be part of those  
3 facilities.

4 I'm sorry, I don't have it in writing  
5 right here, but I will mail you my testimony. And  
6 thank you very much.

7 MR. TOULOU: I'm glad to hear you got  
8 one of the grants. It sounds like you're using it  
9 appropriately. When we look at detention facilities,  
10 that's kind of a shorthand. We are looking at a  
11 broader range of services, at least in the  
12 department. And that's part of the changes that went  
13 into this Act that allows us to do multiple-use  
14 facilities.

15 My background is as a federal  
16 prosecutor, and I see other people in the audience  
17 also. And I didn't see anybody that I prosecuted  
18 that didn't have a long Tribal Court record. It  
19 always seemed to me, if there had been an opportunity  
20 somewhere along the line, we wouldn't be taking any  
21 of the cases. And that's not where we want to be.

22 I applaud you for thinking about the  
23 process and thinking about reaching out to youths  
24 early on and anything we can do in developing the  
25 facilities we would like to help. This is something

1 that falls on all of us.

2 MS. STEELE: For the DOI update, I'm  
3 going to ask Charles Addington to talk about the  
4 Special Law Enforcement Commission.

5 Under the Tribal Law and Order Act we  
6 had a lot of tight deadlines, 60 days, 30 days, 180  
7 days, for things we had to do. We are working toward  
8 that and we are supposed to consult on that. So we  
9 are here trying to fulfill that mandate, but also we  
10 don't want to produce projects that aren't reflective  
11 of what your needs are.

12 So I'm going to ask Charlie and Carla  
13 to provide us the DOI update, and then Tracy and Rose  
14 to provide the Department of Justice and IHS update.

15 MR. ADDINGTON: Thank you. First of  
16 all, we want to let everyone know we do agree with  
17 you on the current SLEC policies we have. We have  
18 run into some -- seems to be a long process. There's  
19 a lot of confusion of what needs to be submitted for  
20 the SLEC cards in the past in some areas. So we want  
21 to consult with the Tribes and develop some policy  
22 that streamlines that process so the Tribes know  
23 exactly what is required and what the process is to  
24 get an SLEC card, and to enter into a deputation  
25 agreement with a state or local or with the BIA for

1 that federal authority.

2 So we have put together a couple of  
3 gentlemen in a team up in Washington, D.C. that have  
4 started reviewing some of the current policies, some  
5 of the things that we are doing and some of the  
6 lessons learned out in the field. We hear from a lot  
7 of the Tribal programs that we submitted this and  
8 that and it's taking too long to get an SLEC card.  
9 We want to get input from the Tribal programs and  
10 develop minimum standards so we can put those in  
11 writing. And each of the Tribal programs will know  
12 exactly what to do and what the process is. There  
13 will be some time lines on there as far as getting  
14 those back to the Tribes and what the requirements  
15 are.

16 I know the training has also been an  
17 issue; not enough training, criminal jurisdiction of  
18 Indian Country training, out in the field. We have  
19 folks who request SLEC cards and then they have to  
20 wait on the training before those can be issued.

21 So those are some of the things we are  
22 looking at that we would like to get some input from  
23 all the Tribes on how we can standardize some of the  
24 procedures and cut it down to the minimum that we can  
25 to get the cards out quicker.

1                   And we do have a new process. We just  
2 got new printers and we got new cards. Because I  
3 know, in some of the areas, some of the different  
4 districts, cards have been an issue. If they don't  
5 have cards, a letter gets sent out to the Tribal  
6 program. A letter gets sent to the U.S. Attorney's  
7 Office and there's not actually a card given to each  
8 officer who has SLEC authority. And we have since  
9 fixed that problem. We have got actual commission  
10 cards that have been received. We just got them. We  
11 just got all the printers and it's been sent out to  
12 each district office. So now, after all the  
13 paperwork is done and the cards are approved, you  
14 will actually get an SLEC card for the officers to  
15 put in their pocket and carry with them.

16                   But like I say, we would like to come  
17 up and develop some written guidelines and standards  
18 for these SLECs and the deputation agreement, know  
19 what a Tribe has to submit and those kinds of things.  
20 So we would like the input from everybody so we can  
21 develop the policy and standards for that. That's  
22 where we are on the SLEC right now.

23                   MS. FLANAGAN: I would like to give you  
24 an update on the guidelines. There's a requirement  
25 in Tulola that the BIA develop guidelines in

1 consultation with the Tribes for long-term detention.  
2 And this is a very short deadline. It's within 180  
3 days. So that puts us in January, towards the end of  
4 January.

5 In anticipation of the meeting of base  
6 documents, we convened a panel of Indian Country jail  
7 administrators, about 15 of them, last week in  
8 Denver. And we worked on guidelines. I think  
9 somebody mentioned it in here. The American  
10 Correctional Association is both the jail and the  
11 prison organization that sets standards. Not  
12 everyone has to comply with the standards. There's a  
13 certification and other approval accreditation  
14 process with ACA. And they have previously had the  
15 adult local detention facility standards. And we  
16 based a lot of the BIA's requirements on the previous  
17 adult local detention facility standards.

18 They recently, in May or June, issued  
19 jail standards. And it's that which we have based  
20 our guidelines on. The core jail standards, for  
21 those of you that can see this, there are about -- I  
22 will tell you exactly how many. I don't have this  
23 one memorized. There are 138 standards, 45 of which  
24 are mandatory. 93 are non-mandatory. And they cover  
25 everything from the administration of jails through

1 sanitation to programming, food service, key control,  
2 security issues and some personnel issues.

3           So what we did last week with our group  
4 was we went through all the standards and we talked  
5 about Indian Country. And we talked about what  
6 impact Indian Country detention had on those  
7 standards, or what we knew would be different. And  
8 we have come up with the core set of standards. We  
9 haven't named them yet, but as soon as the product is  
10 produced, it's being typed and we have to edit it a  
11 little bit, we intend to put it up on the website.  
12 We intend to distribute it, also, if requested, and  
13 to take comments back.

14           Our goal -- and we have folks working  
15 on this. I'm unsure why it's taking so long to do  
16 this little bit -- would be to have an e-mail address  
17 that anybody could send comments to. And I think  
18 that will also be for other issues. So it would be  
19 maybe Tulola, dash guidelines, Tulola, dash, SLECs,  
20 and as soon as we get that out you will be able to  
21 submit your comments.

22           What we want to do is stick with a  
23 basic industry standard so it's not too far from what  
24 industry would require, yet encompasses cultural and  
25 other needs. And some of those areas where we talked

1 about enhanced substance abuse treatment, that's a  
2 pretty normal thing in a jail environmental anyhow,  
3 because most prisoners or inmates have substance  
4 abuse problems. But we wanted to make sure we had  
5 that. We also wanted to make sure we addressed the  
6 traditional and cultural aspects, or at least  
7 mentioned that so it's addressed.

8 I think it's going to be a good  
9 document when it gets published. I think, in all  
10 honesty, I know for a fact that some BIA-operated  
11 facilities are going to have a hard time meeting the  
12 guidelines. I'm speaking for BIA-operated, just  
13 because of our physical plant issues, because of our  
14 funding issues, sometimes because of our remoteness.  
15 We are going to also have to develop how are we going  
16 to do certifications, who is going to certify, how  
17 long will the certification last, what role  
18 self-certification might play.

19 The other issue will be how we will do  
20 waivers. Because I anticipate, right off the bat, we  
21 are going to have a need for waivers. So how long  
22 waivers will apply, what the expectation would be to  
23 come into compliance. So that covers the guidelines  
24 required by Tulola.

25 Secondary to that is the American

1 Correctional Association is very interested in Indian  
2 Country and getting some Indian Country jails  
3 certified under the ACA process, which means you  
4 would have to meet these requirements. And we are  
5 willing to -- I'm working with ACA. We are willing  
6 to sponsor some jails for that and to assist with  
7 advocating with ACA for preparing for certification.  
8 I think it would be a really great thing. And I  
9 think, frankly, we do have a lot of jails in Indian  
10 Country that can meet the certification standards. I  
11 think there are jails which were prepared with some  
12 guidance.

13 Now, the ACA process, anybody who's  
14 been through it understands that it is very onerous  
15 and very complex. It's not something that you enter  
16 into lightly and forget about the money that you have  
17 to pay. But it is complex. They go through it with  
18 a fine-toothed comb. But we do have facilities that,  
19 I believe, could stand up to any county, or other  
20 facilities for that matter, that could approve, could  
21 get certified. These are not going to be accredited.  
22 They are not accrediting the facilities under the  
23 core jail standards. They are certifying them.

24 So we had a great group. What we did  
25 determine, for those of you who have juvenile

1 programs, is we were going to try to do this jointly  
2 with the adult and juvenile and come up with one  
3 synonymous set of guidelines. Midway through I think  
4 we ended up feeling that, while they would be very  
5 similar, there are some diversions on juvenile  
6 facilities that we would have to address. So we will  
7 convene. The law is basically moot on that. So  
8 depending on our progress with meeting the  
9 requirements for the guidelines for at least adult  
10 facilities, we will do the exercise again with  
11 juveniles. And I think we will produce something  
12 that will be good for Indian Country.

13 So if there are any questions -- yes,  
14 ma'am.

15 A SPEAKER: I heard you make reference  
16 initially to asking for waivers. And I'm hoping then  
17 you would be able to explain on what areas you wanted  
18 those waivers, and who did you want those waivers  
19 from?

20 MS. FLANAGAN: We still have to develop  
21 the waiver process. Once we get the guidelines, I  
22 know there will be requirements for waivers and we  
23 are going to have to develop how we are going to do  
24 that and how long they will last, the whole waiver  
25 process.

1                   A SPEAKER: But what is the subject  
2 matter of the waiver?

3                   MS. FLANAGAN: To a guideline. If you  
4 could meet some of the guidelines but you couldn't  
5 meet these guidelines, for instance, you didn't have  
6 the physical plant, so would that be a permanent  
7 waiver or not? So it's that process and recognition  
8 that we would have to do that.

9                   Any other questions ON guidelines?

10                  I would be happy, you can afterwards  
11 come up and look. But I need my book because I have  
12 more consultation and work to do. But if you haven't  
13 seen the book, if you want to come up and take a look  
14 at it, feel free to do so.

15                  MR. WINDY BOY: Vice-Chairman Windy  
16 Boy, Chippewa Creek. I have a question as far as the  
17 book you have there. Is that part of like some of  
18 these other laws, federal laws, that were passed down  
19 with the rule-making process?

20                  MS. FLANAGAN: This particular book is  
21 not. Whether the guidelines have to be part of the  
22 rule-making process, I don't know yet.

23                  MR. WINDY BOY: The reason why I ask  
24 that, if that's the case, then what part is this, or  
25 have the Tribes had an opportunity to be at the table

1 when these guidelines have been put into place?

2 MS. FLANAGAN: I think I skipped over  
3 that, so my apologies. We convened a group of  
4 experts, Indian Country jail experts, to come in and  
5 start this. We are required by the statute to do the  
6 guidelines in consultation with the Tribes. So we  
7 are going to have to figure out what exactly will  
8 meet the requirement for consultation with the  
9 Tribes, whether publicizing it and seeking the  
10 feedback is adequate. That decision hasn't been made  
11 yet because we have just really finished these last  
12 Friday.

13 MR. WINDY BOY: Thank you for making  
14 that comment, because it just elevated the reason  
15 about this whole process. As we are proceeding  
16 forward, it sounds like this is pretty much a done  
17 deal. And I think if the Tribes haven't been at the  
18 table when that particular guideline is set in place,  
19 we are sitting here twiddling our thumbs and saying,  
20 continue on business as usual.

21 That's what is frustrating for the  
22 Tribes. We never get a chance to look at the  
23 guidelines or procedures beforehand, to have a  
24 comment when the guidelines and rules come forward.  
25 Then we are kind of sitting back here. You know,

1 this is the frustrating process at times. And I  
2 think, before this proceeds forward, any guidelines,  
3 I think the Tribes need to take a look at this, sit  
4 back and walk out of the room and look at this and  
5 move forward and proceed with what the Tribes want.

