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POLICING On AMERICAN INDIAN RESERVATIONS

A Report to the National Institute of Justice

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POLICING ON AMERICAN INDIAN RESERVATIONS

I. Introduction and Overview

I.A. Study Goals

This study had two principal goals. The first was to take a broad look at policing in Indian Country in order to: (1) better understand the many arrangements for administering reservation police departments; (2) develop an initial assessment of the challenges facing Indian policing; and (3) identify policing approaches that might be successful in responding to the growing crime problem in Indian Country. The task was complex, especially because the research literature on policing in Indian Country is limited and the variety of policing arrangements and communities served is considerable. There are more than 200 departments, which serve an even larger number of tribal communities. Most departments are administered by tribes, but some are administered by the federal government and some by state and local governments. They range in size from only two or three officers to more than 200 officers. The communities they serve are as small as the Grand Canyon-based Havasupai Tribe (with a population of only 430) and the Puyallup Tribe (whose 104-acre reservation is part of greater Tacoma, Washington) and as large as the Navajo Nation (with a population of more than a quarter million and a land area larger than the state of Connecticut).

Our second goal was to evaluate the prospects for community policing in Indian Country. An obvious question was whether this strategy, which grew out of the experience of police departments in urban settings, could be usefully applied to the strikingly different cultural, geographic, and demographic features typical of Indian reservations. Despite these differences, the parallel is that both urban areas and Indian nations face the task of building local capacity to address severe social and economic problems. To the extent that community policing provides an opportunity for communities to develop and employ their own resources, priorities, and values in the service of public safety, it might also serve tribes' efforts to solve their own problems. Therefore, we sought to understand whether some form of community policing might be appropriate in Indian Country.

We emphasize that this was an exploratory study. It represents a first effort at characterizing the variety of arrangements for policing in Indian Country while at the same time trying to better understand the operations of a limited set of representative departments and their tribal contexts on an in-depth basis. This suggests a third goal—to identify important topics for further research. Given the limited research on policing in Indian Country, the variety of policing arrangements, and the considerable cultural and socioeconomic diversity across tribes, this study can offer only a limited understanding of the dynamics influencing the performance of police departments that serve reservation communities. For example, topics such as law enforcement in Public Law 280 states and the complex problems of criminal jurisdiction and interagency cooperation require separate treatment; we acknowledge their importance but suggest that these issues be addressed comprehensively in separate, future research. Of course, our primary intent is to provide useful data and guidance to police policymakers and tribal leaders. Therefore, we

attempt to balance our recommendations for further research with recommendations for near-term actions that can better equip these individuals to address their most pressing concerns.

I.B. Organization of the Paper

The paper proceeds in four steps. First, we develop the context of policing in Indian Country by introducing the wide variety of socioeconomic, cultural, and political conditions that characterize Indian Country today and by offering a brief, and rough, picture of the typical Indian police department. We do this in order to focus our analysis (and later our recommendations). Next, we describe the crime problems to which these departments must respond, although we preface this description with a discussion of the difficulties in obtaining reliable and useful crime data from Indian Country. Our third step is to address problems of organization and management. We begin with a more in-depth description of the range of departments in Indian Country and present data on reporting structures, staffing, and funding. Then we offer specific examples from our site visits to give a more full-bodied picture of the primary management challenges that reservation police departments face. The severity of these challenges leads us to consider whether the resource constraints we found fully explain the problems with policing. Our answer is no. Therefore, to better understand the problems faced by police departments and the tribal communities they serve, our final step is to look beyond budgetary considerations to the history of reservation policing and, in particular, to the impact of federal policy.

I.C. Overview of Conclusions and Recommendations

A central conclusion of this analysis is that federal policy has failed to promote the ability of Indian nations to design and exert meaningful control over their own policing institutions. Findings from research in Indian Country on the characteristics of effective governing institutions sharpen this failure. The research indicates that governing institutions are more effective when they reflect, in a functionally meaningful way, a tribe's underlying cultural norms and values.¹ Notably, research and experience in community policing are congruent with these findings. The community policing strategy, which involves embedding community priorities and values in the overall function of the police enterprise, enhances the capacity of police to assist communities.² Taken together, the findings suggest that, by pursuing such a strategy, Indian communities can lend *their* authority to the police enterprise, see *their* norms and values (their culture) reflected in the police mission, employ *their* considerable formal and informal resources to address crime, and end up with more effective policing institutions overall.

¹ Stephen Cornell and Joseph P. Kalt, "Where Does Economic Development Really Come From? Constitutional Rule Among the Contemporary Sioux and Apache," *Economic Inquiry* 33(July 1995):402-426; Stephen Cornell and Joseph P. Kalt, "Sovereignty and Nation-Building: The Development Challenge in Indian Country Today," *American Indian Culture and Research Journal* 22(1998):187-214.

² Malcolm K. Sparrow, Mark H. Moore, and David M. Kennedy, *Beyond 911: A New Era for Policing* (New York: Basic Books, 1990); George L. Kelling and Mark H. Moore, "The Evolving Strategy of Policing," *Perspectives on Policing*, No. 4 (Washington, DC: U.S. Department of Justice, November 1988).

The first step in improving policing in Indian Country, therefore, is to systematically link community values to departmental values and to express these values in concrete operations. For any given Indian nation, the systems that animate and guide policing—such as the organizational structures of the police department and overall criminal justice system, tribal personnel and training systems, local management information and control systems, and tribal agencies that conduct strategic planning—can be linked to a vision of policing shaped by that nation's priorities, resources, and needs. These conclusions and recommendations do not speak to the full range of problems faced by Indian policing. Instead, they focus on what we assert is a fundamental issue—that tribes, with the support of the federal government, must reconsider the foundations of policing on American Indian reservations.

Policing in many parts of Indian Country occurs in an environment characterized by serious crime and deteriorating social conditions—a situation that has drawn the attention of politicians, police executives, tribal leaders, and researchers, and suggests that investments in the improvement of policing are urgently needed. The heightened attention and concern are welcome. Policymakers are now thinking harder about how to protect tribal communities from crime and how to better support the efforts of tribal criminal justice agencies. But the very urgency to address violence, gangs, drug-related crime, and substance abuse in Indian Country may have a downside. It may push too quickly toward the conclusion that addressing the problems is simply a matter of obtaining better data on crime, increasing funding, and improving police management. However, these improvements *alone* are likely to have a limited effect on the ability of tribal communities and the police departments that serve them to independently address the substantial problems they face. While our research indicates that these inputs are important, it also shows that they do not address the issue most central to effective policing in Indian Country—the challenge of designing Indian police departments as core institutions of tribal government. Thus, we believe that the first priority for tribal leaders and communities, along with law enforcement professionals, politicians, policymakers, and researchers, should be to work together to rethink policing in Indian Country. Addressing the fundamental questions of policing will enable them to better understand and develop the kinds of investments (e.g., data, money, technology, technical assistance) that will best serve efforts to improve policing.

II. Methodology

Research for this study included four components: 1) a review of relevant literature; 2) brief visits to several Indian police departments and the Indian Police Academy in Artesia, New Mexico; 3) intensive, in-depth site visits to four reservations; and 4) a two-part survey distributed to Indian police departments. Further detail on each of these study components is given below.

II.A. Review of Literature

Several areas of literature provided background and context for the primary research. These included American Indian issues, policing, sociology, and anthropology. For all areas, both historical and current materials were found to be relevant, ranging from academic works to local newspaper articles.

“American Indian” topic areas included history, the history of policing on Indian reservations, culture, economic development, governance, sovereignty, and materials specific to the four tribes studied in depth. “Policing” topic areas included the history of policing, community policing, rural policing, and the organization and management of police departments. The “sociology” review focused on rural sociology. The “anthropology” review focused largely on Native American anthropology, but also included some literature related to social control and the development of modern legal systems in indigenous societies. The wide expanse of the literature search is reflected in the references section at the end of this report.

II.B. Brief Visits to Several Departments

We made brief visits to several tribes and their police departments in order to inform our selection of departments to be studied in depth. These brief visits were also useful as a means of better understanding possible survey issues. Members of the research team visited ten tribes throughout the Southwest, the Northwest, the East, and the Northern Plains. We also visited the Indian Police Academy in Artesia, New Mexico, in order to better understand the training the Bureau of Indian Affairs provides to police officers.

II.C. In-depth Study of Four Departments

We studied four departments and the tribal contexts in which they operate in depth, in order to gain a richer understanding of the diverse and complex ways in which Native communities cope with their policing challenges. In other words, we felt there were many aspects of reservation policing that we could not grasp well or even know about without intensive on-site research. For example, we looked to this method to clarify the details of organizational process and structure. Likewise, because it allows investment in relationships, we anticipated that the site-visit approach would provide data on community members’ more closely guarded opinions (for instance, their real perceptions of their police departments). Data from the four in-depth studies are integrated throughout the report and are at the core of its discussion and analysis.

Like the brief site visits, intensive on-site research was also an important precursor to survey work. Because information about the practice of policing in Indian Country is so limited, on-site work helped us define the topics on which broader-based survey data were needed. Similarly, the substantial variation in justice administration, jurisdictional arrangements, and

socioeconomic conditions that exist in Indian Country suggests that only some quantitative data comparisons are meaningful; intensive study helped us focus the survey on ones that were.

Our site selection strategy was to choose Indian nations that varied on as many relevant dimensions as could be captured in such a small sample.³ The most important dimensions on which we sought significant variation were crime problems and other policing challenges, culture, economics, geography, and the management and administrative structure of the police departments.⁴

We chose Tohono O'odham and the Gila River Indian Community because they have similar cultural backgrounds but distinctly different geographical and economic settings. Both are *O'odham* nations, located in their traditional homelands. Further, we anticipated that, as southwestern tribes near the Mexican border, they might share some important regional challenges, including the problems of illegal migration and drug smuggling. Nonetheless, we expected the overall set of problems to vary substantially between the tribes, since the Gila River Indian Community is greatly subject to the social and economic influence of a major city (Phoenix), while Tohono O'odham remains more isolated, more traditional, and more economically distressed.

Besides these contrasts, we were interested in comparing the policing challenges and approaches of tribes in different regions. Early investigation suggested that Indian nations in the Northern Plains were generally (although not universally) more assimilated than tribes in the Southwest and that in *some* cases they suffered from more crime—particularly more violent crime—a combination that, according to some policing professionals, made them much more difficult to police.⁵ Indeed, the way these factors combined with political dynamics and influenced the administration of some otherwise interesting police departments caused us to rule out certain candidates for intensive study. The sustained involvement in these departments necessary for the study could not be assured. The sites we selected for in-depth study on the Northern Plains were the Confederated Salish and Kootenai Tribes of the Flathead Reservation (in Montana) and the Three Affiliated Tribes of the Fort Berthold Reservation (in North Dakota).

Finally, one of the most important differences between tribes is the management structure of their police departments. While the possibilities are covered in more detail in Section III.C., an important distinction among many Indian communities is whether policing services are provided by the Bureau of Indian Affairs or by the tribe itself. If a tribe opts to manage the police department itself, it can either self-fund or contract for funding from the Bureau of Indian

³ In some, but not all, cases our work was facilitated by existing working relationships with tribes. However, having such a relationship was *not* a criterion for selection.

