

1 facility operations were meeting their missions; and,
2 five, provide a cost analysis based on the findings to
3 suggest whether present remedies and future needs for
4 the detention facilities to meet their mission.

5 The BIA Office Justice Services has
6 worked very hard to improve quality of detention
7 services in Indian Country. The last two years has
8 been a period of major reform. During this time, the
9 program has undergone major change. However, we
10 recognize that much remains to be done to make our
11 programs fully effective.

12 We look forward to developing a healthy
13 and working relationship with the National Prison Rape
14 Elimination Commission in order to prevent sexual
15 assaults in our facilities and to ensure that any such
16 incidents that do occur are dealt in an appropriate
17 and expeditious manner. Thank you.

18 CHAIRMAN WALTON: Thank you.

19 Mr. -- or Professor, I guess.
20 Professor Gover.

21 PROF. KEVIN GOVER: Thank you,
22 Mr. Chairman, members of the Commission.

23 Let me just -- it may seem odd to some
24 people that these communities of Indians have
25 authorities of their own, so let me just provide a

1 little bit of a background and then talk about some of
2 the current problems. First of all, I want to say
3 that Mr. Rivera, as we discussed before -- during the
4 break in the hearing, is the first career prison
5 official to be hired by the Bureau of Indian Affairs.
6 Traditionally, these jails have been run by sheriffs
7 or the equivalent of sheriffs, chiefs of police, on
8 the various reservations. A very spotty training,
9 quite frankly. And the reason for that is that over
10 time, the way these programs emerged, the proper
11 foundations were never laid for either the police, the
12 tribal courts, or certainly for the detention
13 facilities. And so as the -- as time lurched forward
14 and as these programs tried to keep up with the
15 growing problem of crime on the reservations, there
16 was never a proper foundation of training facilities
17 and resources to properly carry out these programs.
18 So the program that Mr. Rivera has inherited has been
19 struggling for a good long time.

20 I should add that the news consistently
21 gets better, particularly over the last 15 years and
22 since the passage of the Indian Law Enforcement Reform
23 Act. But as you heard, the BIA has a long way to go.

24 As I indicate in my written testimony,
25 I'm a former Assistant Secretary for Indian Affairs.

1 What that essentially means is, I had supervisory
2 authority over the Bureau of Indian Affairs Office of
3 Law Enforcement Services, in addition to the other
4 functions that the Bureau of Indian Affairs carries
5 out.

6 Indian tribes are best understood as
7 possessing a limited authority of self government.
8 That is, they have the right to make their own laws
9 and be governed by them. They have the right to
10 enforce their own laws. Now, this authority that the
11 tribes possess is subject to supervisory oversight by
12 the Congress. And to the point that, as I indicate in
13 my testimony, Congress can quite literally take away
14 certain authorities from the tribes.

15 Over the many years of the
16 tribal/Federal relationship, that's happened numerous
17 times. In the last 40 years or so, the relationship
18 has changed quite significant, to the point that
19 Congress is now quite reluctant to remove authorities
20 from the tribes and, in fact, is trying to expand and
21 empower the tribes to really take control of their
22 communities.

23 To make a long story short, Indian
24 tribes have essentially misdemeanor jurisdiction over
25 Indian crimes committed on the reservation. It

1 doesn't matter if that Indian happens to be a member
2 of the tribe on whose reservation the crime takes
3 place. If you are an Indian, you are subject to the
4 jurisdiction of a tribe.

5 Felony jurisdiction, on the other hand,
6 belongs to the United States and is enforced through a
7 statute we call the Major Crimes Act. And thus,
8 Mr. Rivera indicated that the FBI occasionally will be
9 involved in investigations of incidents at the jails.
10 That's because these laws are enforced in Federal
11 courts. The best way to understand it is that
12 reservations are deemed Federal enclaves for certain
13 purposes and, therefore, the United States really has
14 the primary responsibility for law enforcement,
15 especially when it comes to felony offenses.

16 Now, there are basically two groups of
17 Federal officers that carry out the laws. One is the
18 Federal Bureau of Investigation, the other is the BIA
19 police force. Now, the BIA police force was first
20 formed in the late 1880s and was designed as a -- an
21 instrument for the assimilation of reservation Indians
22 at that time, to introduce Western concepts of justice
23 on the reservations. And, basically, have the tribes
24 emulate nonIndian systems of police, courts, jails,
25 and the like. Of course, in the first instance, there

1 was no such thing as an Indian jail. These jails were
2 introduced by the Bureau in the late 19th century, and
3 literally have continued to this day.

4 Because of a major policy shift in the
5 1970s, the Bureau of Indian Affairs no longer is the
6 primary law enforcement agency on the reservations.
7 That responsibility, quite appropriately has been
8 transferred to the tribes. So that at this point,
9 under the statutes, the tribes have the option of
10 taking over BIA law enforcement at any time they
11 choose. The BIA then has to turn over the resources
12 that it has used to provide law enforcement services
13 to the tribe and the tribe becomes responsible for
14 carrying out these functions.