6 We have staff here that are in the  
7 trenches every day. We know what is going on in  
8 Indian Country. We are tired of bureaucrats from DC  
9 telling us what is best for us. And I think that  
10 this process needs to change at some point in time.

11 MS. FLANAGAN: I just want to be clear  
12 that this book is the basis for the guidelines that  
13 we worked on last week with the Indian Country jail  
14 administrators. This is not the publication that we  
15 are basing on, or that will be the guidelines. We  
16 have a whole separate set of guidelines that we  
17 developed based on this book and that we will be  
18 seeking input and feedback from the Tribes.

19 MS. MARKS: My name is Patty Marks.  
20 I'm representing the Oglala Sioux Tribal Council. I  
21 would like to talk to you and to our friends from the  
22 Bureau about the high rate standards because that  
23 goes to the issue of the SLEC cards, it goes to the  
24 issue of detention and goes to the issue of Tribal  
25 law enforcement non-commissioned officers.

1 I'm very pleased, Charles, that you're  
2 talking about putting something in writing. I think,  
3 on behalf of the Great Plains Tribes as a unit, they  
4 want to see something in writing and they want the  
5 opportunity to comment on it.

6 Because while I greatly respect the  
7 desire of the federal government as an entity to try  
8 to adhere to things like the American Correctional  
9 Standards and the Federal Police Officer Standards,  
10 we do have some unique situations in Indian Country  
11 that are presenting real serious problems for  
12 recruitment. They are problems for you and for us.  
13 They deal with the fact that young people, as many of  
14 the gentlemen in here have spoken, oftentimes  
15 experience difficulties in their young lives and  
16 those difficulties lead to something, whether it's a  
17 DWI or some kind of situation involving alcoholism or  
18 marijuana or drugs, and yet they turn their life  
19 around.

20 Under federal standards we look at a  
21 large base of people to draw from and we look at the  
22 purity of the situation. That's not real in Indian  
23 Country and never has been. The fact that someone  
24 who might have had alcoholism problems in their  
25 twenties and now they're in their thirties and hasn't

1 drank for 10 years, is well respected in the  
2 community. Shouldn't prohibit them from all these  
3 jobs.

4 I think that is the position that law  
5 enforcement has taken. If you're adhering strictly  
6 to the standards of an FBI agent or a U.S. marshall,  
7 we are never going to solve the problem of  
8 recruitment in Indian Country. It's just that  
9 simple. It's something I encourage you to look at  
10 very, very carefully.

11 In the corrections area, one final  
12 comment as a lawyer, we have situations across the  
13 country that vary as to who is and is not a  
14 corrections officer. In some cases we have law  
15 enforcement officers carrying law enforcement cards  
16 running lockup. In other cases we have pure  
17 detention officers. That's led to a whole bunch of  
18 issues related to tort claims. And I would really  
19 encourage you, when you're looking at your standards,  
20 to please look at that. Because we need to know  
21 whether these people working in these jails do or do  
22 not have intentional tort coverage. I think you're  
23 well aware the lead case in the country is against  
24 Pine Ridge right now on just that issue; denial of  
25 intentional torts claim coverage for a Tribal

1 detention officer who also carries a police card but  
2 not does not carry a commission card.

3 The thing I just want to say on behalf  
4 of President Two Bulls overall, one, we are very  
5 appreciative of this panel and appreciative of the  
6 fact that the law enforcement bill has brought all of  
7 the agencies together in one room. The big problem  
8 with public safety is people tend to look at  
9 individual programs in a vacuum. And that's not the  
10 reality of Indian Country.

11 Her comment last night, we were both  
12 watching some movie and showing something about fifth  
13 army where they had beautiful tanks and wonderful  
14 soldiers but no gasoline. To some extent that's what  
15 people in the room feel like; there is always a  
16 weakness in the system.

17 Recruiting is one of those weaknesses.  
18 So what can you do to look at that from a practical  
19 standpoint? I don't think there is anyone out there  
20 who wants felons wearing a uniform and carrying a  
21 badge. But that also doesn't mean we should be  
22 keeping out all these people who are well-qualified  
23 individuals.

24 Thank you.

25 MR. LITTLE: Since one of the

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1 prosecutors brought this up at the break, I should  
2 have mentioned it anyway. We are in the process of  
3 trying to work on the certifications for extending  
4 sentencing to three years. The way we view that, and  
5 I'm sure there will be other views as we get into  
6 this, but the way we view that is that certification  
7 kicks in if you're putting someone in a federally  
8 funded detention facility. Those certification  
9 requirements, we are still -- probably going to be a  
10 solicitor's call at some point shortly after the  
11 consultations have occurred, is even how we are going  
12 to approach that. In other words, are we going to  
13 talk about regulations that will certify a whole  
14 legal system? Are we talking regulations on a  
15 case-by-case basis or what? If you're talking about  
16 regulations, there's a long period to get those out,  
17 reviewed and that kind of stuff.

18 The other option is to go to an interim  
19 rules-making process which is maybe on the table,  
20 maybe not. If we do that, are we talking about  
21 certifying a whole system or case-by-case situation,  
22 where we just certify a case that comes up in the  
23 interim?

24 So those will be worked on, just to let  
25 everyone know. Nobody will be able to run out

1 immediately and start implementing the three-year  
2 rule, which is also going to amount to maybe nine  
3 years. Because you would also have to figure out who  
4 can afford to keep them up to nine years under the  
5 staffing situation.

6 BOP, who is taking the hundred-bed  
7 situation and doing that as a pilot project, will  
8 probably come up with their own certification process  
9 for that. Hopefully the Bureau and the BOP will work  
10 together to make sure that both processes aren't too  
11 far off or something similar in that aspect. So it's  
12 still a ways in that development and all that going  
13 through.

14 Some of you that want to change your  
15 law and order codes, you may have to make some  
16 constitutional changes on who is reviewing that. Let  
17 the Bureau review it, can you do it yourself and all  
18 that. We are still a ways from that.

19 I think the big issue to resolve up  
20 front is whether we are going to go the regulatory  
21 process or not. If we do, we are talking about a  
22 ways before we get to that point.

23 MR. ADDINGTON: One thing also, I would  
24 like to comment on the backgrounds. We have many  
25 Tribal VIP police officers out there right now,

1 something that happened 10 years ago. That's the  
2 reason we have trained adjudicators look at those  
3 backgrounds. The adjudicator should be looking at  
4 patterns of misconduct, serious misconduct or honesty  
5 issues, something that happens in someone's  
6 background. Of course, we were all kids. Kids do  
7 crazy things. If it's not something that's going to  
8 hinder them from performing law enforcement duties  
9 that happened years ago, there's not been any other  
10 issues with misconduct, there's not a pattern there  
11 and it's been several years ago, there is a  
12 seven-year and 10-year, depending on the level of  
13 security that they are going to do for the position  
14 that would not keep someone from holding a law  
15 enforcement job unless it's something of a serious  
16 misconduct or a criminal act or something. We do  
17 look at that. And a lot of the adjudicators do  
18 adjudicate some of those issues out to where those  
19 folks can come on board as long as the adjudicator  
20 shows it's not a pattern of misconduct.

21 And also, in regards to Mr. Windy Boy's  
22 comment on SLECs, we pulled together a team of votes  
23 just to look at the guidelines. We are going to get  
24 Tribal input before anything is put into place. We  
25 look at the guidelines. We are kind of sitting on

1 180-day deadline for the enactment of some of these  
2 policies. So we are trying to at least look at the  
3 backbone of what our current guidelines are. We are  
4 going to get Tribal input. We are going to try to  
5 put that input, we are going to combine everything,  
6 look at what the Tribes are saying and come up and  
7 develop a policy that will work best for all of  
8 Indian Country.

9 MS. MARKS: Just a follow-up comment.  
10 That's a problem. We have had many, many situations  
11 in the Aberdeen area where the adjudicators have  
12 approved the hire and the Bureau has gone nuts. And  
13 one of the questions that I think, looking at other  
14 colleagues over here that we are kind of nodding at  
15 each other, who trains the adjudicators and to what  
16 standard?

17 It's something that has not been  
18 brought back to the Tribe so we've never had an  
19 opportunity to deal with it. But it doesn't mean,  
20 just because we submit an officer and have them  
21 adjudicated with a past issue, doesn't mean the  
22 Bureau won't withhold the funding for that officer.  
23 That's what I'm talking about.

24 Lay it out in writing, let the Tribes  
25 respond to it and fight it out until we come up with

1 something that is mutually agreeable. Unfortunately,  
2 these things were just kind of made up as they go,  
3 out of a broad statement in Title 25 that says the  
4 director of OJS will set the standards. So the idea  
5 is give us a fair shake to respond.

6 MS. STEELE: Charlie, do you want --

7 MR. ADDINGTON: Any more questions on  
8 SLECs or corrections before we move on?

9 A SPEAKER: What does a Special Law  
10 Enforcement Commission provide for Tribe law  
11 enforcement standards? What does it do?

12 MR. ADDINGTON: It provides the federal  
13 authority for a Tribal law enforcement officer to  
14 enforce limited federal laws.

15 A SPEAKER: Does that include federal  
16 court? They can go to federal court as an expert  
17 witness or do they have to call the FBI?

18 MR. ADDINGTON: No, you have law  
19 enforcement officers that help special law  
20 enforcement commissions. In some places you have  
21 central violations bureau citation where they issue  
22 federal citations. If they have an SLEC card, they  
23 can issue those central violation bureaus if it's set  
24 up in that area and it goes to the U.S. Attorney's  
25 Office and it's actually a misdemeanor federal crime

1 and they do testify in federal court also.

2 A SPEAKER: In some states they don't  
3 recognize law enforcement training academy and  
4 Artesia and some of our officers wind up going to the  
5 state academy. But a lot of state academies don't  
6 recognize Tribal law enforcement regardless of  
7 whether they went to the state academy or Artesia and  
8 won't certify them to testify in state court if you  
9 have a mutual aid agreement.

10 Myself and the chairman are friends  
11 with the governor of the state of Washington so we  
12 have been talking to her about it and the legislature  
13 did change some of the law that would allow our  
14 Tribal officers to be expert witnesses in state  
15 superior court now, but that doesn't happen across  
16 the board. I mean, the whole country is different.  
17 So I don't know if you can answer that question.

18 MR. ADDINGTON: Absolutely. A lot of  
19 states have adopted the same thing that Washington  
20 state did where they are recognizing the Tribal court  
21 police officers as peace officers in the state. And  
22 we are in full support of that. We would like all  
23 the states to do that because we do have some out  
24 there that do not recognize Tribal police officer as  
25 a peace officers in the state, and our Tribal

1 officers are as well or better trained than state  
2 officers or anyone else out there. And they  
3 shouldn't be limited and not be recognized by the  
4 state. Because we provide a unique service also to  
5 the state. You know we are out there for backup.  
6 They are limited in establishing resources, but we  
7 have to help each other and we have states that don't  
8 recognize the Tribal officers therefore they can't go  
9 out and assist that county or state without an  
10 agreement in place.

11 I know some of the states, if you have  
12 a deputation agreement with the county sheriff, that  
13 allows you to enforce the state laws. But we are  
14 working toward trying to educate all the states.  
15 There are still a few out there that do not recognize  
16 it. We are trying to educate those sheriff  
17 associations and state leaders that we want to  
18 recognize those Tribal officers as peace officers in  
19 the states.

20 A SPEAKER: Charles, can a Tribal fish  
21 and game officer obtain these SLEC cards also?

22 MR. ADDINGTON: If they meet the  
23 standards, that's one of the things that we will  
24 probably look at in the development of the policy.  
25 If they meet the same standards as the police

1 officers as commissioned by the Tribe as a  
2 commissioned police officer, and they meet the same  
3 standards, then, yes, we will be looking at that in  
4 the policy to see what we need to put in place.