⁴ PL 280 provides significant variation along several of these dimensions. We excluded these different administrative and jurisdictional arrangements from our study, however, because of our feeling that the impacts of the law—and the reform options available to tribes whose policing institutions are subject to it—are important enough to merit a study of their own.

⁵ For example, interview with Brent LaRocque, Criminal Investigator, Bureau of Indian Affairs Division of Law Enforcement Services, March 1996.

Affairs. In the latter case, money that would have been used by the federal government to provide policing services is passed on to the tribe.

Our sample of four sites includes important comparisons and contrasts along this management and funding dimension. At the outset of our study, the Gila River Indian Community had a BIA-managed department to which it had added a number of tribally funded officers. By the end of the study period, it had taken over management responsibility from the federal government using a “638” contract, which is the most common arrangement for replacing the federal management of policing services in Indian Country.⁶ Tohono O’odham operated under a “638” contract throughout the period. Similarly, the Confederated Salish and Kootenai Tribes have operated for many years under a “self-governance” compact (in practical terms, this means they have greater control over the way the department is funded and structured than do tribes operating under 638 contracts). Finally, the Three Affiliated Tribes’ police department is BIA-administered (and, at the time of our research, the Tribes had no intention of changing this arrangement with a contract). The contrast between the last two cases may be especially important; some observers suggested that the departments were among the best in Indian Country although they work under management structures that are, ostensibly, nearly as different as possible.

We restricted our study to four sites for several reasons. First, we hoped to study not only the departments themselves but also the tribal contexts in which they serve. Doing both well required a fairly small study sample. Second, in a few cases, it took substantial time on-site (a few days to approximately two weeks of staff time) to obtain approval to conduct the study. While this time was productive from a research standpoint—we gained much insight into tribal politics and culture during the process—it was nonetheless time-consuming and limited the number of communities we could approach for in-depth involvement. Finally, as we had hoped, the increased time spent at each site allowed the formation of relationships, which produced critical information and insight into the way tribes policed. Clearly, it would be productive to study additional sites, especially given the diversity of policing arrangements and social, cultural, and economic settings in Indian Country.

Though we spent considerable “unstructured” time at each site, our research was guided by a systematic list of individuals and groups we wished to interview and activities we wished to observe. Interview prospects included, but were not limited to: (1) formal and informal tribal political leadership, from both the “national” (central tribal government) and “sub-national” (district or village) levels; (2) representatives of the tribal criminal justice system, especially those from the police department, corrections system, probation office, judiciary, prosecutors office, and the defense bar; (3) health and social service providers working for both tribal and federal agencies; (4) consumers of police and criminal justice services, particularly individuals and families who had been “through” the criminal justice system, youth groups, and residents of high-crime areas; and (5) representatives of important historical and cultural practices, such as elders and traditional healers. On the activities side, we sought to observe: (1) routine police activities, especially through ride- and walk-alongs with the police; (2) the operation of the broader criminal justice system (court proceedings, jail conditions, etc.); and (3) important

⁶ The Gila River Indian Community assumed management of its police department on August 10, 1998.

community “meetings,” such as legislative sessions, village or district meetings, school board meetings, elders’ meetings, youth council or club sessions, and (where possible and appropriate) cultural activities.

II.D. Surveys

Although survey-based research addresses a narrower range of issues, the pay-off by comparison to in-depth site research is the ability to collect data from a larger sample of communities. Such data put information from the smaller, intensive study sample into perspective—it should help both researchers and tribes understand what is “typical” and what is not.

To maximize the response rate and stretch our resources, we partnered with Eileen Luna at the University of Arizona in the survey effort.⁷ The University of Arizona mailed the first questionnaire (shorter, more numbers oriented) to more than 200 departments in the continental United States, regardless of size. This distribution was intended to be comprehensive, that is, to include all departments whose primary responsibility is to police Indian Country.⁸ Harvard University mailed the second questionnaire (longer, more in-depth, with some organizational questions) to 67 large tribes (but only 66 departments, since two of the large tribes share a BIA department). These nations are the Harvard Project on American Indian Economic Development’s usual study sample, a group for which it possesses substantial background data. In general, these larger nations set the practice standard for Indian Country in terms of business activity, government and administrative function, and political rights.⁹ Because of their probable greater importance, our greater familiarity with them, and our access to better data about them overall, we made a more concentrated effort to increase the response rate among these tribes. All data that we report from both questionnaires of the survey refer to this smaller study sample.

The questionnaires and list of respondents are included as Appendix A. Forty-six of 66 departments responded to part I of the survey (the University of Arizona instrument) and 39 to part II (the Harvard University instrument). Using background data from the Harvard Project on American Indian Economic Development, we determined that, in general, the groups of respondents and non-respondents are comparable along the following dimensions: average economic status, communities’ average distance from large urban areas, and police departments’ usual administrative arrangements (638 vs. BIA policing). However, police departments responding to the survey serve tribes that are somewhat larger (in both population and area),

⁷ Eileen M. Luna, Assistant Professor, American Indian Studies, University of Arizona, Tucson, AZ.

⁸ There are approximately 330 reservations in the lower 48 United States, but many fewer Indian police departments. This is because some BIA-administered departments serve more than one reservation (particularly where tribal communities are small) and some tribes are not eligible to have their own police departments.

⁹ Using the 1980 Census as a benchmark, the Harvard Project on American Indian Economic Development sample includes tribes with population 1,000 or greater that are located in traditional Indian areas of the continental United States. However, the sample excludes Oklahoma-based tribes, both because they lack distinct land bases (the only reservation *per se* in Oklahoma belongs to the Osage) and because the Census collects data for them in a way that is not comparable to the way it collects data for other tribes.

more assimilated to non-Native society, and less involved with the gaming industry than the non-responding tribes.

We offer a caution here, one that is echoed throughout this paper and in the work of other criminal justice researchers and practitioners in Indian Country.¹⁰ All but the most basic and easily verified data must be interpreted carefully; this is most emphatically true for data that are collected by telephone or by mail. For example, we found that multiple inquiries often produced different answers to the same questions regarding departmental budgets, salaries, department size, and crime statistics. The reasons are numerous and complex (and we discuss them further below), but the end result is that we hold very loosely to what might be termed the “statistical” portrait of police departments in Indian Country offered later in this paper. That is why we develop a portrait of the typical department that focuses more on management challenges. Indeed, there is a growing consensus among researchers and policymakers on management challenges faced by Indian police departments, even while there is substantial disagreement on such issues as the budget resources available and the ratio of law enforcement officers to citizens.¹¹

¹⁰ See for example, Eileen Luna and Samuel Walker, “Policing in Indian Country: A National Survey of Tribal Law Enforcement Agencies,” Police Executive Research Forum, Washington, DC, February 1998; Eileen Luna, “The Growth and Development of Tribal Police: Challenges and Issues for Tribal Sovereignty,” *Journal of Contemporary Criminal Justice* 14(February 1998):75-86; Jennifer Wood, “Law Enforcement Survey,” paper presented at the National Institute of Justice Strategic Planning Meeting on Crime and Justice Research in Indian Country, Portland, Oregon, October 14-15, 1998; and, Gail L. Elias, “Criminal Justice Data Collection Issues in Indian Country,” paper presented at the National Institute of Justice Strategic Planning Meeting on Crime and Justice Research in Indian Country, Portland, Oregon, October 14-15, 1998.

¹¹ This was discussed by members of the Indian policing panel at the National Institute of Justice Research and Evaluation Conference, Washington, DC, August 1998.

III. Policing in Indian Country: The Context

In this section, we respond to the following questions: What is *Indian Country*, and what do we mean when we refer to Indian *reservations* and Indian *nations*? Whom do police in Indian Country serve? What does the typical police department in Indian Country look like (especially, who is it that polices Indian Country)? And finally, what are the basics of the criminal justice *system* in Indian Country? Our intent in this section is simply to “set the scene”; we reserve detailed discussions of other important aspects of policing in Indian Country for later sections.

III.A. What is “Indian Country”?

“Indian Country” comprises the 56 million acres of land owned by Indian communities in the United States.¹² According to the Bureau of Indian Affairs (BIA), there are more than 330 federally recognized Indian tribes in the lower 48 United States.¹³ Nearly all tribes have reservations, which are lands the United States “ceded” to tribes by treaty, statute, or executive order during the Euro-American western expansion of the eighteenth, nineteenth, and twentieth centuries.¹⁴ Most of Indian Country is located west of the Mississippi River, but it also includes a number of reservations belonging to tribes in the East. Overall, Indians live on reservations in 34 continental states, and all reservations have some form of policing arrangement.¹⁵

Increasingly, tribes are referred to as “nations,” in order to acknowledge their distinct political status vis-à-vis the U.S. national and state governments: Indian governments are not part of the “federal” hierarchy but, instead, have a “government-to-government” relationship with the United States.¹⁶ (Under this arrangement, American Indians hold dual citizenship, as citizens of both the United States and their Native nation.) Because limitations on tribal authority do exist (for example, tribes do not float their own currencies or provide for their own defense), it is more

¹² Indian Country was defined by the U.S. Congress in 1948 (18 U.S.C.A. §1151): “a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.” See William C. Canby, Jr., *American Indian Law in a Nutshell*, 3d ed. (St. Paul, MN: West Group, 1998), pp. 113-114.

¹³ Bureau of Indian Affairs web pages, “American Indians Today: Introduction” (<http://www.doi.gov/bia/aitoday/aitoday.html>) and “American Indians Today: Answers to Frequently Asked Questions” (http://www.doi.gov/bia/aitoday/q_and_a.html), U.S. Department of the Interior, Washington, DC, 1998.

¹⁴ Bureau of Indian Affairs web page, “Report on Indian Lands” (<http://www.doi.gov/bia/realty/report.html>), U.S. Department of the Interior, Washington, DC, 1998.

¹⁵ *Ibid.*, and Bureau of the Census, *1990 Census of Population, Social and Economic Characteristics: American Indian and Alaska Native Areas* (Washington, DC: U.S. Department of Commerce, 1993), p. 1.

¹⁶ Janet Reno, U.S. Attorney General, “Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations with Indian Tribes,” U.S. Department of Justice, Office of Tribal Justice, Washington, DC, June 1, 1995 [published in *Federal Register* 61(112)(June 10, 1996): 29424].

accurate to describe Indian nations as semi-sovereign, or “domestic dependent nations,” as Chief Judge Marshall did in *Cherokee Nation v. Georgia*.¹⁷ Yet, while tribes control a narrower scope of policy than do nations such as Germany and Brazil, they have significantly more scope for policy making than cities or even U.S. states. Indian nations adopt constitutions for their societies, write civil law to regulate conduct and commerce within their territorial boundaries, and enforce those laws with their own judicial systems. In brief, modern tribes exercise substantial but not complete rights of self-determination and self-government.

III.B. Who Do Police in Indian Country Serve?

In 1995, the Bureau of Indian Affairs estimated a non-Alaska service population (the number of Natives living on or very near reservations) of 1.1 million. Other estimates are higher. Using data from the 1990 census and an historical growth factor, the Indian Health Service estimated a 1996 non-Alaska service population of more than 1.3 million—and that this figure would rise by more than 100,000 by the year 2000.¹⁸ These differences reflect difficulties in enumerating the reservation-based Indian population, the high birth rates that are typical on many reservations, and in some cases, in-migration.