15 Now, there are a couple of problems
16 that arise from that. First, BIA has never had enough
17 resources to carry out the program on its own and,
18 therefore, the transfer of resources to the tribes
19 usually leaves the tribes without adequate resources
20 to carry out the program. The tribes usually, in
21 fact, in every case I can think of, supplement the
22 money they get from the BIA with their own resources,
23 and yet we knew, as of 1997, that tribal police forces
24 were staffed at about one quarter of corresponding
25 county of police forces, in rural counties of roughly

1 the same kinds of population throughout the United
2 States. And despite -- I guess I would have to call
3 it a half-hearted initiative to improve law
4 enforcement on the reservations in the late 1990s, the
5 gains were marginal, I think it's fair to say.

6 Now, because the tribes have taken over
7 law enforcement, including in many cases, again, as
8 Mr. Rivera indicated, the detention facilities, the
9 ability of the Bureau of Indian Affairs to require
10 particular standards in the operation of these
11 facilities is limited. It's limited in two respects.
12 First, there are limitations in the statutes on the
13 degree to which the Bureau of Indian Affairs can
14 impose program standards on the tribes. And for the
15 obvious reason, that the BIA had often imposed program
16 standards that were quite inappropriate, and so that
17 power was taken away. But second, even in the case of
18 really extreme failures by the tribes to properly
19 carry out the responsibility, the Bureau's only real
20 recourse is to reassume the program. Now, as a
21 practical matter, that can hardly be done. The Bureau
22 can't go out and create a new facility, create a new
23 staff, train the staff, and begin to run the facility.
24 And so the reality is that it really relies on the
25 good faith between the tribes and Mr. Rivera's office

1 to bring the needed improvements to these facilities.

2 The other thing to know is that because
3 the tribes are sovereigns, there is very limited
4 authority, even in the courts, to review what goes on
5 in the Indian jails. Now, I'm going overstate a bit
6 and then I'll try to clean it up. To make a long
7 story short, the tribes have sovereign immunity,
8 unless they choose to waive that immunity. Now, many
9 tribes do, and that's obviously a good thing, but they
10 may well waive their immunity only in tribal courts,
11 for example, and not subject themselves to suit in
12 Federal courts. That is to say, the kind of prisoner
13 right suits that we're accustomed to seeing in Federal
14 courts really don't happen when it comes to the Indian
15 jails.

16 Now, there are ways, there are means to
17 address problems in the jails through the courts, but,
18 really, they are more in the nature -- they are not
19 the kind of comprehensive oversight that we saw from
20 the Federal judges in the '70s and '80s that really
21 began to improve conditions in a number of the jails.
22 The courts simply don't have that kind of
23 jurisdiction. What they can do is hear certain kinds
24 of tort claims against the tribes -- or, really, not
25 against the tribes, but against the United States

1 because of something the tribe has done. And they can
2 grant writs of habeas corpus. That's well short of
3 being able to really impose and enforce standards on
4 the Indian jails, as were done.

5 I think that because of the unique
6 history of these police courts and jails over the past
7 120 years or so, that as I indicated before -- I
8 should add, for example, the statutory authority to
9 operate jails and to even have police forces and to
10 assist tribal courts didn't come until the 1990s. The
11 BIA had been running these programs for literally a
12 hundred years, before any statutory standards were
13 imposed on the program. Now, when those standards
14 finally came, we began to see a dramatic improvement
15 in the professionalism of Indian law enforcement, BIA
16 law enforcement and these detention facilities. But
17 up until that time, you can imagine that in the
18 absence of standards and in the absence of any
19 meaningful oversight and supervision, the condition of
20 these programs was rather grim, save for the
21 improvements that the tribes themselves were making.

22 At the end of the day, the problems in
23 BIA detention facilities and in BIA police programs
24 are the same old problems. Facilities, a lack of
25 training, and ultimately, of resources to hire the

1 correction officers needed, properly train them, and
2 put them into facilities that would meet the
3 Constitutional standards that state and federal
4 government -- or state and federal facilities have to
5 meet.

6 So with that, Mr. Chairman, I'll pass
7 the mike to Mr. Cowboy.

8 CHAIRMAN WALTON: Thank you very much.

9 Mr. Cowboy, you're -- thank you for
10 your presence. Can you take the oath, please.

11 (Witness sworn in.)

12 CHAIRMAN WALTON: Thank you, sir.
13 Welcome.

14 MR. SAMPSON COWBOY: Good afternoon. I
15 apologize for being late. I blame it on the plane.

16 It's an honor to be here, ladies and
17 gentlemen. I -- my name is Sampson Cowboy. I'm a
18 Division Director for Navajo Division of Public
19 Safety. And, again, I would like to thank Mr. Thomas
20 for inviting me, calling me to be here. It is an
21 honor and I will do as best as I can to provide the
22 statistical information and other pertinent
23 information that this Commission is requesting of me.

24 As I read the Title 42, Chapter 147,
25 Section 15602, I think we have something in common