5 We have a lot of Tribes with fish and  
6 game officers out there that work the roads alongside  
7 the Tribal and BIA officers right now. So  
8 absolutely, we will be looking at that.

9 MR. WINDY BOY: I have a comment again.  
10 I apologize for grabbing the mike too many times, but  
11 that's what I'm here for.

12 You know, sitting back and listening,  
13 we are talking about the corrections and all the  
14 unfunded mandates and all of that. In the 12 years  
15 that I have been doing what I'm doing here with all  
16 these consultation processes, seems like there's a  
17 disconnect that's going on. It's good that you guys  
18 are up there in the panel and providing what you're  
19 doing and all that stuff.

20 But there's a major player that is  
21 missing and that's the OMB, the Office of Management  
22 and Budget. Because we can talk until we are blue in  
23 the face, and rob Peter to pay Paul to do whatever we  
24 need to do. OMB will never understand what we are up  
25 against until they are at the table here to hear

1 firsthand from the people who are on the ground doing  
2 a lot of these things here. Because until they hear  
3 that, until they hear the pleas from Indian Country  
4 to understand that whole aspect of it, they will  
5 never get it. And their priorities right now aren't  
6 the priorities that we have in Indian Country.

7 So perhaps maybe that would be, if you  
8 can take that message to the powers that be, that  
9 until OMB is at the table here that we are going to  
10 be robbing Peter to pay Paul to make a failed process  
11 work.

12 MR. LITTLE: Just to answer that.  
13 You're exactly right. In fact, we didn't get the  
14 increases in the Tribal Court funding until we did  
15 the court review. And the reason we did that is not  
16 because the Bureau wanted to do court reviews but  
17 because the OMB said, I need to see what is going on.  
18 Once we started doing that, they loosened up the  
19 purse strings; not enough, but I don't know what it  
20 will take with the law enforcement side.

21 But we will continue that because it  
22 seems like it's what OMB wanted, unfortunately, or  
23 fortunately, whatever. You have to play with them  
24 too. We are not quite sure what they want is part of  
25 the problem. They kind of live in a different world

1 and you kind of meet what they think they might need  
2 in order to move forward. That's kind of what we  
3 have done. But I can't guarantee it for every  
4 program. It's a negotiated process.

5 And it's very frustrating. But I would  
6 rather get the money out to the Tribes without having  
7 to do the court reviews, but that's what OMB wants  
8 and that's what made us come to the table right now.

9 MR. ADDINGTON: I can tell you  
10 recently, what, a couple weeks ago, three, four weeks  
11 ago, some of OMB out of D.C. was taken to Indian  
12 Country, to several sites, so they could see  
13 firsthand some of the things that we are going  
14 through in Indian Country. We can tell people all  
15 day long out there. Until they get out and actually  
16 see what is going on out there -- I think it was a  
17 couple folks from D.C. that actually went out and  
18 made a visit. Of course they can't go around  
19 everywhere, but they did make several visits to  
20 several Tribal programs so they can see firsthand.

21 So they are getting to that mindset  
22 where they are going to go out there. Some of the  
23 department is actually encouraging them and taking  
24 them on trips to some of the places so we can show  
25 them firsthand, we need a building and this building

1 has been condemned and how bad it is. But until we  
2 take them there and show them those things, it gives  
3 them that vision of what we are talking about, rather  
4 than just explain it. So they are doing some of that  
5 right now.

6 MS. MARKS: I think the assistant  
7 secretary took some OMB folks for a week out into  
8 Indian Country. But it's an excellent point. We  
9 could invite them to the consultations so they can  
10 hear firsthand.

11 We have also been working with the  
12 White House. An inter-agency team, implementation of  
13 the Tribal Court and OMB folks are at those meetings.  
14 So it is an excellent point.

15 MS. STEELE: Just a reminder to say  
16 your name before you comment again.

17 And Charlie, do you want to talk about  
18 the data collection?

19 MR. ADDINGTON: We have a question  
20 right here up front.

21 MR. FOX: Just a comment. Mike Fox for  
22 Belknap Tribal Council Law Enforcement Oversight.

23 Just a couple of quick comments and  
24 then I will actually get to my question. One of  
25 the -- I think it's up to your Tribal leaders to get

1 onto our representatives in D.C. to address some of  
2 the unfunded mandates, especially the prevention  
3 side. You look at the Tribal Law and Order Act and  
4 that's where most of the money was stripped out. So  
5 that's something that we need to get to the top of  
6 the priority list as Tribal leaders.

7 But back to the commission cards. What  
8 type of training are we going to have for those  
9 limitations on the power that goes with them? I  
10 would sure hate to turn a couple of our guys loose  
11 with them.

12 MR. ADDINGTON: Currently it's a  
13 three-day training that they put on for criminal  
14 jurisdiction in Indian Country. I know some of the  
15 U.S. Attorney's Office is also teaching some of the  
16 training across the Indian Country and some of it's  
17 done out of the Indian police academy that gives them  
18 some of the federal law and some of the requirements  
19 and what they can do with the commission card. So  
20 they do get a training on the background of some of  
21 the federal laws and some other things they need to  
22 know in order to use the federal commission.

23 MR. FOX: So once they get through the  
24 state academy there would be something else set up.

25 MR. ADDINGTON: Absolutely. They have

1 to attend criminal jurisdiction training in order to  
2 get an SLEC card so they know what they can do and  
3 what they can't do and the federal law.

4 MR. DEVEREAUX: Henry Devereaux with  
5 Blackfeet Law Enforcement Service.

6 I wanted to address just a couple of  
7 issues about the enforcement cards. The Blackfeet  
8 Law Enforcement has been doing an MLA training at the  
9 law enforcement academy in Helena, Montana. And I  
10 think it's important that a lot of the state officers  
11 that work around the Indian reservations that would  
12 like to have the same training that if at all  
13 possible while our officers are at MLA being trained  
14 and the state is putting their officers through the  
15 same training, if there is some probably, because  
16 there is other law enforcement officers there too  
17 that would probably benefit in some of this  
18 instructional training.

19 Because a lot of the training that is  
20 basically put in through there, some of it has to do  
21 with Indian jurisdiction. And a lot of times that is  
22 not being done in a manner that is beneficial to the  
23 officers being trained. I think that would be a good  
24 opportunity for the Office of Justice Services to  
25 approach that. Because a lot of the Indian

1 reservations in a couple of the conferences I  
2 attended sent their officers to state training. And  
3 I think that state training, the reason we would look  
4 more toward that because cross-deputization is a key  
5 element in and around the reservations, especially  
6 with the Blackfoot.

7 We back up against Glacier National  
8 Park. We have millions of visitors that come through  
9 the Blackfoot reservation and we currently have no  
10 jurisdiction or no way to affectively deal with the  
11 individuals.

12 The other thing is, as has been brought  
13 many times to the U.S. Attorney's attention, is the  
14 fact that we have nonmembers that we can't deal with  
15 on the reservation that basically sometimes federal  
16 prosecution or the jurisdiction in the county refuse  
17 to deal with these guys and they become almost  
18 untouchable on reservations. As was brought up with  
19 the checkerboard areas of reservations, that's where  
20 law enforcement really needs to step to the key to  
21 eliminate this.

22 I've been in law enforcement 32 years;  
23 started with the Tribe, went to the Bureau and went  
24 to the National Park Service and back with the state  
25 and back with the Tribe. And in 30-some years I have

1       been in law enforcement, something really changed  
2       that basically has put the foot down.  These issues  
3       have been issues for as long as I have been in law  
4       enforcement.  And when in '71, the 638, when I went  
5       through several meetings that as we was approaching  
6       the assumption of BIA programs, it was promised then  
7       that we would have these programs fully intact and be  
8       able to do a lot of things.  And a lot of that was  
9       supposed to be working in a full judicial capacity.  
10      We have not even met that.

11                   And I think a lot of that has to do  
12      with the direct non-communications of the Office of  
13      Justice Services, BIA in many respects.  The  
14      reservations, many times you talk about reservations  
15      and meetings.  There were very few meetings on  
16      reservations.  The Blackfeet reservation I realize is  
17      an isolated reservation, but yet we need to have the  
18      people that can make decisions come to the  
19      reservations, meet with our Blackfeet Tribal leader,  
20      our councilman and effect their leader, tell them.

21                   As Indians, we understand the word no,  
22      if it's done in an articulate manner and based with  
23      facts that we can understand.

24                   And then the old adage, "We will get  
25      back to you. " We have heard that so many times our

1 ears ache. That's kind of the part that we are up  
2 against.

3 Because in the Blackfeet, we went  
4 through the background issue. We went with that. We  
5 laid off our police officers for over 45 days. We  
6 had 11 Tribal police officers. We dropped all the  
7 way down to seven. We are trying to climb back up  
8 again and we are going through the background check.

9 I realize it's necessary for officers  
10 for background. You don't want individuals out there  
11 that don't need to be out there, that have an issue  
12 or that the community has an issue with. Those  
13 people need to be eliminated from law enforcement  
14 positions because law enforcement carries a great  
15 deal of respect. If you don't have it going on in  
16 the street, you're never going to get it.

17 But I just ask, when dealing with this,  
18 as we go through this planning stage of the newer  
19 program that is being presented by the president,  
20 that we do it in the manner that is constructive,  
21 communicative and bring it to the people of the  
22 Blackfeet Tribe.

23 Not everybody can come to these  
24 meetings. As you're aware, we have no Tribal leaders  
25 at this meeting because they are busy or something.

1 And I can tell you right now everything that they are  
2 going to get is going to be some degree of  
3 miscommunication because they are not going to  
4 properly understand it. And I can't go back and  
5 fully articulate because I don't even know. I don't  
6 even have the bill with me. I feel like a community  
7 stub that don't read bills. I don't want to be in  
8 that category. I want to express it's important, as  
9 Mr. Windy Boy expressed. Bring it to the Blackfeet  
10 people, people on Rocky Boy, stuff like that.

11 We are in dire need. We have a jail  
12 that has been falling apart the day they built it.  
13 It's been piecemealed together and stuff like that.  
14 There are areas on reservations that need to be  
15 expressed in depth and people seeing exactly what the  
16 circumstances are. Because we have some tremendous  
17 need.

18 But I can honestly tell you within the  
19 last six months the BIA has greatly helped us, gave  
20 us good technical support. We are on a good path,  
21 have good communications and that's what we need.  
22 And when we get that, we charge forward because we  
23 are informed. We still get misinformed and we still  
24 misinterpret stuff. But we need to get better  
25 communication on the reservation. Not all

1 reservations are that bad.

2 I realize Blackfeet, we are limited on  
3 hotel space in Browning. But 30 miles to the east we  
4 have the Super 8, and it has a slight bed bug  
5 problem, but check the rooms out. It can be worked  
6 out.

7 So that's pretty much what I want to  
8 say. I just want to express, again, communication  
9 really is the key. This is what we need, more  
10 in-depth communication on a Tribal level.

11 MR. ADDINGTON: I agree with you a  
12 hundred percent on the training side of it. Those  
13 state officers, county, city officers, any full-time  
14 peace officer is welcome to our criminal adjudication  
15 in Indian Country training. We have a lot of those  
16 counties and cities out there, even the highway  
17 patrol, across the United States that comes to our  
18 training. We have probation and parole officers.  
19 All of those officers are welcome. And we even have  
20 some folks with courts that come through the  
21 training. So it is open to those folks that are in  
22 state law enforcement out there.

23 First of all, on behalf of Director  
24 Darren Cruzan, he sends his regards and is sorry he  
25 couldn't be here. He couldn't be out on a flight.

1 He is committed. He is just in the job. He has been  
2 here in his second week and he is committed to having  
3 the good relationship between the Tribal programs and  
4 Office of Justice Services. We are going to have a  
5 lot of changes taking place in those areas. Like I  
6 said, he is committed to make it better. So.