Improved economic opportunities are the primary cause of in-migration in the Indian communities where it is occurring, but such changes are the exception rather than the rule. In particular, the perception that Native Americans are generally enjoying increased prosperity as a result of the growth of the gaming industry is a mistaken one. According to the GAO, almost half of all gaming revenues earned in 1995 were generated by only eight of the 184 gaming tribes.¹⁹ Thus, despite new tribal opportunities and ventures, American Indians remain the poorest minority in the United States. Those living in reservation communities, commonly characterized by severe unemployment (sometimes reaching 80 to 90 percent²⁰) and the attendant social and economic symptoms of poverty, are the worst off of all.²¹

Important education and health outcomes are also poor. For example, as of 1990 (the most recent year for which there are comparable data), the high school completion rate among

¹⁷ 30 U.S. (5 Pet.) 1 (1831), at 17.

¹⁸ Indian Health Service, Office of Planning, Evaluation, and Legislation, Division of Program Statistics, *Trends in Indian Health 1996* (Washington, DC: U.S. Department of Health and Human Services, 1997).

¹⁹ General Accounting Office, “A Profile of the Indian Gaming Industry,” Report to the Chairman, Committee on Ways and Means, U.S. House of Representatives, Washington, DC, May 1997.

²⁰ See, for example, Bureau of Indian Affairs, “Indian Service Population and Labor Force Estimates, 1995,” U.S. Department of the Interior, Washington, DC, 1996. To be counted as “unemployed” in the calculation of the reported unemployment rate, an individual must be seeking work. Given their limited opportunities, many reservation residents may have given up the search. A calculation that includes these “discouraged workers” is probably more accurate than the standard calculation of the employment rate, and it is this figure that leads to unemployment estimates in the 80 to 90 percent range for some reservation communities.

²¹ See, for example, Peter T. Kilborn, “Sad Distinction for the Sioux: Homeland is No. 1 in Poverty,” *New York Times*, September 20, 1992, p. A1.

reservation-resident Natives age 25 and over was 54 percent, as compared with the national rate for all races of 78 percent.²² Rates of alcoholism among American Indians are extraordinarily high, and even higher than for other minorities, who are themselves at increased risk of alcohol abuse.²³ Consequently, the rates among Natives of alcohol-related health problems—chronic liver disease, cirrhosis, fetal alcohol syndrome—are much higher than for other population groups.²⁴ Indices of social dysfunction, such as suicide and homicide, are much higher than for either the general population or other minority populations as well; for instance, the suicide rate is almost *triple* that of the general population.²⁵

Even so, many reservations are experiencing significant counter-trends. For example, through aggressive economic development and effective governance, unemployment among the Mississippi Choctaw fell from 80 percent in the early 1980s to virtually zero in 1996; average family income increased approximately sevenfold, to \$22,000, over the same period.²⁶ The Gila River Indian Community was able to provide funding to more than 200 college students in the late 1990s, as opposed to only a handful earlier in the decade. This support will dramatically increase the percentage of community members who are recorded as college graduates in the next decennial census.²⁷ In sum, Indian Country comprises a striking variety of economic and social conditions and characteristics.

An important additional type of variation is the substantial cultural diversity found among American Indian communities. While “American Indian” is a single race category on the U.S. Census, this grouping hides the fact that members of one tribe can be as different from members of another tribe as citizens of Greece are from citizens of Vietnam. Certainly, tribes’ geographic dispersion is one source of diversity. Peoples sharing similar natural surroundings developed somewhat similar cultures and related languages; tribal sub-groups then refined the common culture in distinct ways, which gave rise to a wide variety of cultures throughout Indian Country. One rough categorization of these differences separates the Indians of the continental United States into five cultural/geographic groups: (1) farmers of the eastern forests, (2) nomadic hunters of the plains and prairies, (3) farmers and herders of the Southwest, (4) seed gatherers of

²² Bureau of the Census, *1990 Census of Population, Social and Economic Characteristics: American Indian and Alaska Native Areas*, above, Table 7, p. 312; and, Bureau of the Census, *Statistical Abstract of the United States, 1997* (Washington, DC: U.S. Department of Commerce, 1998), Table 243, p. 159.

²³ See, for example, Lawrence A. Greenfeld, “Alcohol and Crime: An Analysis of National Data on the Prevalence of Alcohol Involvement in Crime,” Bureau of Justice Statistics, Washington, DC, April 1998.

²⁴ Indian Health Service, *Trends in Indian Health, 1996*, above.

²⁵ *Ibid.*

²⁶ Fergus M. Bordewich, “How to Succeed in Business: Follow the Choctaws’ Lead,” *Smithsonian* 26(12)(March 1996):71.

²⁷ Personal interview with the Director of the Gila River Indian Community Department of Education, October 29, 1998.

California and the inter-mountain "great basin," and (5) ocean and river fishermen of the Northwest.²⁸

Another method for classifying Native Americans' cultural diversity is based on language. Early studies found more than 70 distinct linguistic families and isolates among some 250 North American Indian languages. However, with the extinction of some languages and reclassification of others, linguists now group most extant North American Indian languages into six primary families: (1) Eskimo and Aleut (Far North), (2) Algonquian (various tribes in the eastern forests, the Plains, and the Far West), (3) Athabascan and related languages (the Mackenzie-Yukon Basin, the Navajos in the Southwest, and some West Coast peoples), (4) Uto-Aztec and related languages (the Great Basin and Rocky Mountains area, the Plains, and the majority of the Pueblos), (5) Chinookan and related languages (several scattered Far Western tribes), and (6) Siouan and related languages (people in such highly separated regions as the Northeast, the Southeast, the Plains, New Mexico, and northern California).²⁹ While languages within the six families display linguistic similarities, in practice they are mutually unintelligible, a fact that reinforces cultural differences. Despite decades of suppression and English assimilation, Native language use may now be on the upswing.³⁰ Thus, the extraordinary cultural variation among historical Indian nations is, and should continue to be, an important distinguishing factor among modern Indian nations.

Finally, the history and politics of place also contribute to distinct cultural identities. As reservations were created, members of several indigenous groups were sometimes assigned to one locality, and conversely, members of some large indigenous groups were located on several land bases. Over time, the people of each reservation experienced unique struggles. These historical, geographical, and cultural/linguistic differences together support the proposition that the resident community of each of these 330-plus, unique "nations" is the most appropriate group to undertake policymaking and problem solving.

III.C. Who Polices Indian Country?

The array of administrative arrangements for policing in Indian Country is complex. Members of the police departments that serve reservation communities may be either tribal, federal, state, county, or municipal employees. Table 1 summarizes this variety; we provide greater detail in the paragraphs that follow.

²⁸ Summarized from Harold E. Driver, *Indians of North America*, 2d ed., rev. (Chicago: University of Chicago Press, 1969); and, Carl Waldman, *Atlas of the North American Indian* (New York: Facts on File Publications, 1985).

²⁹ For example, see Driver, above, pp. 43-45, who bases his table on Charles F. and Florence M. Voegelin, *Map of North American Indian Languages* (New York: American Ethnological Society, 1966).

³⁰ The Native American Languages Acts of 1990 (Public Law 101-477) and 1992 (Public Law 102-254) are examples of the renewed interest in Native language. These laws, which articulate a U.S. government policy of protecting indigenous languages, were passed at the express request of Native groups.

Table 1: Types of Indian Police Departments and Their Characteristics, 1995

	Public Law 93-638	BIA	Self-Governance	Tribally Funded	Public Law 83-280
Number: ³¹	88	64	22	4	?
Trend: ³²	↑	↓	—	—	—
Administered by:	Tribe	U.S. Government: BIA	Tribe	Tribe	State or local law enforcement agencies
Officers are employees of:	Tribe	U.S. Government	Tribe	Tribe	State or local law enforcement agencies
Funding:	Federal (often with tribal contribution)	U.S. Government	Tribe	Tribe	Primarily state and/or local entities

III.C.1. Tribal or Public Law 93-638 Policing

As noted in Table 1, the most common administrative arrangement is for police departments to be organized under the auspices of the Indian Self-Determination and Education Assistance Act of 1975. Also known as Public Law 93-638 (PL 638), this law gives tribes the opportunity to establish their own courts, police, legislatures, and other government functions by contracting with the Bureau of Indian Affairs.³³ Thus, “638ed” police departments are administered by tribes under contract with the Bureau of Indian Affairs’ Division of Law Enforcement Services.³⁴ Typically, a 638 contract establishes the department’s organizational framework and performance standards and provides basic funding for the police function. Officers and non-sworn staff of 638ed departments are tribal employees.

Tribes have used the Self-Determination Act quite aggressively to acquire increased control of their police departments. In 1995, for example, 88 departments (nearly half of the non-Public Law 83-280 tribes) were administered under the auspices of PL 638.

III.C.2. BIA Administration

Departments administered by the Bureau of Indian Affairs are the second most common type of police department in Indian Country. Staff in these departments are federal employees and are part of a national, BIA-employed hierarchy of law enforcement officers. For many years, patrol

³¹ Data in this table derive from the Bureau of Indian Affairs, Division of Law Enforcement Services, “Listing of Reservations Where Major Crimes Act Applies By Area Office and Type of Law Enforcement Program,” U.S. Department of the Interior, Albuquerque, New Mexico, March 31, 1995.

³² In this table, ↑ indicates increasing numbers, ↓ indicates reduced numbers, and — indicates no trend.

³³ 25 U.S.C.A. § 450 et seq. Canby, *American Indian Law in a Nutshell*, above, pp. 30-31.

³⁴ We use the terms “638ed” and “contracted” interchangeably in this paper.

officers were under the line authority of the local BIA superintendent (each reservation has a BIA superintendent who oversees all or most of the BIA functions on that reservation), and criminal investigators were under the line authority of the BIA's Division of Law Enforcement Services. Recent changes have placed line authority for patrol under the BIA's Division of Law Enforcement Services as well.

In 1995, 64 departments were administered by the BIA (a figure that encompasses just over one-third of the non-PL 280 tribes).

III.C.3. Self-Governance Policing and Tribally Funded Departments

By far less common than the types described above, but significant nevertheless, are departments that receive funding under the auspices of the self-governance amendments to Public Law 93-638 and departments that receive complete funding from tribal coffers. Like tribes with 638ed police departments, tribes with self-governance arrangements contract (except in this case the terminology is to "compact") with the BIA to assume responsibility for law enforcement services that might otherwise be performed by the BIA. The primary difference between contracting under PL 638 and compacting under its self-governance amendments is that financing is through a block grant, rather than as payment for budgeted line items. These contractual requirements and funding mechanisms grant tribes much more control over government functions than is permitted under 638 contracts. In 1995, 22 Indian police departments (approximately 12 percent of the non-PL 280 tribes) were administered through self-governance.

While tribes achieve a high degree of organizational freedom through self-governance compacts, tribes that fully fund their own police departments gain near complete tribal control of their law enforcement institutions. Given resource constraints in Indian Country, however, only four of the non-PL 280 tribes had tribally funded departments in 1995.

III.C.4. Public Law 83-280 Policing

A number of tribes rely on state and local authorities for police services under Public Law 83-280, 67 Stat. 588 (1953). This law, passed as part of a larger effort to "terminate" American Indian tribes, gave California, Minnesota, Nebraska, Oregon, Wisconsin, and later, Alaska the power to enforce the same criminal laws within Indian Country as they did outside of Indian Country. The law also "provided that any other state could assume such jurisdiction by statute or state constitutional amendment" and many did so.³⁵ With the advent of the federal policy of self-determination in the 1970s, some states retroceded policing responsibility back to tribes. Nonetheless, a significant number of Indian communities still rely on state and local police services. Usually, these are paid for by the surrounding, and generally larger, non-Indian community; however, where non-Indians cannot afford to provide adequate policing services and Indians may not, a tribe may pay state, county, or municipal authorities to do so.³⁶

³⁵ Canby, *American Indian Law in a Nutshell*, above, p. 27; and, Michael L. Barker, *Policing in Indian Country* (New York: Harrow and Heston, 1998), pp. 46-49.

³⁶ See, for example, "Santee Sioux Tribe, City Join Forces to Fight Crime," *Sioux Falls Argus Leader*, January 7, 1998, p. 2D.

The number of tribes subject to policing through Public Law 280 is fairly static and relatively large (for example, it includes many of the more than 100 tribes in California). We have excluded them from this study because our focus is on tribes that either police themselves or have a present opportunity to do so. Often, PL 280 tribes have rather small populations and/or limited land bases, characteristics which make self-policing much more difficult. We agree with other researchers, however, that, despite these constraints, PL 280 tribes should have an opportunity to determine the policing arrangement that best serves their members.³⁷ The complexities of these issues merit separate, comprehensive treatment not possible in the present broad investigation.

III.C.5. Other Administrative Arrangements

To this already complicated picture, we must add several more possibilities. First, tribes can contract with the BIA for *individual* police functions. Therefore, some departments will have a tribal patrol function and a BIA criminal investigation function. Second, an increasing number of departments include both tribally employed and BIA-employed patrol officers. The COPS program³⁸ is one driving force behind this mix. Its grants provide funding for new *local-level* officers, who cannot be federal employees. Thus, tribes that receive COPS grants but have BIA-administered departments have had to hire officers under tribal auspices.

III.C.6. The "Typical" Department in Indian Country

Despite the complexity of administrative arrangements, it is possible to construct a rough portrait of the typical police department serving Indian Country. Again, we emphasize this is a *rough* portrait; it is offered as a step toward developing a *general* understanding of the context of policing in Indian Country. The data for this portrait come from the approximately 40 respondents to our survey of the 67 largest tribes (66 largest departments) located in the continental United States.

The typical department is administered either by the tribe through a 638 contract or by the BIA. It has 32 employees (of which approximately 9 are civilians, 6 are detention officers, 16 are police officers, and 1-3 are command staff). Given the around-the-clock nature of policing, the numbers imply that the typical department has only a few officers on duty at any one time. The sworn officers are high school graduates and graduates of certified law enforcement training academies. A slight majority are Native American.

The typical department polices a reservation land area of 500,000 acres and serves approximately 10,000 tribal members.³⁹ Therefore, the typical setting is a large land area with a relatively small

³⁷ Carole Goldberg and Heather Singleton, "Research Priorities: Law Enforcement in Public Law 280 States," paper presented at the National Institute of Justice Strategic Planning Meeting on Crime and Justice Research in Indian Country, Portland, Oregon, October 14-15, 1998.

³⁸ The Office of Community Oriented Policing Services (COPS) in the U.S. Department of Justice is "responsible for advancing community policing, including the hiring of 100,000 additional community policing officers" (quoted from the COPS web page, <http://www.usdoj.gov/cops/gpa/default.htm>).

³⁹ The average acreage calculation—based on survey data, not on the entire universe of reservations—excludes the Navajo reservation, which is atypically large. The average population estimate does *not*

population patrolled by a small number of police officers, and the *superficial* description is of a rural environment with rural-style policing. In actuality, substantial numbers of reservation residents live in fairly dense communities that share attributes of suburban and urban areas. Nonetheless, the figures are roughly equivalent to an area the size of Delaware, but with a population of only 10,000, that is patrolled by no more than three police officers and as few as one officer at any one time—a level of police coverage that is much lower than in other urban and rural areas of the country.⁴⁰

The typical department has an operating budget of approximately \$1 million per year, which is again less than its rural counterparts and much less than the typical urban police department.⁴¹ In keeping with this limited resource base, the facilities and equipment that support such a department are generally old: It is housed in a building that is 20 or more years old and relies on a vehicle fleet that is at least three years old.

III.D. The Criminal Justice System in Indian Country

The components of the criminal justice system in Indian Country are similar to those of non-Indian communities throughout the country. The primary components are the judiciary, the prosecutorial and defense bars, the correctional system (including probation), and the police. However, the complex jurisdictional arrangements in Indian Country mean that for nearly every serious crime, the U.S. Attorney and the FBI have potential jurisdiction. This is markedly different from the situation in non-Indian communities: On reservations, *federal* agencies play a potentially broad role in the operation of what is essentially a *local* criminal justice system.

Although the arrangements may vary from reservation to reservation, three factors always come into play in determining criminal jurisdiction in Indian Country. These factors tend to narrow tribal jurisdiction and expand either state or federal jurisdiction over a wide range of crimes:

- *Where* the crime was committed. Only crimes committed in Indian Country fall under the jurisdiction of tribes. All crimes committed outside of Indian Country, regardless of whether they include American Indians, fall under state or federal jurisdiction.
- *Who* committed the crime (Indian versus non-Indian). For tribal jurisdiction, the alleged offender must be an American Indian. Depending on the offense,

derive from survey data, but rather, was reported to us by members of the Executive Committee for Indian Country Law Enforcement Improvements. It may substantially overestimate the actual number of tribal members served by the typical department. Data from the U.S. Census, the Bureau of Indian Affairs Labor Force Survey, and the tribes themselves suggest that the figure may be as low as 6,000. The simple and unfortunate fact is that data on the Native population actually served by police in Indian Country is of limited reliability. Indeed, the range of difference reported here suggests that researchers and policymakers must be especially wary of “per capita” estimates (for example, policing resources per tribal member served) and of policy recommendations that depend heavily on these figures; they can be made to say many things. This issue is discussed in greater detail in section V.A.5.

⁴⁰ This comparison is discussed in greater detail in section V.A.5.

⁴¹ This comparison is discussed in greater detail in section V.A.5.

however, Indians who are not members of the tribe on whose reservation the crime occurred may not fall under that tribe's jurisdiction. Regardless of the nature of the crime or the location in which it occurred, non-Indians are not under the jurisdiction of tribes.

- The *kind* of crime committed. As a result of the Major Crimes Act of 1885 (18 U.S.C.A. §1153), tribes have jurisdiction only over less serious crimes. Most serious crimes—including murder, manslaughter, arson, burglary and robbery—fall under the jurisdiction of federal authorities. However, some tribes have found ways to exercise increased authority over the investigation *and adjudication* of more serious crimes.⁴²

The other attributes of the criminal justice system in Indian Country that are most often highlighted by experts in the field and that are relevant to this discussion are: (1) like police departments in Indian Country, other Indian Country criminal justice agencies suffer from major resource constraints;⁴³ (2) there is a greater representation of non-professionals in the judiciary and the prosecution and defense bars than in non-Indian communities;⁴⁴ and (3) there is a severe shortage of jail space and correctional treatment programs, particularly with regard to substance abuse.⁴⁵

III.E. Summary

The context for policing in Indian Country can be summarized as follows:

- The communities served are aptly described as nations, and these nations exhibit an exceptionally wide variety of social, economic, and cultural characteristics. Even so, *most* Indian nations face severe social and economic problems.
- Departments serving most of the residents of Indian Country are administered either by tribes through a contractual arrangement with the BIA or directly by the BIA.

⁴² For example, tribal police and prosecutors sometimes charge alleged criminals with misdemeanors (over which Indian nations have jurisdiction) in addition to (or instead of) felonies (over which Indian nations do not have jurisdiction); this allows the community to keep the alleged criminal within the tribal system and/or seek some remedy even when the federal system is too over-burdened to pursue prosecution.

⁴³ See Mariam Odum, "Money Shortage Seen as Hindering Indian Justice," *New York Times*, October 4, 1991, p. A1.

⁴⁴ See, for example, Ada Pecos Melton, "Research on Indigenous Justice Systems," paper presented at the National Institute of Justice Strategic Planning Meeting on Crime and Justice Research in Indian Country, Portland, Oregon, October 14-15, 1998.

⁴⁵ Office of the Inspector General, Audit Division, "Criminal Justice in Indian Country," U.S. Department of Justice, Washington, DC, September 1996 (available online as <http://www.usdoj.gov/oig/au9616/961res.htm>).

- Departments have limited resources with which to accomplish their mission. This is exemplified by the typical department, which patrols a large land area with a small number of police officers, works with older equipment and facilities, and depends on a relatively small operating budget.
- The criminal justice system within which departments operate is similar to that of non-Indian communities, except for the stricter limits on tribal jurisdiction and the more prominent role of federal agencies.

IV. Crime Trends in Indian Country

IV.A. The Limitations of Indian Country Crime Data

IV.A.1. General Remarks

In recent years, policymakers and law enforcement professionals have become increasingly concerned that crime, particularly violent crime, is increasing rapidly on American Indian reservations.⁴⁶ The problem is all the more worrisome because we know far less than we would like about crime in Indian Country (on the tribal, regional, and national levels).⁴⁷ Broadly, the lack of accurate data on crime in Indian Country can be attributed to the under-reporting of crime. More specific reasons for the lack of accurate crime data include issues of culture, geography, and economics unique to American Indian reservations; the limited administrative and technological resources available to tribal police departments; inadequate coordination between tribal and federal agencies; and management problems common to both tribal and BIA police departments.⁴⁸ Furthermore, even when it is possible to obtain accurate tribal-level data, multiple and complex factors cause the prevalence and character of crime to vary widely from reservation to reservation, a fact which strongly cautions against using data from a few tribes as a basis for projecting overall trends. For example, during 1995 there were at least 15 homicides on the Gila River Reservation, a community with a robust economy and a population of approximately 10,000.⁴⁹ In contrast, the Oglala Sioux—a much larger tribe (40,000) that is plagued with serious social problems and a struggling economy—had only one homicide during a similar period. Equally dramatic examples can be found throughout Indian Country.

Policymakers and law enforcement professionals frequently focus on the obstacles to formulating effective anti-crime strategies.⁵⁰ While the information is useful, this focus tends to obscure much that is known about crime and its context in Indian Country—information that might be immediately useful to policymakers, law enforcement professionals, and tribal leadership.

⁴⁶ See, for example, William Claiborne, "Crime in Indian Country Rises Amid Crumbling Law Enforcement: Tribal Police Under-funded, Under-manned," *San Francisco Chronicle*, October 16, 1998, p. D5; "Why Does Violent Crime on Indian Lands Soar 87 Percent As It Drops Elsewhere?" *Crime Prevention News*, September 18, 1997, pp. 1-2; Executive Committee for Indian Country Law Enforcement Improvements, "Final Report to the Attorney General and the Secretary of the Interior," U.S. Department of Justice, Criminal Division, Washington, DC, October 1997; and, Seth Mydans, "Gangs Reach a New Frontier: Indian Reservations," *New York Times*, March 18, 1995, p. A1.