7 On his behalf, I want to assure you  
8 that he is going to be making some changes so we do  
9 have some better communication out there between our  
10 Tribal partners and federal partners.

11 A SPEAKER: My name is -- (inaudible)  
12 and I'm the domestic violence director on the Blind  
13 Creek Reservation.

14 Listening to all of this I don't come  
15 here well informed. I haven't seen the bill. I  
16 heard about it and I was very interested because it  
17 affects our victims, our children that we work with,  
18 our families and the people that are suffering. And  
19 what I do know, as far as the training component is  
20 concerned, I think it's got to be across the board.  
21 It can't be just for this piece, this reservation,  
22 this state. It has to be across the board.

23 Because we get a lot of people that  
24 aren't trained, fully trained in the old BW statutes  
25 that act. There are a lot of statutes in there that

1 are not implemented and they do not follow them. And  
2 therefore our victims suffer and they fall through  
3 the cracks and the abuser gets away. They are not  
4 held responsible.

5 I really think that needs to be taken  
6 into consideration as far as domestic violence is  
7 concerned. Like Mr. Windy Boy said, we work in the  
8 trenches. That's where we are at. We know what goes  
9 on on the reservation. We suffer too because of the  
10 lack of information, lack of being informed.

11 There's a lot of laws, a gun law, three  
12 strikes law, there's many statutes that are mandated  
13 by the feds but aren't brought down through the  
14 different levels of, for example, state, county  
15 Tribal laws. I know our codes are terrible and we  
16 are working on them with a couple of judges, which is  
17 really good. I'm really happy for that and we are  
18 working on revising stalking, sexual abuse and  
19 domestic violence. But officers, courts, everybody  
20 needs to be trained so that these women and children  
21 can be helped in the system the way they should be.

22 Thank you.

23 A SPEAKER: Good afternoon, my name is  
24 Carl -- (inaudible) -- the lead prosecutor for the  
25 Blackfeet Tribe, also placed over in family court.

1 I've been in the system for 38 years. I look at  
2 Lorie, she is about as old as me. But my concern --  
3 and everybody pretty much touched on, I have a copy  
4 of the Act. I've read it, marked it up and I have  
5 some of the concerns where I see the U.S. Attorney's  
6 Office getting all kinds of liaisons and extra help.  
7 We know the federal government is going to fund that.

8 But everything that comes to the Tribe  
9 says it's at the Tribe's expense. The Tribes can't  
10 afford to hire attorneys to defend or prosecute a  
11 case when the attorneys being paid on a full-time  
12 basis ask for a minimum of \$80,000 per attorney. And  
13 you're asking for a judge, a defense attorney and a  
14 prosecutor. That's going to deplete their budget  
15 right off the bat. Like Joe has said, the Tribal  
16 Courts are running off of one fourth of what they  
17 should be getting.

18 But the biggest part, and everybody has  
19 covered my concerns so I didn't have many questions  
20 there, but you guys are talking about your deadlines,  
21 30 days, 60 days, 180 days, to get these things done.  
22 So my concern comes into play, in 38 years of what  
23 I've seen coming from the government, the OMB and  
24 everybody else, that you're going to sit down and  
25 you're going to put your guidelines, your policies,

1 your rules in place. And then you're going to ship  
2 it off to all these councilmen out here and say,  
3 Here, you have 10 days; make a decision. Give us  
4 your input, because in 10 days these go into place.

5 It's the same thing that come about  
6 with the April law. The government was supposed to  
7 give the Tribes notice a year and a half before they  
8 give notice. When they did give notice, the Tribes  
9 only had six months to put their comments in and  
10 create their probate laws. A lot of Tribes did not  
11 get that done. And on June 6 of 2006 or 2007, that  
12 law became law.

13 And so I guess what I'm asking you guys  
14 is to rush your process. Don't take your time; to  
15 give these guys the time to do their input.

16 Thank you.

17 MS. WALTER: Faith Walter from  
18 Blackfeet. I kind of agree with Mr. Devereaux. I  
19 work with the Blackfeet domestic violence program and  
20 I see a lot of -- I'm also a victim of assault too.  
21 On our reservation we have nonmembers coming in and  
22 beating our Indian women, drag them down the road in  
23 vehicles, and nothing happens to them.

24 We had district attorney's office come  
25 and meet with us advocates in our legal department,

1 and what they wanted us to do is called a tracking  
2 form for just Native Americans. So they want to know  
3 every time our Blackfeet, our Indians, what they do.  
4 They want to track that, keep numbers on us.

5 So I asked U.S. District Attorney's  
6 Assistant, I said, what happens to the non-natives  
7 that come on our reservation, beat up our women,  
8 break their bones and whatever? What happens is our  
9 sheriff will go out and tell them, You better behave.

10 Okay, well, last February 14, my son  
11 come into my home, was drunk, and of course, on the  
12 reservation, we have drugs, pills, alcohol. And he  
13 punched me in the eye. I was going to call the  
14 police. And I had a hairline fracture on my face.  
15 Well, today my son is sitting in Great Falls, Cascade  
16 County. The FBI is coming and got him. So he's  
17 going to be doing some time.

18 But what happens to those non-Natives?  
19 We can't do nothing to them.

20 And the other thing is my son, they  
21 said they had to check. They dropped all charges.  
22 They dropped charges in Tribal court on him as long  
23 as he was supposed to get some help. And that's all  
24 I wanted for my son was ever to get help.

25 Well, now the district attorney said

1 they dropped charges. Then they went and re-indicted  
2 him and they wanted to check to see if he was an  
3 Indian. Well, my son's not an Indian. So really he  
4 shouldn't be being held in the system there. But  
5 what the district attorney said, well, my son is not  
6 enrolled, but he's Indian. He went to a SWEAT. He  
7 went to IHS. So he's an Indian. But he's not an  
8 enrolled Indian. My son's name is Conrad Old Horn.  
9 He is Crow, Flathead, Blackfoot, but he is not  
10 enrolled. He doesn't have a number. So they are  
11 still holding him.

12 So I think there is a lot of injustice.  
13 that goes on in Indian Country with our people. I  
14 guess that is all I have to say.

15 Thank you.

16 MS. STEELE: Let's take a quick break  
17 for the court reporter, like five minutes, and we  
18 will move to the -- let's have your comment and then  
19 we will take the break.

20 MR. RED EAGLE: Darryl Red Eagle and I  
21 represent the Fort Peck and Sioux Tribes.

22 You know, one of the things, as Tribal  
23 leaders, we really need -- Vice-Chair Windy Boy hit  
24 the nail on the head. Since I have been on the  
25 council, this is my third term on council. We have

1 always asked for OMB to be on the council meeting  
2 during IHS budget formulation. I say this because we  
3 need to stay in the fight. But OMB needs to be up  
4 there.

5 What I want to say, OMB did finally  
6 come to the table in 2009. 2009. After a long  
7 struggle, many years of not getting funding fully, we  
8 are still not funding in IHS, but the point I want to  
9 make, OMB did finally come to the table in 2009;  
10 first time in 15 years, I believe, that we received a  
11 raise. We received a 13 percent increase. Why?  
12 Because OMB heard from Tribe leaders and they heard  
13 and saw the budget and the need-based budget.

14 So I encourage all the Tribal leaders  
15 to write letters to OMB, to the senators, and let  
16 them know that OMB needs to be at the meetings.  
17 Because it did happen and could still happen with the  
18 BIA. So I wanted to leave that with everybody.

19 (Brief recess.)

20 MS. STEELE: I would like to have an  
21 update from the Department of Justice and from the  
22 Indian Health Service. Tracy Toulou is here from the  
23 Department of Justice and Rose Weahkee is from Indian  
24 Health Service. And then the balance of the time we  
25 will again open up to the floor for your comments.

1                   MR. TOULOU: I know we have been here a  
2 lot and I know you have questions. What I thought I  
3 would do is run through some of the provisions that  
4 have been picked out that involve the Department of  
5 Justice in a fundamental way and I thought you might  
6 be interested in. This is a really long bill and  
7 there are some things really important but don't  
8 impact you directly. There's a provision that allows  
9 for law enforcement other than the FBI to enforce the  
10 Indian Arts and Crafts Act. That's important but  
11 probably not why most of you are here today.

12                   So let me get some of the other  
13 provisions. There are a half of them I think are  
14 important. Some of them we talked about so it should  
15 go relatively quickly.

16                   One of the first ones that I know  
17 involves us and I think you might be interested in is  
18 the long-term detention plan we talked about a couple  
19 times. There are always plans and studies and all of  
20 this, but this is, I think, probably the first time  
21 Congress has really engaged on this. And there is so  
22 much to be done on this area and you've pointed out  
23 that I think hopefully this heralds a new direction  
24 on how we're going to do this. And it requires we  
25 all work together.

1                   Candidly, we haven't worked together  
2 real well in the federal family and it hasn't worked  
3 for you as far as building and maintaining and  
4 running facilities. So hopefully, between the Bureau  
5 and the Department of Justice and IHS and SAMSA, we  
6 will end up with plans a little more functional. I  
7 don't think we will solve the problem, but hopefully  
8 it will take us down the road.

9                   Section 212 deals with declinations and  
10 that's when the Department of Justice declines to  
11 prosecute a case, or investigative agencies, if it  
12 ever gets to us; or the FBI or Bureau of Indian  
13 Affairs decides to terminate a case. And there has  
14 been a lot of complaints and back and forth about  
15 whether these cases are getting transferred in a  
16 timely fashion to Tribes so the Tribes can begin with  
17 prosecution. And this requires that this goes on.  
18 My hope is it won't be as bad as people have said it  
19 is. But this makes sure we have that communication  
20 and these cases don't slip through the cracks.

21                   I know the U.S. Attorney's Office here  
22 in Montana has already started a process where they  
23 meet twice a month with Tribal prosecutors to talk  
24 about the cases. It's going to be a  
25 district-by-district situation.

1                   So if you're not from Montana, you  
2 should talk to your U.S. Attorney's Office and find  
3 out what they are doing. But I think that will help  
4 in that communication and hopefully make sure we  
5 don't lose people in the process, particularly  
6 victims.

7                   213 provides for the designation of  
8 Tribal liaisons. A lot of districts already have  
9 AUSAs, assistant district attorneys, to work with the  
10 Tribes. Some of them don't. I suspect everybody  
11 here knows who the Tribal liaisons are and have  
12 worked with them for years with them, but some places  
13 that is a problem and we want to make sure we have  
14 that communication.

15                   I think more importantly for this area  
16 is it provides for the appointment of special  
17 assistant U.S. attorneys, or SAUSAs. And there have  
18 always been SAUSAs that were state prosecutors who  
19 then carry the federal cards, kind of like the  
20 cross-designation SLEC card we talked about for law  
21 enforcement. This is for prosecutors.

22                   And what it is, it's an agreement that  
23 is reached between the Tribe and the U.S. Attorney's  
24 Office. It can do a lot of things. But I think  
25 where it really stands to maybe help us out is in

1 those areas I heard people mention a couple of times  
2 where you have non-Indians on the reservations  
3 committing probably serious offenses but probably  
4 don't raise to the felony levels. Those are cases  
5 that the U.S. Attorney's Office can take and often  
6 does, but they are of local concern. And this  
7 provides for another means, if you have well-trained  
8 prosecutors, to take the reins on your own and follow  
9 up on those cases.

10 234 A and B deals with enhanced  
11 sentencing. Enhanced sentencing I think is probably  
12 going to be one of the provisions that potentially  
13 has the most impact. And what it does is it changes  
14 the Indian Civil Rights Act to allow, instead of a  
15 one-year sentence per count, up to a three-year  
16 sentence. And if it's more than one count, you can  
17 stack up to nine years. What it does on the other  
18 side is there was a lot of lobbying from the National  
19 Association of Defense Attorneys to put in some of  
20 the Constitutional protections that exist in federal  
21 court. So there are additional requirements that are  
22 in there as far as what your court has to look like  
23 if you're going to exercise those enhanced sentencing  
24 requirements.