⁴⁷ Executive Committee for Indian Country Law Enforcement Improvements, "Final Report," above; and, Jacob R. Clark, "Complex Job in Changing Times: Law Enforcement in Indian Country is Anything But Easy," *Law Enforcement News* 22(443)(April 15, 1996):1, 6-7.

⁴⁸ The problem of data collection with regard to criminal justice issues and agencies in Indian Country is widely noted by researchers and policymakers. See, for example, Elias, "Criminal Justice Data Collection Issues in Indian Country," above.

⁴⁹ Clark, "Complex Job in Changing Times," above.

⁵⁰ Luna, "The Growth and Development of Tribal Police," above.

Therefore, while we discuss the factors contributing to a lack of accurate data on crime in Indian Country, we also draw attention to what is known and what that information suggests about the strategies presently available for addressing crime on American Indian reservations.

IV.A.2. Reasons for Poor Crime Data in Indian Country

Figure 1 summarizes the mechanisms noted above by which under-reporting of crime on reservations occurs. The mechanisms work on two levels—between reservation citizens and their police agencies and between these tribal-level police agencies and federal agencies, such as the FBI and the BIA.

On the first level, under-reporting is attributable to cultural and demographic factors that are highly characteristic of Indian Country. The extensive research literature on under-reporting of crime cites distrust of police, the shame and/or humiliation associated with certain kinds of crime, and fear of retaliation as strong predictors of under-reporting.⁵¹ These factors are unusually common in Native American communities. In many, there is a longstanding distrust of law enforcement authorities. On social, cultural, and even political levels, the issues of shame and fear of retaliation are also present. Tribal members under-report because of the shame associated with crimes such as child abuse, child neglect, and domestic violence; because of their fear that the (typically) small, intimate reservation community will be unable to “protect” those who report such crimes; and because close and complicated family and clan relationships between victims, offenders, and police officers discourage it.⁵²

Unfortunately, these causes of under-reporting of crime are exacerbated by other characteristics of reservation life.⁵³ For example, geographic isolation from police departments and from tribal social service agencies heightens the fear of retaliation that victims of family violence may have and further discourages reporting. On some reservations, this fear is increased even more by a lack of ready access to telephone service in isolated and/or poor villages. Data from the 1990 Census show that “the majority of American Indian homes on reservations (53 percent) did *not* have a telephone.”⁵⁴ (By comparison, only 9 percent of non-metropolitan households in the U.S.

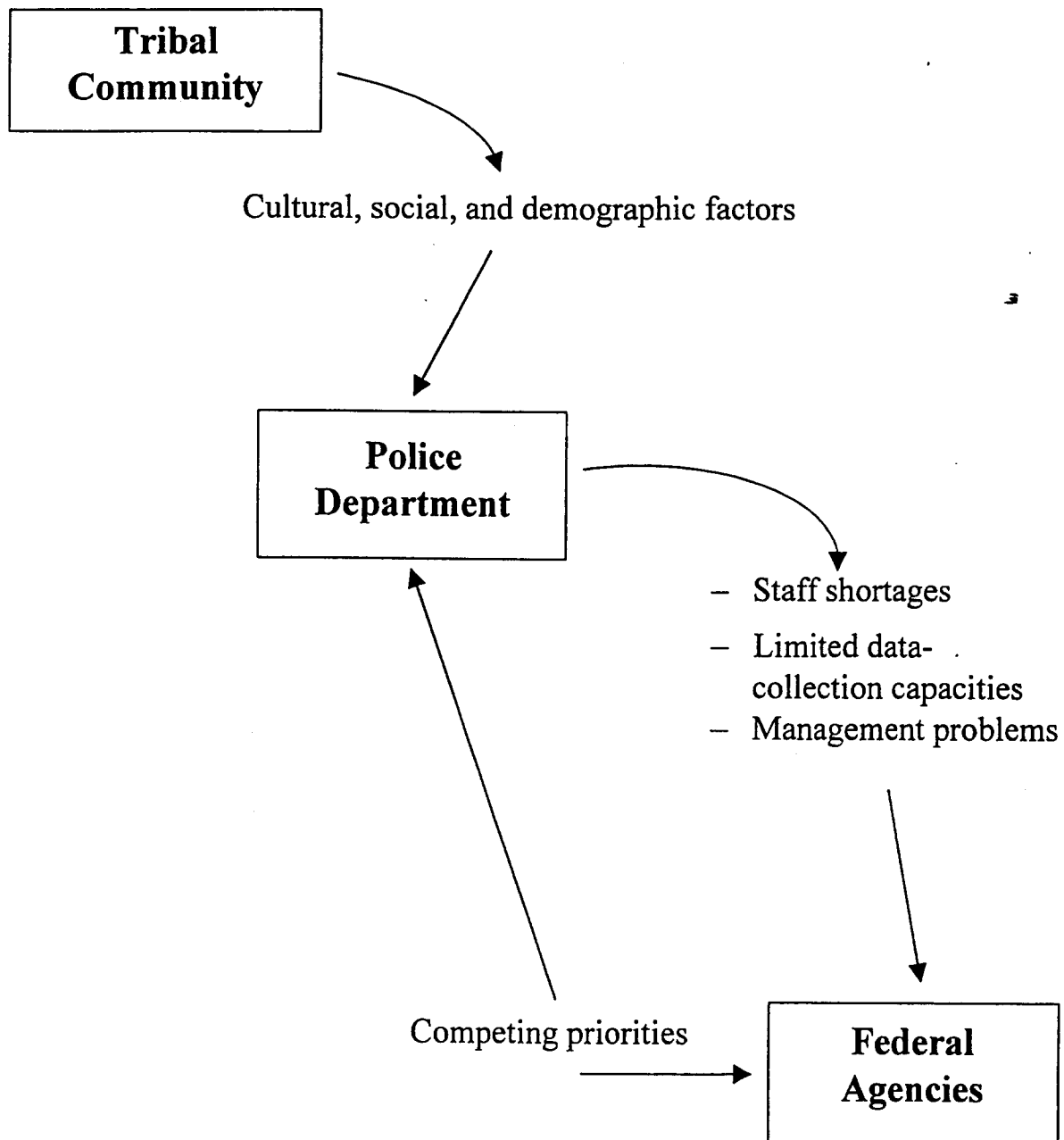
⁵¹ Wesley Skogan, “Dimensions of the ‘Dark Figure’ of Unreported Crime,” *Crime and Delinquency* 23(January 1977):41-50; and, Eidell Wasserman, “Issues in Conducting Research on Crime Victimization,” paper presented at the National Institute of Justice Strategic Planning Meeting on Crime and Justice Research in Indian Country, Portland, Oregon, October 14-15, 1998.

⁵² Many of these problems are not unique to Indian Country but are common to the small, tightly knit communities of rural areas across the country. See, for example, Ralph A. Weisheit, L. Edward Wells, and David N. Falcone, “Crime and Policing in Rural and Small-Town America: An Overview of the Issues,” National Institute of Justice *Research Report*, Washington, DC, September 1995.

⁵³ See, for example, Robert A. Silverman, “Patterns of Native American Crime,” in Marianne Nielsen and Robert A. Silverman, eds., *Native Americans, Crime, and Justice* (Boulder, CO: Westview Press, 1996), pp. 58-74.

⁵⁴ Bureau of the Census, “Housing of American Indians on Reservations—Equipment and Fuels,” Statistical Brief, U.S. Department of Commerce, Washington, DC, April 1995, p. 1.

Figure 1: Under-reporting of Crime In Indian Country



Data are lost in each of these flows.

population overall did not have a phone.⁵⁵) Finally, in those tribes where traditional means of dispute resolution and social norm enforcement have declined but where new methods, like police intervention, are not readily available or are not viewed as legitimate or effective by the tribal community, many crimes may never come to the attention of police authorities.⁵⁶

The second level at which under-reporting occurs originates with reservation police departments. Even when citizens report crimes or these crimes are otherwise made known to police departments, data are either not collected or not forwarded to federal agencies. Four different types of problems—most of which are associated with the typically small size of departments in Indian Country—play the greatest role in this level of under-reporting: staff shortages and time constraints, limited data collection capacities, competing federal and local priorities, and problems with department administration and management. These are discussed in turn in the paragraphs that follow.

The small size of police departments in Indian Country places time constraints on staff, so that the collection of data is extremely expensive relative to the overall budget of the department. Police officers and other staff in the departments we visited referred to themselves as generalists and commented that the time needed for specialized administrative tasks competes with, and often loses out to, crime fighting and the provision of emergency services. When police officers must also serve as jail staff, as is the case in approximately 50 percent of all departments surveyed, their time is stretched even further. Simply put, because these typically small departments cannot “afford” to dedicate staff to *any* specialized function, the cost of data collection and analysis is much greater than it is for larger departments.

Small departments serving small communities often lack systematic methods for collecting and analyzing crime data. Like other observers, we found that many Indian Country police departments do not have automated call management (i.e., 911 systems) and data collection and analysis systems; survey results suggest that approximately half of the departments lack them. (For several tribes we visited, data regarding crime reports and arrests could be collected only by reviewing handwritten records—and in some cases, even this level of effort was not possible, because written records were not consistently maintained.) There seem to be two reasons for the limited amount of automation—Indian police departments’ scant resources, which have made the purchase of such systems prohibitively expensive, and the typically small size of reservation communities, which for many years did not require sophisticated call and data management capacity for adequate policing. As tribal populations and crime both increased,⁵⁷ Indian police departments suddenly found themselves far behind their larger, urban counterparts, and

⁵⁵ Ibid.

⁵⁶ See *Judicature* 79(3)(1995), a special issue entitled “Indian Tribal Courts and Justice”; and, especially, Ada Pecos Melton, “Indigenous Justice Systems and Tribal Society,” *Judicature* 79(3)(1995):126-133.

⁵⁷ We note again that tribal populations are growing at a much faster rate than the overall U.S. population (see Indian Health Service, *Trends in Indian Health 1996*, above) and that some reservation communities report the return of tribal members as a result of improved economic opportunities. Some interviewees speculated that, having lived away from the stabilizing influence of culture and extended family, returning members have an increased predisposition to crime.

somewhat behind their comparable rural counterparts, in building such systems.⁵⁸ An additional complication, related to the problem above, is that even some departments *with* automated systems for data collection and analysis cannot maximize the benefits of these systems, since the departments do not have staff trained to use them to their full advantage.