25 Now, that said, you don't have to

1 exercise those enhanced sentencing options. It's  
2 just something that Tribes as a sovereign can elect  
3 to do if they want to go through these hoops. I  
4 think there will be a lot of discussion on how that's  
5 implemented, probably a lot of litigation. It's  
6 something we are interested in. It's something we  
7 are interested to talk to you about, to figure out as  
8 we go along because I'm sure you all thought about  
9 it.

10 Five, and I only have six, is the BOP  
11 sentencing project. And the Bureau of Prisons, under  
12 this act, is to set up a pilot project. And that  
13 pilot project will allow for up to a hundred  
14 prisoners, Tribal-sentenced prisoners, who have the  
15 enhanced sentencing, to be placed in BIA facilities.  
16 It's a pilot project because I think there are a lot  
17 of pluses and minuses to that.

18 The plus is, if you have a bad  
19 offender, you don't want him in the Tribal  
20 population, you want him someplace else, you send him  
21 off. The bad side there is, as I see it, there  
22 aren't a lot of BOP facilities very close to Indian  
23 Country. I think in most situations you probably  
24 want to have your offenders close so you can at least  
25 think about how you're going to reintegrate him into

1 the community.

2                   Again, this is a Tribal sovereign  
3 decision and another option out there. But it's a  
4 big change. So there will be a lot of discussion  
5 about that.

6                   We are going to be going out, talking  
7 more, and we would be interested in your input on how  
8 we implement these provisions. Right now it looks  
9 like we will follow some of the provisions pretty  
10 closely where we take inmates from the state. That  
11 is, there aren't a lot of strings attached. It has  
12 to be a violent offender. But there isn't going to  
13 be a lot of paperwork involved with this, a lot of  
14 guidelines, but we would like to hear what you think  
15 about that.

16                   And finally I wanted to talk about  
17 Section 241, which is Tribal Action Plan. What that  
18 does is it asks, if the Tribe would like, they can  
19 request that the federal government help them develop  
20 a Tribal Action Plan on substance abuse and  
21 treatment. Those action plans are to involve the  
22 input of SAMSA, IHS, DOI and DOJ. We all know  
23 substance abuse is a big problem. We dance around it  
24 and pick away at the edges and deal with a lot of  
25 little programs. The idea is this will be an

1        overarching plan and will be collaborated into the  
2        community not only with different agencies you have  
3        internally but with different agencies we in the  
4        federal family have to help with those programs.

5                        So that isn't everything but those are  
6        some I thought you might be interested in. And if  
7        you have questions, I'm happy to talk to you about  
8        them more. We would like input on any of them, but  
9        we are particularly interested in the sentencing  
10       program and the BOP program because those are ones we  
11       have to implement.

12                      That's all I have right now.

13                      MS. MARKS:    Patty Marks, attorney.  
14        Three points, Tracy, real quick. The first is you  
15        and I have kicked around the idea of long-term  
16        Department of Justice funding, although I would very  
17        much like you to consider long-term Department of  
18        Justice funding for the issue of defense attorneys  
19        and enhanced sentencing-related activities. Because  
20        that scares a lot of people if the money for the  
21        defense attorneys is coming from a situation where  
22        the funding could run out at any point and go six  
23        months in between. That's a real problem.

24                      Mr. Little and the other law  
25        enforcement colleagues here, we very much encourage a

1 discussion between Department of Justice, BIA and the  
2 Tribes over who's responsible for what. And the  
3 Tribes have got to be in the room on that because a  
4 big part of the issue here, for large land-based  
5 Tribes who are drawing a third of their budget out of  
6 Department of Justice, all of these things, as we  
7 move into implementation, will be a big problem.

8 On the issue of BOP, an interesting  
9 comment I received -- this is not an Oglala comment,  
10 it's from me -- but an interesting thought that's  
11 come up from a couple other Tribal attorneys is the  
12 possibility of using the BOP program for people with  
13 unique needs for strong counseling. We are talking  
14 about repeated child sexual offenders, people with a  
15 lot of recidivism with rape and other violent crimes,  
16 stalking, where the Tribal jails are never going to  
17 be able to provide the kind of treatment and  
18 counseling that might be available at a federal  
19 facility; but looking at this more as a treatment  
20 option as well as a safe incarceration option rather  
21 than just lock them up and throw away the key. That  
22 was the next one.

23 And the third one is on the Tribal  
24 Action Plan. This goes to the young lady from IHS.  
25 There was a big reaction in Great Plains to the

1 Tribal Action Plan because this was a program that  
2 used to exist. And the issue was Tribes spent a ton  
3 of money putting together action plans, met with  
4 everybody, and then there wasn't a single dollar  
5 provided to implement. So when we talk about an  
6 action plan, bringing the other agencies, SAMSA, IHS  
7 to the table, it's to the table with a commitment  
8 with a least a period of time to fund the operation  
9 of these things. Those are the practical types of  
10 problems that come up when we take it from the  
11 theoretical down to what happens.

12 Thank you.

13 MS. JUSTICE: Carol Justice with  
14 Northern Arapaho Tribe.

15 I wanted to comment on the whole issue  
16 of declination. What I found, and again, I'm  
17 speaking for myself here, working as a Tribal  
18 prosecutor, is not that the USAs take a long time in  
19 deciding, but it does take a long time for the FBI to  
20 get the case to the USAs. So it is the issue of  
21 timeliness.

22 I would submit to you that you need to  
23 also look at ways that the FBI can work better with  
24 the USAs on what cases are considered Tribal priority  
25 cases, not necessarily BI cases but Tribal priority

1 cases; they take a look at those, prioritize them for  
2 their investigation, prioritize them for possible  
3 federal prosecution and prioritize them for possible  
4 declination. Of course Tribes as sovereigns can  
5 exercise concurrent prosecution, but when the  
6 evidence is at the FBI office, it makes it very  
7 difficult for the Tribes to exercise that authority  
8 and especially with lack of police investigators for  
9 crimes that go before the Tribal Court. And those  
10 include felony-level crimes, even though they are not  
11 felony-level jurisdiction as far as sentencing.

12 So I would submit to you, take a look  
13 at that process. I think that without it nothing  
14 much will change. Thank you.

15 MR. WINDY BOY: Vice-Chairman Windy  
16 Boy. I have a couple of items that I would like to  
17 raise here and I don't really hear too much about the  
18 mental health panel stuff. Back at home there's a  
19 couple of underlying issues that aren't being  
20 addressed or at least can be addressed at a higher  
21 level. And I can only speak on behalf of my Tribe  
22 because I'm most familiar with it.

23 Rocky Boy is a reservation, and Havre  
24 being a border town, there are issues in the mental  
25 health area. We have a situation where my clinical

1 psychologist came to me one day and told me a  
2 situation that he was up against. He said that  
3 Northern Montana Hospital refused to take any of our  
4 mental health cases. And I asked him why and he said  
5 because they don't have the bed space for it. Which  
6 is probably true.

7           The levels of untreated mental health  
8 patients and cases overall is so astronomical it's  
9 really hard, but especially hard for Tribal  
10 communities. My local health board, we have a  
11 psychiatrist that we have a contract with through an  
12 IHS contract from a psychiatrist in Florida that  
13 comes up once a year. And we all know in Indian  
14 Country. The need is much higher than one  
15 psychiatrist visit per year.

16           And getting back to the point about  
17 what my clinical psychologist was saying was the  
18 situation with the hospital locally that he called  
19 the president of the hospital on the carpet, knowing  
20 that it's against the law. You can't refuse my  
21 patients. Which then he accommodated some of our  
22 mental health patients at the hospital, which is on  
23 the fifth floor recovery floor for some of those who  
24 go through surgery and whatnot. But still that issue  
25 isn't being addressed because there is no services

1 that's being provided on the fifth floor.

2 Right now, with the mental health  
3 situation here, we need to expand the opportunity and  
4 ability for Tribes to have the opportunity and  
5 ability to reach out even beyond that. And the  
6 status, the state of mental health services in the  
7 whole state does not address mental health in Indian  
8 Country.

9 In Montana, there is what is called the  
10 SAA, the Service Area Authority, for mental health.  
11 And if you can picture Montana in your mind there,  
12 it's cut up in five different areas. And whatever,  
13 if you're from Rocky Boy or Fort Belknap or Browning,  
14 if you fit into one of those areas, for our case, for  
15 example, is Golden Triangle out of Great Falls,  
16 that's where we have to take our patients, which is a  
17 hundred miles one way. And the burden of  
18 transportation and all of these other costs rests  
19 within the Tribe, which goes on to another issue  
20 about some of these increases coming down from  
21 Congress into these different departments.

22 But the increases never make it to the  
23 local level. The increases usually is top heavy on  
24 administration and pay increases, severance packages,  
25 all these other packages of increases, but a lot of

1 times we never see it on the local level.

2 So getting back to the mental health  
3 issues here on some of the needs here, number one,  
4 with our HPPG being participant in the five percent  
5 reduction in crime, one of the major causes of a lot  
6 of the offenses that we see are alcohol- and  
7 drug-related. Everybody knows that. But until we  
8 have a true comprehensive approach on how to address  
9 that -- because that particular incident has  
10 far-reaching effects across the spectrum of mental  
11 health issues. You have domestic violence, child  
12 trauma caused from domestic violence; you have family  
13 counseling, grief, PTSD. The list goes on for a lot  
14 of the things we need to address -- and until we  
15 address those we will continue to treat those people  
16 who have that need as criminals.

17 And that's the reason why the Bureau of  
18 Prisons has a 29 percent Native American population.  
19 And in Billings we have approximately 49 percent is  
20 Native American. Those numbers are going to continue  
21 to remain at that level, if not increase, until we  
22 start addressing those issues. Because so far, like  
23 I said, I haven't heard too much about what we are  
24 going to do with the mental health stuff. All we are  
25 talking about is increasing police officers,

1 increasing corrections, upgrading facilities. Until  
2 we start to address those things, we are going to  
3 continue on to start training our children and  
4 grandchildren to becoming criminals and domestic  
5 violators.

6 So I think the approach needs to change  
7 or we need to take a better look, which is the reason  
8 why I say, if these guidelines, if these rules and  
9 regulations, policies and procedures proceed forward,  
10 come to us first. Let us take a crack at it.  
11 Because we are going to continue spinning our wheels  
12 as Tribal leaders the way things have happened.

13 Thank you.

14 MR. ARNESON: My name is Ron Arneson,  
15 A-r-n-e-s-o-n. I work as an attorney for the Crow  
16 Tribal legislature.

17 I'm not currently in a position as it  
18 relates to prosecution in Tribal communities, but  
19 I've been in the prosecution business since 1985 for  
20 Tribes. One of the most difficult things that I  
21 worked with when I was in that business was the  
22 access to records, particularly as it relates to  
23 declination.

24 When I see rules and laws that say  
25 basically you have a right to those, I invite you to

1 be on the other side requesting them. Whenever  
2 records have things in them that the agency doesn't  
3 necessarily want you to see, those records become  
4 extremely difficult to get to.

5 And I don't know if there's a mechanism  
6 that is going to be built into the rule or law or  
7 application of that access issue, but it better be,  
8 or it won't work.

9 The second thing that I would like to  
10 talk about is a huge issue across Indian Country and  
11 that's the issue, as the attorney from Oglala Sioux  
12 mentioned, for defense counsel. It's really, really  
13 difficult to do an adequate case before a court, on  
14 the side of a prosecuting attorney, when one doesn't  
15 have the other component of the defense counsel. And  
16 there has to be a mechanism to provide for those  
17 services.

18 And I firmly believe that Congress just  
19 simply, for some reason or another -- I will mention  
20 this and then you can throw rocks at me -- for some  
21 reason or another, particularly because someone said  
22 we just don't have enough funds to provide it, wrote  
23 in the Indian Civil Rights Act that Indian folks  
24 don't have the right to defense counsel. It's a  
25 shame. It's a tragedy. And besides that, it's a

1 civil rights violation. I think the duty has to go  
2 in a direction where the agencies have to  
3 particularly fill that void.

4 The third and most important thing I  
5 want to talk about goes to the issue of mental health  
6 that Mr. Windy Boy spoke about. I think it's a  
7 tragedy in Indian Country that we don't have  
8 appropriate services for folks who need mental health  
9 services and the services for other kinds of  
10 treatment situations. What really happens in Tribal  
11 communities, and like I said, I've been there for  
12 pushing now 25 years, is it simply gets ignored. It  
13 then becomes some kind of a violation because someone  
14 doesn't have the tools and the necessary help to stay  
15 away from the criminal justice system so they fall  
16 into that system.

17 If we are going to establish a plan  
18 that in fact causes coordination, you have to fund  
19 it. It has to be long-term funding, not just two- or  
20 three- or five-year grants. All you're doing is  
21 throwing water at a blossoming fire.

22 Those are my comments.

23 MR. HOPTOWIC: Ken Hoptowic.

24 We are kind of aggressively looking at  
25 this, and I met with our prosecutor and some of our

1 other people with the Tribes there, and we have gone  
2 to reworking our code, things to match this up. And  
3 we were kind of asking ourselves, when we were doing  
4 this last week and this week, how much is this going  
5 to cost us to change over?

6 And I talk about, for example, if the  
7 FBI turned down a case where there was DNA evidence,  
8 will the Tribes have to pay for that? How is that  
9 evidence going to be processed when we collect it at  
10 the scene if the FBI says, no, we don't have anyone  
11 available. You guys go ahead and do all that  
12 collection of evidence. If they decide to say, We  
13 are not doing these certain crimes now. You will  
14 have to do those crimes yourself, or something of  
15 that nature. There will be a cost for the process,  
16 collection of evidence, how that evidence is going to  
17 be tested, how it will be preserved, how it will be  
18 presented, who will be the expert witness for us to  
19 testify that the DNA process was correct.

20 And those are things that we came up  
21 with, that somewhere along the line some case is  
22 going to get turned down by the FBI, where we have to  
23 stand up and we are going to have to have those  
24 people that are trained, anyone from the collection  
25 of the evidence, how it's tested, how it's presented,

1 evidence technician, a place to store that evidence,  
2 things like that that came to mind that we currently  
3 have, but our evidence right now is basically a  
4 misdemeanor-type evidence room. There are things in  
5 there that we have, of course. We have some rape  
6 kits and stuff that our process held so the FBI came  
7 down. But those are some of the things we came up  
8 with.

9 I know one gentleman here said \$80,000.  
10 Our estimate was around three million dollars for us  
11 to do this. And that was just the basic. We are  
12 planning on expanding our correctional center  
13 facility with a police department next to it. Now  
14 that we have this, the police department is going to  
15 have to change because of the evidence room that we  
16 will have to have there. We may have to have some  
17 type of testing facility within that structure there,  
18 within that, to process DNA evidence.

19 So there was a whole host of things  
20 that we came up with that I don't think the thought  
21 was given to it.

22 And by all intentions, I agreed with  
23 this. The only thing I think that they lacked out  
24 here is our jurisdiction to arrest non-enrolled  
25 Indians into our court system. Because we have had a

1 lot of victims of crime and the suspects have been  
2 non-Indians. And they have never been prosecuted by  
3 the district court or state court or city court, for  
4 whatever reasons. I've had officers shot at by  
5 suspects that were convicted felons. Nothing  
6 happened to them. Sent them to the U.S. Attorney's  
7 Office. He declined. Sent them to the county  
8 prosecutor in Superior Court and he declined  
9 sentencing, saying that the U.S. Attorney has  
10 jurisdiction over that because the officer's a Tribal  
11 police officer.

12 Well, the Tribal police at that time  
13 didn't have an SLEC is what it is now, but DSO card  
14 at the time. I had a gentleman try to shoot me. He  
15 was processed through the federal court system for  
16 assault on a federal officer. But I've had cases  
17 where our officers have been assaulted and nothing  
18 has ever come of that, within our casino, within  
19 calls that we backed up, or went to respond to calls  
20 that the county sheriff has called us on.

21 Those are some of our problems.

22 MS. STEELE: I wanted to give a chance  
23 for Dr. Weahkee to give the IHS update and then we  
24 will turn the balance back to the group.

25 DR. WEAHKEE: Good afternoon. Now I

1       guess that was a good segue, with all the discussion  
2       about mental health and substance abuse issues.

3                 I've been serving as the director for  
4       the IHS headquarter's division of behavioral health  
5       since this past November, and I just wanted to first  
6       introduce myself. I'm an enrolled member of the  
7       Navaho Nation. My family is from Crownpoint, New  
8       Mexico. My education and training is in clinical  
9       psychology. I'm a clinical psychologist. I've  
10      served a number of years as a clinical provider,  
11      addressing the very issues you're referring to,  
12      serving Indian children who have been removed from  
13      their homes, victims of domestic violence and sexual  
14      assault and those who have dealt with repeated and  
15      multiple traumas.

16                As such, I feel it's appalling that we  
17      have one in three Indian women that are raped in  
18      their lifetimes and just dealing with all these  
19      horrible statistics. So I feel that we all have a  
20      role to play in increasing and ensuring that our  
21      communities have increased safety and security.

22                So there are a couple of things that I  
23      did want to address overall in terms of hearing all  
24      these comments. One, just to let you know that I  
25      will share these comments and concerns with Dr.

1       Romero, the IHS director. We have been working  
2       closely with the substance abuse and mental health  
3       services administration and Administrator Pamela  
4       Hyde, so we will share this feedback with her office  
5       as well.

6                   One update in terms of SAMSA is they  
7       have named an acting director for their Office of  
8       Indian Alcohol and Substance Abuse so that's a part  
9       of the law as well. In addition to that we have been  
10      working together very closely with the Department of  
11      Justice, with the Bureau of Indian Affairs, with  
12      SAMSA and other agencies to coordinate our efforts.  
13      I think we all recognize that these issues need  
14      additional resources, but we also recognize that we  
15      need to coordinate those existing resources that we  
16      have currently to be more effective in responding to  
17      these issues of crime and violence in our  
18      communities.

19                   There were a couple of areas that I  
20      wanted to provide an update on that specifically  
21      address some sections pertaining to Indian Health  
22      Service. One of those is Section 266. The  
23      Government Accountability Office is to do a review of  
24      the IHS collection and preservation of evidence for  
25      sexual assault and domestic violence cases. I did

1 want to let you know that the GAO office has  
2 contacted and officially notified the Indian Health  
3 Service that they will be conducting the study. We  
4 have our first opening interview or meeting with them  
5 coming up on October 27.

6 In their initial letter, I want to  
7 share with you a couple of the preliminary research  
8 objectives that they will be looking at. The first  
9 question that they will be addressing in this  
10 research project is what are the capabilities of the  
11 IHS in remote Indian reservations and Alaska native  
12 villages to collect, maintain and secure evidence of  
13 sexual assaults and domestic violence incidents  
14 required for criminal prosecution. That's one of  
15 their objectives.

16 The second preliminary objective is how  
17 can IHS or other agencies involved in collecting,  
18 maintaining or securing such evidence improve the IHS  
19 capabilities? And this report will be provided to  
20 the chairman and ranking members of the Senate  
21 Committee on Indian Affairs as well as the House  
22 Committee on Natural Resources, by July 29, 2011. So  
23 hopefully we will have additional information after  
24 that initial meeting on October 27.

25 Another section, Section 265, addresses

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1 IHS developing a sexual assault policy or protocol  
2 for its IHS facilities. I want to give you an update  
3 on that. We have drafted a sexual assault protocol  
4 or policy for our IHS facilities and currently have  
5 shared that with the Department of Justice, which is  
6 something that is included in the Act, and wanting  
7 us -- the Act states in there that they would like us  
8 to base our sexual assault protocol on what has been  
9 developed by the DOJ.

10 We do have a follow-up meeting with the  
11 Department of Justice, and it's this coming Tuesday,  
12 to look at our current sexual assault protocol draft  
13 that we have developed, as well as review what they  
14 have developed within their agency.

15 The other piece that we are looking at  
16 is in terms of federal employees testifying. That is  
17 another section that applies to the Indian Health  
18 Service. Our office of general counsel and our  
19 division of regulatory affairs are currently  
20 reviewing that policy. It will provide guidance to  
21 each of our area offices regarding that particular  
22 provision.

23 There were a couple other areas that I  
24 did want to address that, although there may not be  
25 specifically stated in the law, I think that

1 definitely relate to this Act. And one of those is  
2 the domestic violence prevention initiative of Indian  
3 Health Service. Our national Tribal advisory  
4 committee on behavioral health, which is made up of  
5 Tribally elected officials from each of the IHS 12  
6 regional offices, provided recommendations to the IHS  
7 director on the distribution of funds to address  
8 domestic violence and sexual assault in Tribal  
9 communities. In fiscal year 2009, IHS was  
10 appropriated 7.5 million dollars, and in fiscal year  
11 '10, ten million dollars to address domestic violence  
12 and sexual assault. We have awarded over 80 programs  
13 throughout Indian Country and IHS Tribal and urban  
14 Indian facilities to address community-developed  
15 models to address domestic violence and sexual  
16 assault, and also have funded national programs for  
17 sexual assault nurse examiner and sexual assault  
18 forensic examiner, 24-seven emergency care facilities  
19 as well.

20 So we are hoping that over this next  
21 year, as those programs begin to implement, we can  
22 share some of those vested promising practices that  
23 are identified in the IHS Tribal and urban Indian  
24 facilities. Not all of the funding was awarded in  
25 terms of the national sexual assault nurse examiner

1 program so we will be sending out a re-announcement  
2 of availability and those funds and programs can  
3 apply for them.

4 If you're interested, I brought my card  
5 and you can share your information with me and we  
6 will make sure your programs have that information.

7 The other is that we have been working  
8 with the Office of Victims of Crime. They will be  
9 funding a position in the Indian Health Service and  
10 in the FBI to address forensic examinations, and we  
11 will be coordinating our efforts across those  
12 agencies. And we have been working very closely, as  
13 Michalyn Steele has said, with the Bureau of Indian  
14 Affairs on a number of areas, and I think a number of  
15 you brought up the issues today.

16 The area of alcohol and substance abuse  
17 treatment, particularly in terms of health care  
18 treatment among detainees, the area of domestic  
19 violence and sexual assault, and the area of suicide  
20 prevention. So those are all top priority areas or  
21 areas of collaboration that we will continue to work  
22 very closely with the Bureau of Indian Affairs on.

23 So those were all of my updates. Are  
24 there any questions?

25 MS. JUSTICE: Who is the new acting

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1 director?

2 DR. WEAHKEE: For the SAMSA it's Dennis  
3 Romero.

4 A SPEAKER: What is your turnaround  
5 time for the sexual assault response protocols with  
6 the DOJ?

7 DR. WEAHKEE: As soon as possible. We  
8 have the draft so we need to get a final as soon as  
9 possible and get that through the system as far as  
10 getting that to the federal register.

11 MS. FLANAGAN: Please remember your  
12 names.

13 MR. HUGHES: Gene Hughes, acting chief  
14 judge for the Spokane Tribe.

15 I just have a comment. I'm glad you  
16 guys are looking into, for the victims, doing them on  
17 the reservation. But the problem that we are having  
18 right now, and I know it's our problem, but for the  
19 victims' sake, they don't have -- they feel there is  
20 a breach of confidentiality within the clinics. So  
21 they don't want to go to the local clinics.