Even when data are collected, the reporting of data (and the referral of cases) by tribal departments to federal agencies has been problematic. As recently as 1996, for example, one northern plains tribe reported no major crimes of any kind to federal officials for several months—a precipitous and unlikely decrease over the previous period.⁵⁹ In large part, the problem arises because of competing local and federal priorities, which means that individual Indian police departments have little or no incentive to report data on major felonies. Because the communities they police are typically small and/or highly inter-connected, officers already have a good sense of the prevalence of serious crimes, and it is difficult for them to see how an official compilation of data would provide them with any better information. Because Indian police officers spend so much more time on routine patrol activities than they do on the crimes covered by federal reporting requirements, reporting may appear fairly unimportant to them. And, if tribal police feel that federal agencies give low priority to the prosecution of crimes that occur on reservations, they may believe that reporting serves no purpose.⁶⁰ Unfortunately, while the impact on individual tribes may be negligible, the failure to report or refer these serious crimes has important implications for understanding the prevalence and distribution of crime on regional and national levels. Such data might, for example, be very useful in better

⁵⁸ Of course, the lack of automated call management and data collection systems is not unique to Indian Country. Whether or not a police department has such a system is determined to a significant degree by the size and location (urban vs. rural) of the department. While virtually all of the departments serving U.S. cities of 50,000 or more have some kind of 911 system, in 1993 only 70 percent of the departments serving communities of fewer than 10,000 had one (or used an existing system in partnership with a local law enforcement agency such as a sheriff's department or the state police), and that percentage decreases further with the size of the community served. The situation is similar with regard to computerized data management. While nearly all of the departments in the country that serve populations over 10,000 have a data management system, in 1993 only 39 percent of the departments serving communities smaller than 2,500 had them. (Brian A. Reaves, "Local Police Departments, 1993," Bureau of Justice Statistics, U.S. Department of Justice, Washington, DC, April 1996.) In this context, the lack of 911 systems in Indian Country seems less dramatic, but the point remains that without methods for the systematic collection and analysis of crime data, Indian police departments will tend to under-report crime.

⁵⁹ Interview with Ted Quasula, chief of the Bureau of Indian Affairs Division of Law Enforcement Services, December 1997.

⁶⁰ On the other hand, federal agencies complain that tribes do not refer cases in a timely manner (thus, evidence is not fresh and witnesses are difficult to locate or their memory has faded) or that preliminary preparation of the cases has not been adequate. Both the tribal and federal problems are widely reported; see, for example, the Native American Subcommittee, House Interior and Insular Affairs Committee, "Proceedings from the Oversight Hearing on BIA Law Enforcement," U.S. House of Representatives, Washington, DC, March 18, 1994; and, Senate Committee on Indian Affairs, "Proceedings from the Summit on Charting the Future of Justice in Indian Country," U.S. Senate, Washington, DC, October 28, 1997.

understanding crime on reservations close to urban areas or near international borders where the illegal activity associated with urban gangs, drug trafficking, and illegal immigration might follow significant regional or national patterns.⁶¹

Problems with department administration and management also stymie the collection and reporting of reservation crime data. While section V provides more detail on these issues, we provide one example here of how such problems (striking in their triviality but alarming in their frequency) work against the efficient collection of useful crime data. In this case, the many police districts in the department of a large plains tribe were required to submit incident report records to the department headquarters at a fixed date each month. Districts were notoriously late with their submissions, but the response was neither to modify deadlines nor to work with districts to improve reporting. Instead, late information was simply discarded.⁶² As a result, this information was unavailable to the tribe and to federal agencies for purposes of planning and management.

IV.B. The Prevalence, Distribution, and Character of Crime on American Indian Reservations

Given the above constraints on developing a detailed, accurate analysis of crime trends, in this section we describe what the *general* prevalence, distribution, and character of crime on reservations suggest about the evolving role of police in Indian Country. Three factors appear most important:

- First, though it is difficult to accurately describe crime trends in Indian Country, we can say with some confidence that the overall workload of police departments in Indian Country has been increasing at a significant rate. In other words, the intensity and range of problems that police departments in Indian Country must respond to appear to be increasing.
- Second, the fact that many Native reservation residents live in rural, isolated areas, and that the resources and technologies available to effectively police these areas are in short supply, tends to obscure the fact that a significant percentage of reservation populations has settled in semi-urban communities and much, if not most, crime on reservations occurs in these fairly dense communities. Crime in

⁶¹ These reporting problems exist not only between tribal and federal law enforcement agencies, but also between *tribal* criminal justice agencies. For example, in several of the systems we studied in depth, the juvenile division of the tribal courts compiled data on juvenile crime but did not regularly pass it on to the tribal police department—either because it was never asked for it or because the police department rarely utilized the information for planning purposes.

⁶² Problems with this department were widely reported in *Indian Country Today*. See, for example, Jean Roach, “Evaluation Could Lead to Changes,” *Indian Country Today*, February 3-10, 1997, p. C-1, and David Melmer and Jean Roach, “Pine Ridge Public Safety Unworkable,” *Indian Country Today*, February 3-10, 1997, p. A-1. Also see the report by Edwin Naranjo, Frank Adakai, Brent LaRocque, Warren LeBeau, and Dwain Holland, “Oglala Sioux Tribe, Department of Public Safety Program Review,” Aberdeen Area Office, Division of Law Enforcement Services, Bureau of Indian Affairs, U.S. Department of the Interior, Albuquerque, NM, October 1996.

these areas may be amenable to well-developed, tested approaches and strategies from urban contexts.

- Third, notwithstanding the recent reports of dramatic increases in violent crime on reservations, especially among youth, the crimes that most occupy police in Indian Country (as measured by calls for service, incident reports, and arrests) are those that directly or indirectly relate to alcohol abuse. Alcohol-related crime is a deep and complex problem that, by contrast to the problem of violent crime, has received insufficient attention.

IV.B.1. The Rising Workload of Police Departments in Indian Country

The workload of police departments in Indian Country is increasing at a significant rate. General evidence of this trend comes from our survey data, brief site visits, and four intensive site visits. Specific evidence is given in Figures 2–4, which provide approximations of the increase in calls for service, incident reports, and arrests from the Tohono O’odham Nation, the Three Affiliated Tribes of the Fort Berthold Reservation, and the Confederated Salish and Kootenai Tribes of the Flathead Reservation. The Tohono O’odham figures show an average annual increase between 1994 and 1996 of more than 20 percent in incident reports and nearly 30 percent in arrests. During that period, not only did the overall pressure on the department increase, but so did the workload of individual officers, as the number of sworn officers remained relatively constant. The Three Affiliated Tribes’ figures show an average annual increase in arrests of more than 30 percent between 1992 and 1994. As at Tohono O’odham, this led to an increased demand for service from individual officers, since the increase in calls for service and arrests outpaced the expansion of the Fort Berthold department staff.⁶³ The Confederated Salish and Kootenai Tribes’ figures show an average annual increase of 15 percent in calls for service and 44 percent in cited offenses from fiscal year 1992 to fiscal year 1996. Several new officers were hired in fiscal year 1995, but again, not in proportion to the additional workload.

Certainly, anecdotal evidence suggests that these workload increases are due in part to increases in serious crime and emergencies on reservations. But other simple explanations should not be overlooked. For example, unlike many smaller Indian police departments, the Tohono O’odham department has a 911 system; there, the community’s increased reliance on 911 is a strong contributing factor to the increase in calls for service. Likewise, these systems may be a broader cause of the increased workloads we observed across Indian Country. As Indian police departments implement automated call management, they may be experiencing the surge in high priority calls and heightened demand that big-city departments experienced once they established 911 systems.⁶⁴ For the Confederated Salish and Kootenai department, the large increase in demand from fiscal year 1994 to 1995 occurred as a result of “retrocession,” by which the state

⁶³ Since 1996, both departments have significantly expanded, in part due to COPS funding. While new staff have better enabled these departments to respond to the increased demand for police services, the rapid personnel expansion has created significant organizational challenges. Furthermore, the fact that COPS funding has a sunset clause means that many departments in Indian Country will once again be vulnerable to this increase in demand.

⁶⁴ Sparrow et al., *Beyond 911*, above.