22 Will there be something in place we can  
23 take them off until we can rebuild that? Otherwise  
24 they are not testifying. I'm hearing this from the  
25 DV advocates and from the officers there. Once they

1 tell them they have IHS, they drop the case because  
2 they feel it's not in their best interest.

3 DR. WEAHKEE: In terms of the domestic  
4 violence initiative funding that we provided, we left  
5 it up to the communities to determine what type of  
6 program they would like to deliver. Many of them are  
7 including domestic violence or sexual assault  
8 advocates as part of the program, realizing we need  
9 advocacy for the victims to navigate through not only  
10 the mental health or Indian Health System, but in  
11 terms of prosecution in Tribal Courts and all of  
12 that.

13 MR. LaPOINTE: My name is Lawrence  
14 LaPointe. All Tribes I think three or four years ago  
15 were sent a notice in regards to Adam Welchak and  
16 whether we were going to participate in SORNA, and  
17 SORNA is in regard to registered sex offenders.

18 We have registered sex offenders on our  
19 reservation, not only native but all races. And if  
20 we participate in that, that's going to impact us  
21 really heavily in regards to counseling and whether  
22 it's for the perp or the victim. We don't know. I  
23 don't know how that whole panel is going to answer  
24 that question. We have until July 31 to commit.  
25 Otherwise we give it back to the state.

1                   MR. TOULOU: As far as the deadline, I  
2 wish there was something we could do about it.  
3 Unfortunately it's statutory. We have the SORNA  
4 office, smart office, to provide some technical  
5 assistance. I know what you need is more funding to  
6 implement it. But I will take your concerns back on  
7 that end of it. I wish I had more on that.

8                   MR. LaPOINTE: What you're talking  
9 about is the future or the present. SORNA is the  
10 past.

11                   MS. MARKS: Patty Marks, from Oglala.  
12 Great Plains has been very concerned for a long time  
13 because it believes the Indian Health Service  
14 currently has and has had the statutory authority to  
15 become involved in construction and planning of  
16 detox. And it just hasn't been done.

17                   I was the attorney in Michigan when  
18 three of the IHS-funded, -constructed and -operated  
19 detox centers were put in place. And most of them  
20 were done through Congressional earmarks.

21                   What Great Plains would like to say  
22 very clearly is they hope that policy is going to  
23 change until the Tribes will advocate on the Hill as  
24 they have to get this language included in the bill.  
25 But we are sincerely asking the agencies to give

1 serious consideration to going to OMB and starting to  
2 make these facilities or wings of facilities  
3 available for just this purpose. We have been  
4 dancing around it for years and it just doesn't  
5 happen.

6 DR. WEAHKEE: I will share your  
7 comments with the director.

8 MR. KING: My name is Tracy Chin King  
9 from Fort Belknap, president. A lot of these  
10 programs I believe they are very important. But I  
11 think someone mentioned this for quite a few years.  
12 The goals we have and the objectives of a grant or  
13 any kind of monies that come, we limit ourselves.  
14 Because they give you a certain amount of money so  
15 you have to be creative. And you might need five  
16 million and they will give you two million, or I call  
17 it half-ass funding. So it's never enough.

18 By the way, Jonathan, thanks for your  
19 comments. "I wasn't elected to shut up."

20 Starvation tactics are continued to be  
21 used throughout the budget system. And I always  
22 remember the Grenelle Agreement in 1896. They told  
23 our relatives that if you don't give up this land,  
24 where they were illegally mining, that your people  
25 are going to starve. So you really have no choice.

1 To starve, it's kind of like if they told our people,  
2 Here's a red Chevy pickup truck and here's a white  
3 one. Both are the same model. Which one do you want  
4 us to run over you with? Hell, we'll use both of  
5 them to run over you.

6 So those types of situations that we  
7 are placed in, you know, we never have enough money  
8 to get to the next level. And by the time we almost  
9 get there, then that grant period runs out and we  
10 have to start all over. We don't have the luxury.  
11 And most of our places -- I really believe that those  
12 kinds of messages, and when we are implementing laws,  
13 we have to look at the shortfalls budget-wise. And  
14 every time a 638 program from the BIA -- it's a BIA  
15 mike. One of the things that I see is when we are  
16 trying to implement these laws that come in place or  
17 we need SAMSA, whatnot, to help us implement  
18 programs, I really believe that a real true budget,  
19 like I always believe there's a distance factor,  
20 weather factors, that are never implemented into many  
21 of the dollars. You know, when you have to drive two  
22 to 500 miles one way just to go to a meeting, that  
23 takes a lot of money.

24 So I really believe that if you're  
25 going to shape these that you have to look out for a

1 service of how do we prevent our people from being  
2 locked up.

3 In Billings here, they don't have no  
4 problem arresting me because I'm an Indian. They  
5 have no problem. But on the reservation, if we try  
6 to arrest a non-Indian, then our hands are tied.  
7 There's something wrong. That has to be fixed.

8 Our prisons, this women's prison is  
9 like 50, 49 percent Indian women. Most of them  
10 probably suffered from a lot of violence. So to me,  
11 try to be specific for each area. What works for  
12 Fort Belknap might not work for Rocky Boy. Those  
13 kinds of things have to be taken into consideration.

14 Besides, I told the patrolman and the  
15 sheriff in Wayne County, they must have our sports  
16 schedules for the students because every time us  
17 Indians come back there is always a patrolman or a  
18 sheriff waiting to stop us. But that's a hate crime.  
19 But nobody pays attention anyway.

20 MR. ARNESON: I certainly want to  
21 apologize to Chairman King. My name is Ron Arneson.

22 I do want to speak to the issue of the  
23 availability of federal witnesses in Tribal Courts.  
24 It's an extremely complex arena. If you've never run  
25 the gauntlet, and I consider it a gauntlet, it will

1 take you six months for you to call a federal  
2 employee into Tribal Court. And then the only  
3 opportunity you have is you have an opportunity to  
4 address questions that you have to give to them  
5 before they get there. There's really no opportunity  
6 to question them, to cross-examine them, to do those  
7 kinds of things that are necessary in a typical  
8 court. Those are very, very serious issues if the  
9 Tribal Courts are going to get into the issue of  
10 serious crimes such as sexual abuse.

11 Another section I want to comment on is  
12 what is in the plan for trying to improve the mental  
13 health business treatment facilities here in Indian  
14 Country?

15 DR. WEAHKEE: Well, I think part of  
16 that I mentioned earlier about our national tribal  
17 advisory committee on behavioral health. Part of  
18 what they are working on now and seeking Tribal  
19 comment on is our five-year behavioral health  
20 strategic plan and our five-year suicide prevention  
21 strategic plan. They have been working with our  
22 behavioral healthcare worker, which is made up of  
23 more of the behavioral health providers in the field,  
24 first to develop that, but now to seek Tribal input.  
25 That will lay the pathway in terms of what tribal

1 leaders believe are the areas we need to focus our  
2 efforts on.

3 I encourage, if you haven't provided  
4 input, let me know so I can share the link of that  
5 with you or send you the strategic plan so you can  
6 provide that input to our Tribal advisory committee.

7 MS. JUSTICE: SAMSA, about five years  
8 ago, along with Department of Justice, created a  
9 thing called Indian Country Meth Initiative, which  
10 has been highly successful in Indian Country. It was  
11 government-to-government flexible funding from the  
12 administrative level to Tribal government level with  
13 the Tribes then planning on the use of services. And  
14 we are not talking a lot of money. We are talking a  
15 very small amount of money. That was a tremendous  
16 effort.

17 Why I bring it up here is not only does  
18 that need to be expanded -- again, my name is Carol  
19 Justice -- but at this point there were 10 Tribes  
20 participating. Now there's only three. And those  
21 are the three that SAMSA continued to fund. Office  
22 of Minority Health has de-funded seven others. Why I  
23 mention this model is not only because I believe in  
24 it. I believe it was the best use of federal funds  
25 I've ever seen in my adult lifetime, but it is also a

1 model for what I'm hearing Tracy mention, what I  
2 heard Jonathan mention, the idea of giving to the  
3 Tribes what they need and letting them create their  
4 plans, letting them include their cultural  
5 traditions; not just building jails, letting them  
6 come up with their treatment and process these plans  
7 for what works in each and every different community.

8 The federal planning process is very  
9 much appreciated, but without that Tribal input at  
10 the beginning, it's just another federal planning  
11 process. Without the monies to carry out the duties,  
12 it will still be a flawed system.

13 So I encourage very much, as you're  
14 looking at these plans to, look at not just advisory  
15 committees, not just mental health for the way it's  
16 typically done, your 90-minute hour in a clinical  
17 setting, but really allowing the Tribes to craft  
18 their type of treatment programs for their own  
19 communities.

20 Yes, we need psychologists and  
21 clinicians, but we also need a lot more intervention,  
22 prevention. We need culture. We need to be able to  
23 not use the jails as our detox and mental health  
24 facilities and look at economical ways of delivering  
25 services.

1           Because we all know, as he has said,  
2           that there is never enough money to do what it is  
3           that we are commissioned to do. And so I encourage  
4           you not just to look at advisory committees, plans on  
5           the Internet, but really some meaningful dialogue and  
6           some flexible measures so if there is an overarching  
7           plan, that the Tribes can come back with their  
8           specific implementations and plans.

9           MR. DAKOTA: Good afternoon. My name  
10          is Dale Dakota with the Tribal executive board with  
11          Assinboine and Sioux Tribes.

12          I have two questions, most of them  
13          directed to law enforcement. This morning I see on  
14          the agenda that they are talking about backgrounds.  
15          I don't know if they mentioned this morning that  
16          those could be turned around, like they are trying to  
17          get it down to six months.

18          But who is going to pay for the  
19          backgrounds? Are they still responsible for the 638  
20          Tribes?

21          The second question is, if you look at  
22          the state law enforcement, they could hire someone at  
23          the age of 18. But BIA you have to be 21 under 638.  
24          When I was 21 years old, I was picking up refugees in  
25          Vietnam.

1           That bothered me. Why can we send our  
2           own children to war at the age of 18 but they cannot  
3           be law enforcement on our own reservation?

4           Thank you.

5           MR. ADDINGTON: On the background  
6           issue, under the Act, if a Tribe requests, if they  
7           have a contractor or a compacting program and they  
8           request the Bureau of Indian Affairs to do the  
9           backgrounds for law enforcement, correction officers  
10          or Tribal courts, the judges and those kinds of  
11          things, then the Bureau will be responsible for  
12          providing those backgrounds within 60 days after  
13          receipt from the Tribe for the request. So those  
14          costs for that the Bureau will either contract that  
15          out to someone or we will have agents conduct those  
16          background investigations for the Tribes. But it  
17          will be on the request and we have 60 days to get  
18          those back to the Tribe and get them adjudicated. It  
19          will be at the cost of the Bureau.

20          MR. DAKOTA: Are you talking about the  
21          special law enforcement? A lot of this stuff has  
22          been around for a long time. Seems like it would  
23          already be done and ready to go. If you're able to  
24          do the background, you should be able to issue the  
25          SLECs at the same time.

1           MR. ADDINGTON: With the SLECs, you  
2 have to attend the three-day training and you have to  
3 fill out the proper paperwork in order to be in  
4 compliance to be eligible for the SLEC. That's a  
5 whole separate issue.

6           The background is for officers just  
7 hired on. That's the biggest issue we are going to  
8 get with backgrounds, where a Tribe hires an officer  
9 on, they need a background done before that officer  
10 can perform any law enforcement duties. That will be  
11 most of the request that comes in.

12           Once we do that, the background is  
13 already completed. So if they request an SLEC, the  
14 backgrounds will already have been completed at that  
15 time.

16           MS. CRAWFORD: My name is Stacy  
17 Crawford from the Fort Peck Tribe. I'm a Tribal  
18 prosecutor.

19           My question is regarding the enhanced  
20 sentencing. What is the requirement that the  
21 defendant has to have in order for the enhanced  
22 sentencing to be recommended?