Figure 2a: Tohono O'odham Incident Reports, 1994-1996

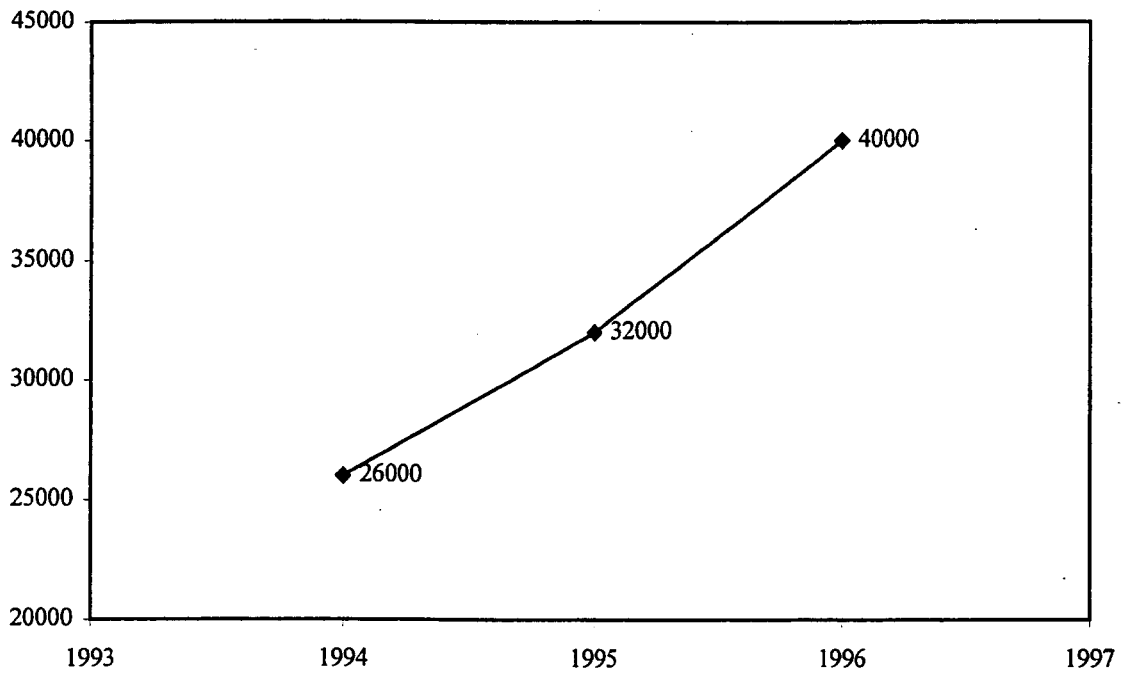


Figure 2b: Tohono O'odham Arrests, 1994-1996

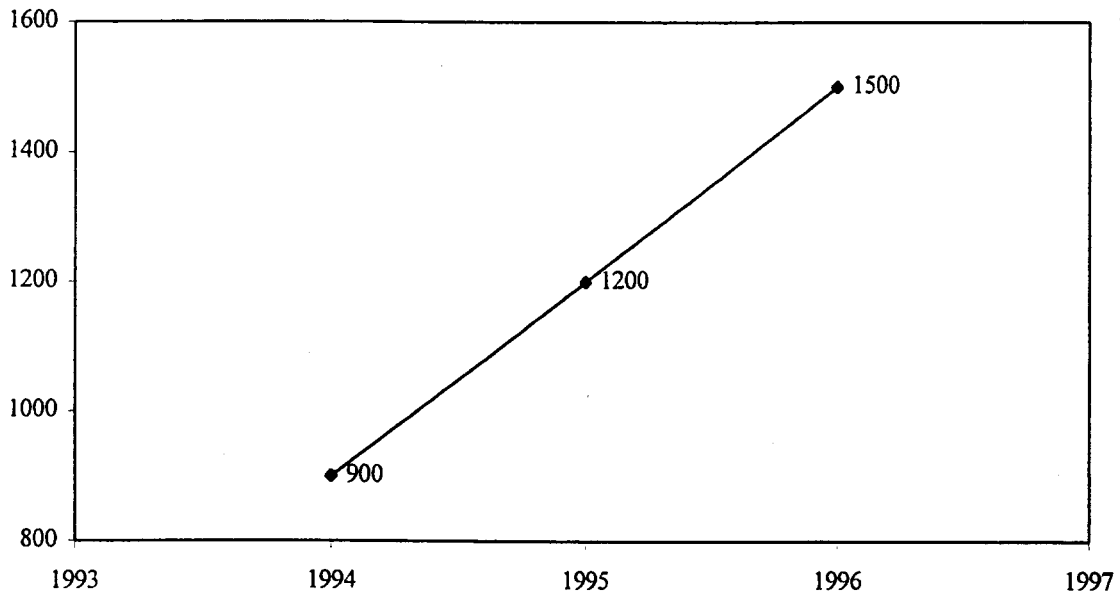


Figure 3: Fort Berthold Agency Law Enforcement Arrests, 1988-1994

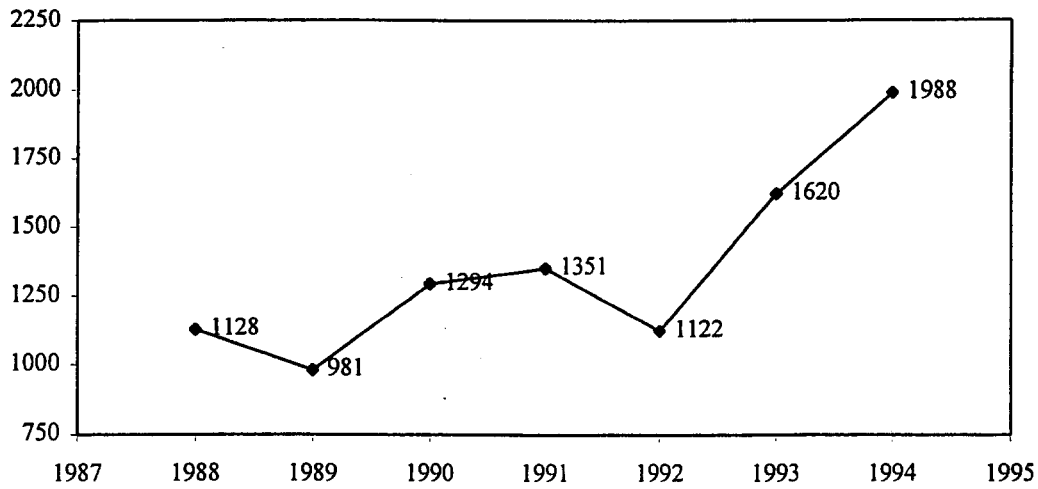
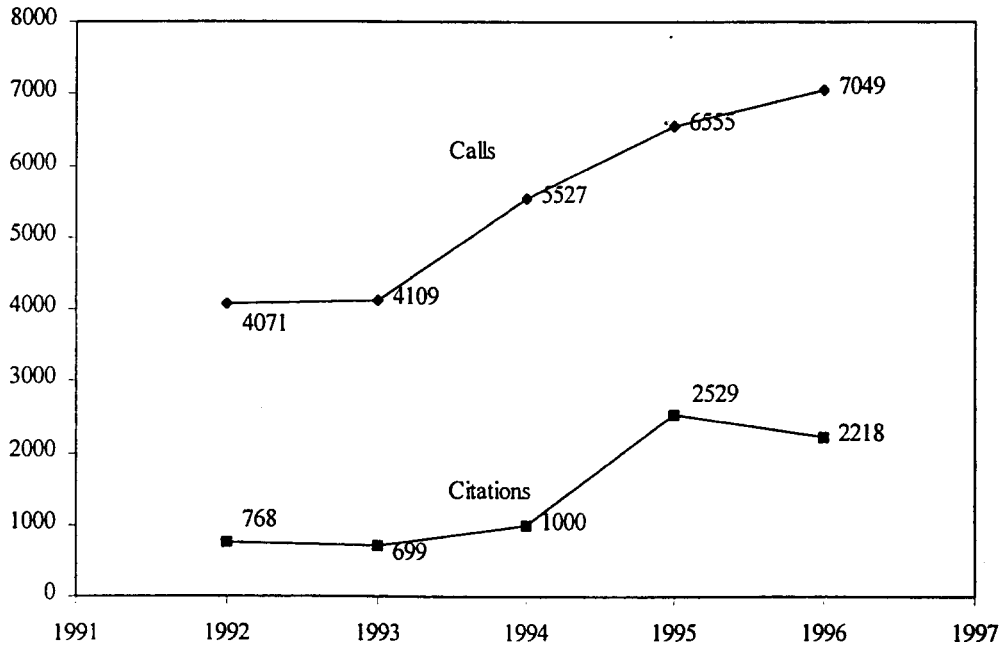


Figure 4: Confederated Salish and Kootenai Citations and Number of Calls, 1992-1996



of Montana ceded control over reservation policing to the tribe (this change is discussed in greater depth in section V.B.3.). While this was a fairly dramatic increase in tribal control, in which a tribe subject to the authority of PL 280 regained former rights, other Indian nations are also increasing their jurisdictional sweep, largely through cross-deputization agreements. Thus, another simple cause of Indian police departments' increased workloads is increased authority over the offenses committed within reservation boundaries.

Yet, there is good reason to believe that the increased workloads of Indian police departments are not simply the result of rising serious crime and emergencies, the greater availability of 911 services, or expanded jurisdictional rights. It appears that communities also are placing new demands on police departments to respond more frequently and more rapidly to a broad range of problems. Many researchers have asserted that tribal communities have become less and less reliant on traditional methods of problem or conflict resolution and more reliant on the police.⁶⁵ Our observations support this conclusion. For example, at Tohono O'odham, not only has the demand for police services increased, but in recent years, there has also been a steady increase in the tribal advocates' caseloads;⁶⁶ by 1996, each of the ten advocates handled approximately 500 cases a year, an estimate that does not include the cases handled by private attorneys and other legal services providers on the reservation. Similarly, defense advocates at Gila River reported that they stopped accepting "traffic" cases (misdemeanor violations of tribal traffic laws) in the early 1990s because so many more serious cases filled their dockets.

IV.B.2. The Geographic Distribution of Reservation Crime

The argument is often made that the unique demographics and geography of Indian Country require uniquely "rural" approaches to crime prevention and control. But, in general, researchers and police professionals have found that such strategies are not as well developed as those for urban areas.⁶⁷ Most rural strategies leave unsolved the problem of how to provide adequate police coverage to widely spread communities.⁶⁸ Police professionals in Indian Country often describe how a single call from an outlying area of a large reservation can take an officer "out of service" for several hours, perhaps even a full day. That creates a serious coverage problem for departments in which only one to three officers are on duty at any one time.

Conversely, it is often under-emphasized that while many reservation residents live in isolated rural areas, a significant number have settled in semi-urban townships and villages, and much, if

⁶⁵ See, for example, Marianne E. Nielsen, "Major Issues in Native American Involvement in the Criminal Justice System," in Marianne E. Nielsen and Robert A. Silverman, eds., *Native Americans, Crime, and Justice* (Boulder, CO: Westview Press, 1996), pp. 293-303; and, the Royal Commission on Aboriginal Peoples, "Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada," Canada Communications Group, Ottawa, Canada, 1996.

⁶⁶ Tribal advocates provide free legal services to tribal members.

⁶⁷ Weisheit et al., "Crime and Policing in Rural and Small-Town America," above.

⁶⁸ See, for example, Gary Corder, ed., "Neighborhood-Oriented Policing in Rural Communities: A Program Planning Guide," Bureau of Justice Assistance, U.S. Department of Justice, Washington, DC, August 1994.

not most, crime on reservations occurs in these more densely populated areas. At Tohono O'odham, for example, half of the reservation's population of 14,000 lives in Sells, Arizona, but considerably more than 50 percent of the incidents that officers initiated or responded to in 1995 and 1996 took place there. In addition, officers estimated that of these calls, the majority originated in two relatively small HUD developments known as the "rentals," while another 18 percent originated in a small "urban" area near the city of Tucson. At Fort Berthold, approximately 1,500 of the almost 2,000 arrests made by the police department in 1994 were made in the relatively densely populated New Town district, an area which is home to 50 percent of the reservation's total population. Gila River police officers also identified the HUD rental developments in Sacaton and St. Johns as high-crime/frequent-call areas, and at Flathead officers identified a crowded trailer park in one small reservation town as a particularly troublesome site. It is quite possible that in such areas, police could use strategies developed for urban areas both effectively and efficiently.

In addition to their semi-urban character, these neighborhoods exhibit numerous and unmistakable signs of decay and abandonment that invite crime.⁶⁹ We distinguish this from the casual disorder that may be a cultural variant and not necessarily a reliable indicator that an area has, in some significant way, been abandoned by local residents and authorities. As noted above, crime in the town of Sells on the Tohono O'odham reservation and in the towns of Sacaton and St. Johns on the Gila River reservation is most prevalent in run-down public housing areas that share many attributes of big-city public housing developments. At Tohono O'odham, the "rentals" contrast dramatically with a nearby immaculate and orderly village, Big Fields, in which very little crime occurs; tribal police officers reported that they rarely patrol Big Fields, simply because crime is so low there and, in any event, residents "look out for each other." In a HUD housing development on the Flathead reservation, crime and disorder dropped precipitously when residents mowed lawns, cleaned up the neighborhood, and reported illegal or suspicious activities to police. These results are similar to results in big-city neighborhoods when residents take an active stand against physical disorder, abandonment, and decay. Again, strategies that have proven useful in urban areas might be applicable to dense reservation housing areas also.

In sum, an analysis of the geographic distribution of crime on reservations suggests that useful means of addressing crime in urban areas—strategies like community policing, which have led to interventions like Boston's Operation Ceasefire, and other fruitful problem-solving approaches, such as those that have led to the eradication of open-air drug markets—are underutilized *or at least under-tested* in Indian Country. Indeed, such approaches might have particular promise in reservation housing projects, since their limited size and population might permit police to more easily develop detailed and expert knowledge of key community characteristics, which is vital for successful problem-solving.

⁶⁹ James Q. Wilson and George L. Kelling, "Broken Windows: The Police and Neighborhood Safety," *The Atlantic* 249(3)(March 1982):29-38.