23           I know they have to have an attorney,  
24 but the reason I'm asking is we have -- are they  
25 licensed attorneys, licensed in the state they are

1 in? Are they licensed or advocates that are licensed  
2 in the jurisdiction of the Tribes? What is the  
3 requirement?

4 MR. TOULOU: Joe and I were talking  
5 about this earlier. It's deliberately ambiguous.  
6 Congress left it that way. There was a debate about  
7 what it should be. The Tribal advocates, including  
8 both departments, felt that should be left up to the  
9 Tribe.

10 There was a strong lobby from the  
11 National Offense Attorney Association to make them  
12 licensed attorneys under state law. So they had to  
13 belong to the state bar. It ended up being  
14 ambiguous.

15 Like I said, there will probably be a  
16 lot of litigation around this statute. I think it  
17 depends on what your licensing requirements are. It  
18 could be Tribal bar license, if you have a Tribal bar  
19 you have to go through. Obviously the gold standard  
20 would be a state bar certification license, but it  
21 was left deliberately ambiguous.

22 MR. LITTLE: That's basically part of  
23 what we are -- part of what we are trying to address  
24 because we don't know. Congress left it up to us to  
25 figure out what that is. Right now we don't know

1     what that is. At some point there would be some  
2     standards set, but I couldn't tell you what those are  
3     right now.

4             There are so many machinations in there  
5     because it not only says the bar, but you have to  
6     have the right qualified training. Well, what does  
7     that mean? If you're state barred or federally  
8     barred you would presume you have the training to get  
9     barred. If you're Tribally barred, does that mean we  
10    have to look closer at the Tribes, to see if you have  
11    the right training? We don't know.

12            MR. TOULOU: I suspect it's not going  
13    to be us that decides that but the courts.

14            MS. CRAWFORD: At this point it's just  
15    left up to the courts. We do have to pass the Tribal  
16    bar exam. We have licensed advocates, prosecutor, we  
17    also have a public defender's office. We have the  
18    attorney position and the lay position.

19            The attorney position is not filled at  
20    this time, but even if we did have the attorney  
21    position, you know, that person didn't keep their  
22    state license because it was not a necessity of the  
23    Tribe. But through this Act, if it is a necessity,  
24    then they would have to keep their state.

25            I guess what we are trying to get at

1 is, what's going to happen if the Tribes go and make  
2 their own decisions? Will they just be appealed?

3 MR. LITTLE: To begin with, you  
4 wouldn't be able to put them in any of the federal  
5 facilities. That's why we have to come up with the  
6 guidelines and regulations to address that.

7 What Tracy is saying is, after we do  
8 that and you cross all the dots and did this and all,  
9 that doesn't mean it still won't be challenged under  
10 habeas by someone saying, those aren't sufficient  
11 regs or qualifications.

12 So we are required to come up with that  
13 under the Act and we will. Whether they stand a  
14 court challenge, that would be the next step.

15 MR. RUSCHE: My name is Ryan Rusche.  
16 Just to follow up on Stacy's question -- I'm with  
17 Fort Peck as well.

18 The burning question on that is who is  
19 going to pay for the defense if the Tribal court --  
20 (inaudible) on a federal habeas action? Because  
21 that's really not something a Tribe -- and I couldn't  
22 imagine you could ever sustain. If you could tell us  
23 who will pick up the bill, then we would be happy to  
24 bring the test case. I think this is what Stacy was  
25 trying to get at.

1           MR. LITTLE: You understand why we will  
2 be looking very closely at those requirements.  
3 Because as you point out, if you get to habeas, they  
4 are not coming after the Tribe, they are coming after  
5 us because we would have said yes, they are  
6 certified. So I think that's why, when we started  
7 earlier, we said it's going to be a while before  
8 anybody gets to the point where we can incarcerate  
9 under our system. It's a whole other question if  
10 you're incarcerated somewhere else. But within the  
11 federally funded, yes. It's not going to happen  
12 overnight.

13           MR. TOULOU: If you are in ours, if  
14 you're in the hundred facilities, then it will be the  
15 federal government who takes the habeas case. If  
16 they're incarcerated in a Tribal facility, which  
17 certainly it has the capacity to do, then it's  
18 probably a Tribal matter.

19           Even if it's a federal case -- I'm  
20 getting into the weeds here -- I would be concerned  
21 as a Tribal leader. Even if it is purely a Tribal  
22 facility that remains purely Tribal -- if it's DOJ  
23 and we are handling the defense, I would be concerned  
24 about what basis they were appealing that decision  
25 on.

1 I'm concerned, as somebody who's  
2 focused on Tribal sovereignty, whether some of these  
3 appeals are going to get into basic Tribal law. It's  
4 something we need to have a discussion about.  
5 Clearly this is a very important issue. It goes  
6 beyond the money. But I understand the money is  
7 important.

8 A SPEAKER: Just to follow up on the  
9 comment, are there going to be procedures and  
10 policies drafted that also address the qualifications  
11 of the Tribal court judges? Because there are also  
12 some ambiguous clauses in the Act about what  
13 qualifications are for a Tribal court judge.

14 MR. LITTLE: We are definitely looking  
15 into that and that's why I say a lot of this is  
16 premature. Because you're exactly right. We'd  
17 probably get sued under tort claims because we are  
18 638 contracts or that's how we fund the court  
19 systems. So ultimately it comes back to us again.

20 So, yes, we are going to be looking at  
21 this whole issue of training and what does that mean.  
22 And, again, we are not sure. Even if we set these  
23 guidelines and go into it, that doesn't preclude a  
24 lawsuit saying, they were not good enough. At the  
25 very minimum, we will have to have something to stand

1 behind when that suit does get brought.

2 Now, Tracy may not agree with this, but  
3 there's a kind of gap area I'm not sure the bill  
4 covers. Because I know Congressional staff says, oh,  
5 yeah, you can start putting them in jail now. No.  
6 But what about the systems totally self-contained in  
7 the sense you've paid for your own court, paid for  
8 everything, paid for detention? You're not having to  
9 get certified for that. I don't know. Theoretically  
10 those might go up if the state can put them  
11 somewhere.

12 There's a lot of questions. The other  
13 is, if you get the three-year sentencing, does that  
14 make it a felony? If it's a felony, why does it come  
15 back to the feds? Or if it's a high court  
16 misdemeanor, what does that mean? If it's a felony,  
17 does it count on the three-strike issue?

18 There's a lot of questions to answer.

19 MR. WELSCH: This is Robert Welsch. I'm  
20 a Tribal executive board member from Assinboine Sioux  
21 reservation.

22 I just have the question,  
23 hypothetically, I don't know if any of you up there  
24 on the panel have ever been to Indian Country, if you  
25 heard one of the leaders say that their jail has been

1 falling apart since it was built. So why would any  
2 court want to sentence an individual to three years  
3 and fine them \$15,000, when that would be basically  
4 cruel and unusual punishment, when they can barely do  
5 a year under the old statutes?

6 So the question is the Tribes don't  
7 have to classify their felonies that they have on the  
8 books now up to three years. They can keep them at  
9 one year if they so desire. They don't have to boost  
10 them to three years. That's a choice of individual  
11 Tribes.

12 If you start sticking people in jail  
13 for nine years, they don't have the proper facilities  
14 to accommodate those prisoners such as would be at a  
15 federal facility, exercise, proper nutrition, so on.  
16 So they don't have that luxury in Indian Country. So  
17 under the Tort Claims Act, the United States opens  
18 them up for a lot of torts under this new bill, this  
19 new act, that's coming out.

20 I think that it's an individual choice  
21 of Tribal Councils, if they want to take the three or  
22 leave it at one. Because some of the jails in Indian  
23 Country don't even meet standards. Some of them are  
24 operating after we've been condemned.

25 Thank you.

1           MR. TOULOU: I think you're right. I  
2 agree with everything you've said. It really needs  
3 to be an individual Tribal decision. There are some  
4 Tribes where that will be easy; for some it's not.

5           I've seen your jail. I've seen all the  
6 jails here in Montana, I think. Some maybe; some I  
7 don't think you'll have a good chance of habeas when  
8 it comes up, and it can come up there too.

9           But a lot of Tribes, when the bill was  
10 being written, felt strongly they wanted that  
11 enhanced sentencing authority. That's something, as  
12 a sovereignty, you decide whether that's for you or  
13 not. I think they are all good things to think  
14 about.

15           MS. STEELE: The other point, as Joe  
16 has said, it may be that you didn't exercise this  
17 enhanced authority for a particular case; and it may  
18 not be that, for your routine day-to-day operations,  
19 you need to satisfy all the hurdles that are in the  
20 Tribal Law and Order Act for the enhanced sentencing.

21           I don't mean to cut off the discussion,  
22 but our time has come to a close. I want to really  
23 thank you for your very thoughtful comments and  
24 feedback. We come to these consultations in order to  
25 try to get our marching orders, and we have heard you

1 and it does help.

2           Someone asked the question, what will  
3 come out of this meeting? I won't say all the  
4 problems will be solved, because we have a lot to do  
5 and we have a long way to go. But the dialogue does  
6 move the ball forward and we will translate that  
7 dialogue into action at each of our respective  
8 agencies. And I'm here under the instruction of the  
9 assistant secretary to come here in the spirit of  
10 respect, government-to-government consultation,  
11 spirit of humanity, to hear what you've had to say;  
12 not just hear it but to take it and translate it into  
13 policy in Washington.

14           We have big bureaucracy that we are  
15 trying to nudge this way and that in response to your  
16 input. And I don't promise that it will be easy or  
17 that you will see instantaneous results, but please  
18 know that you are heard and your time was well spent.

19           I know that Mr. Echo Hawk is waiting  
20 for a report. We had one of these meetings in San  
21 Diego a couple days ago. He wanted a report right  
22 away, what were the concerns, what was said. He will  
23 ask for a similar report here in Billings.

24           And we have four or five more of these  
25 to go. And each of those meetings, the themes that

1 are merging -- I wasn't in San Diego but I heard and  
2 I saw the report, and unfunded mandates was their  
3 topic as well. So we are hearing what you had to  
4 say.

5 Thank you for your time. It was  
6 valuable for travelling at great distances, many of  
7 you.

8 So let me just express again the  
9 greeting from Mr. Echo Hawk and from Darren Cruzan.  
10 I know many of you know Darren because he has worked  
11 here in Montana. He has really brought a lot of  
12 energy to the OJS position. It's only his second  
13 week, but he is already -- I would say if I wasn't  
14 here representing the federal government -- kicking  
15 butt and taking names, but he is getting going.

16 So this dialogue is crucial and it will  
17 continue. The record is not going to close. If you  
18 have written comments, your council wants to submit  
19 written comments, we have a lot of things to  
20 consider. We are at the beginning stage of the  
21 Tribal Law and Order Act implementation. This is  
22 from the start. We wanted you in the room with us as  
23 we consider these issues from the beginning.

24 So thank you again very much for your  
25 participation. And thank you to each of the

1 agencies; Tracy from justice; and the U.S. Attorney's  
2 Office is represented; and Rose Weahkee from Indian  
3 Health Service.

4 I've asked Vice-Chairman Jonathan Windy  
5 Boy to offer closing prayer.

6 (At which time closing prayer is  
7 offered and meeting is adjourned.)

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## 1           C E R T I F I C A T E   O F   O F F I C E R.

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3           I, Virginia Leyendecker, a Certified Shorthand  
4 Reporter and Notary Public, do hereby certify that  
5 the foregoing is a true and accurate transcript of  
6 the testimony as taken stenographically by and before  
7 me at the date, time and location aforementioned.

8           I do further certify that I am neither a relative  
9 nor employee, nor attorney or counsel to any parties  
10 involved; that I am neither related to nor employed  
11 by any such attorney or counsel, and that I am not  
12 financially interested in the action.

13

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15

16



Virginia Leyendecker, CSR

17

Notary Public

18

My Commission expires (July 7, 2009)

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NJ C.S.R. License No. XI-1701

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