IV.B.3. Alcohol-Related Crime in Indian Country

Alcohol-related crime and violence remains by far the biggest problem for reservation police,⁷⁰ notwithstanding recent reports of dramatic increases in violent crime in Indian Country, particularly youth violence.⁷¹ Certainly, we are aware that assessing alcohol abuse as a leading problem in Indian Country is not new, and that the “finding” may even sound trite. But we stress that this conclusion was drawn by tribal members, tribal leaders, and tribal police officers first, and that we are simply reporting it here. In particular, the conclusion that alcohol-related crime is *the leading crime problem* in Indian Country is based on evidence from our survey and site-visit tribes. Across all survey responses, for example, the constellation of crimes that were directly related to alcohol abuse (crimes such as DUI, the sale of alcohol to minors, and drunk and disorderly conduct) or were indirectly related to alcohol abuse (crimes such as domestic violence, child abuse and neglect, and assault) constituted the leading category of calls for service, incident reports, and arrests. Also, the great majority of police officers and administrators, tribal leaders, and community members we interviewed cited alcohol abuse as the single biggest challenge facing their departments and communities. The commanding officer at Fort Berthold, for example, estimated that 90 percent of their calls for service were driven by some form of alcohol abuse. Similarly, an acting commanding officer at Gila River estimated that 98 percent of calls were alcohol-related. While it did not focus on reservation residents but on American Indians overall, a recent Bureau of Justice Statistics study provides additional evidence of these claims. Analysis of victimization data shows that “American Indian victims of violence were the most likely of all races of victims to indicate that the offender committed the offense while drinking.” Also, “the 1997 arrest rate among American Indians for alcohol-related offenses was more than double that found among all races,” although drug arrest rates were lower than average.⁷²

We do not dispute that alcohol abuse is a difficult problem and that police involvement is only one part of the solution to alcohol-related crime. Community members realize this as well. For

⁷⁰ Other research confirms this finding: Indian Health Service, *Trends in Indian Health 1996*, above; and, J. Phillip Gossage and Philip A. May, “Substance Abuse and Crime in Indian Country,” paper presented at the National Institute of Justice Strategic Planning Meeting on Crime and Justice Research in Indian Country, Portland, Oregon, October 14-15, 1998.

⁷¹ See, for example, Jacob R. Clark, “No Reservations About Gangs: Urban Youth-Crime Problem Infects Indian Country,” *Law Enforcement News* 22(447)(June 15, 1996):1, 6; Melissa Goldblatt, “Getting a Grip on Gangs: Tribes Dish Up Tough Love to Stop Gang Membership,” *American Indian Report* 14(4)(April 1998):26-27; and, Debra Weyerman, “And Then There Were None,” *Harper’s Magazine*, April 1998, pp. 60-70. Also, the President’s FY99 budget includes specific appropriations to combat crime on Indian lands: \$51 million for “20 FBI agents and 26 attorneys to enhance investigations and prosecutions by attacking violent crime and gangs, establishing the Indian Tribal Courts Program, and creating a New Drug Testing and Intervention Program” (quoted from “DOJ Seeks 4.4% Raise for FY99, With Prevention Programs Increasing 19%,” *Crime Prevention News* 98-3(February 5, 1998):1.

⁷² Lawrence A. Greenfeld and Steven K. Smith, “American Indians and Crime,” Bureau of Justice Statistics, U.S. Department of Justice, Washington, DC, February 1999, pp. vi and vii.

instance, the director of the Gila River Indian Community Department of Social Services expressed a belief that a comprehensive community strategy for combating alcohol abuse was the only way that further inroads could be made against crime and the other social problems associated with alcohol abuse. Members of the Gila River Youth Council reported that they helped found a local Boys and Girls Club so that young children living in homes where alcohol abuse was common could be exposed to more positive role models. In other words, tribal community leaders acknowledge the need for broad-based and creative solutions.

Despite this caveat, it is also the case that police departments in Indian Country are not organized to deal most effectively with alcohol-related crime. For instance, many departments have drug task forces, largely funded through special federal programs, but these focus on "harder" drugs than alcohol. Among the Salish and Kootenai, for example, drug task force officers were highly focused on methamphetamine, which was being transported and marketed via the reservation, but largely to non-Natives. We found no evidence of similar comprehensive planning and deterrence programs that deal with alcohol-related crime. If such programs exist, they are rare. Perhaps more so than other crime categories, alcohol-related crime reflects an entire nexus of social problems and, as the Director of Social Services at Gila River attested, requires broad solutions. Yet at one of the sites we visited, when asked for directions to the Department of Social Services, police department officials provided directions to a building that Social Services had not occupied for a year. Where police departments lack basic connections to such vital partners as social service programs, it is another sign that they are not organized to respond to the dire problem of alcohol-related crime. One of the ways to begin addressing these organizational problems is to give alcohol-related crime the attention and prominence that it deserves.

V. Organization and Management of Police Departments in Indian Country

In this section, we examine the ways in which police departments serving American Indian reservations are organized and managed to respond to crime. We begin by adding depth and detail to the description of police departments provided in the section on context, including a fuller account of their budgetary resources. Then, using both the perspective provided by our survey and specific data from the departments we studied intensively, we examine the organization, strategic planning systems, organizational technology, and personnel systems that Indian police departments employ in their efforts to address crime.⁷³ While we frequently draw attention to the ways that the federal and tribal governments support the police function, a more comprehensive discussion of their roles is reserved for the next section.

V.A. Characteristics of Departments Serving Indian Country

Earlier, we presented a brief profile of the “typical” department in order to focus our analysis and recommendations; we complete this picture with a description of the variation found in the more than 200 tribally and BIA-administered police departments in Indian Country. Luna offers a detailed statistical profile of these departments; another is being developed by the COPS office.⁷⁴ Therefore, while we offer some basic statistics, our focus is on the core management challenges across the range. We roughly group these management challenges as follows: size, administrative arrangements, staffing and personnel, and funding.

V.A.1. Size

Small departments: These very small departments have at most nine and usually fewer officers. While there are many more small departments (approximately 150) than medium-sized or large departments, they serve substantially fewer people—between 25 and 30 percent of the citizens served by BIA and tribally administered police departments in Indian Country.

Among the most important problems facing these departments is the challenge of providing daily, around-the-clock police coverage to their communities. These departments rarely have more than one officer on duty at any time. As a result, officers in these departments often work without adequate back-up and common events, such as an officer’s illness or need to testify in court, can substantially reduce or eliminate the availability of police services.

The officers working in these departments are truly generalists, as they work not only across different police functions but in administrative and support functions as well. They may serve as dispatchers, investigators, patrol officers, detention officers, and custodians. During site visits, we even observed patrol officers in these small departments preparing food for detainees and sentenced inmates. In the not-so-distant past, tribal police sometimes also served as

⁷³ We review the role of management information systems in the section on crime trends and briefly in our conclusion and recommendations.

⁷⁴ Luna and Walker, “Policing in Indian Country,” above; Luna, “The Growth and Development of Tribal Police,” above; and, Wood, “Law Enforcement Survey,” above.

prosecutors.⁷⁵ Organizational charts for departments of this size do not adequately reflect the variety and complexity of the work their officers perform.

Medium departments: These departments have between 10 and 45 sworn officers. There are more than 75 medium-sized police departments in Indian Country, serving roughly 60 percent of the Native Americans living in reservation communities subject to BIA or tribal policing. The “typical” department we describe in section III.C.6 is medium-sized and, therefore, gives an apt indication of the management challenges these middle-range departments face.⁷⁶

The key organizational attribute that distinguishes medium-sized departments from small departments is that a minimum of one or two officers are on duty at all times. That is, it is *theoretically* possible for these departments to provide 24-hour police coverage, even though it may be quite difficult in *practical* terms. At the low end of the size range, in terms of the demands made upon staff members to perform a wide range of duties, the departments face challenges similar to those of the small departments in Indian Country. At the high end of the size range, the departments can support *some* specialized activities; not only are “patrol” officers free to focus on standard patrol activities, but some officers may specialize in areas such as gang violence, substance abuse, and domestic violence. This transition is notable. It may signal that there is a staffing level at which specialization can enable a department to focus on critical strategic and planning issues (a focus that is not possible if officers and command staff are obligated to respond to a wide range of demands).

During the last few years, many medium-sized departments have experienced significant growth in staff, primarily through COPS grants. For example, the Three Affiliated Tribes department almost doubled in size. A few other tribes have been able to augment police staffs with their own resources. One of our site-visit tribes, the Gila River Indian Community, used gaming profits to double the size of their patrol staff, from approximately 18 to 38 officers.

Large departments: Two departments in Indian Country—the Navajo Nation’s and Oglala Sioux Tribe’s police departments—have 100 or more uniformed officers. Together these departments serve approximately 15 percent of the nearly 1.4 million residents of Indian Country. Both the Navajo Nation and the Oglala Sioux Tribe have 638ed their police functions.

These large departments feature levels of organizational complexity not present in small and medium-sized departments. Increased specialization, more elaborate (but not necessarily more efficient) oversight mechanisms, and district-based organization are some of the factors that drive the complexity. Surprisingly, however, some of the primary management challenges that large departments face are similar to those in smaller departments. For example, for many years, the Oglala Sioux Tribe’s Department of Public Safety (OSTDPS) had approximately 85 officers spread over nine districts, and each district had its own local command staff. While district-

⁷⁵ Interview at Mescalero Apache, March 1996.

⁷⁶ As we noted, the typical department has approximately 32 employees, 16 of whom are sworn officers. It serves a large land area with a relatively small population, which is located in both rural areas and more densely populated, “semi-urban” communities. Like most departments in Indian Country, the typical department works with a limited resource base. It is administered either by the tribe through a 638 contract or by the BIA.

based organization had some positive aspects, it also created a high ratio of command staff to sworn staff. As in small departments, demands on OSTDPS's patrol staff to perform a wide range of duties, many unrelated to the patrol function, were considerable. Similarly, despite the overall size of the department, OSTDPS's district-based organization presented a formidable challenge in providing adequate police coverage over the entire expanse of the Pine Ridge reservation. In recent years, challenges such as these, as well as the problems of managing a large department in a large, highly politicized community, have put tremendous pressure on the largest police departments in Indian Country.

V.A.2. Administrative Arrangements

The two most common department types are BIA-administered and tribally administered 638ed departments. These classifications appear straightforward, but the complexity of organizational and administrative arrangements is significantly increased by the following factors:

(1) *The variety of administrative arrangements for policing in Indian Country.* As discussed in the section on context, 638 and BIA departments are only the primary administrative possibilities.

(2) *The split in line authority for the investigative and patrol functions between different divisions within the BIA.* Until very recently, the BIA's Law Enforcement Division, headquartered in Albuquerque, had line authority for criminal investigation (that is, line authority was placed at the national and regional levels), while BIA superintendents at the reservation level had line authority over other police functions, including patrol, dispatch, and detention (that is, line authority was placed at the local level). In a handful of cases, one function was 638ed while the other was provided by the BIA.

(3) *The presence of both federal and tribal sworn officers in many departments administered by the BIA.* In BIA departments, officers hired by the BIA are federal employees. However, many tribes also have hired tribal officers to supplement the limited number of BIA positions.

Despite these complicating factors, it is possible to describe the general "reporting" arrangement between tribes and the departments that serve them. When the department is administered by the BIA, the reporting relationship is mediated by the BIA. That is, the BIA, not the tribe, has direct supervisory responsibility over the department's executive (although in practical terms, tribes wield considerable power over many decisions regarding department policies). When the tribe administers the department under a 638 contract, the reporting relationship between police departments and the tribes they serve is not mediated by an outside party. This direct supervision may be exercised in a variety of ways—oversight might be provided by tribal executives (variously known as tribal chairs, presidents, and governors), by elected legislative committees, or by other appointed bodies.

An interesting and often difficult oversight issue arises in the increasingly numerous “split” departments described in item three above.⁷⁷ The usual approach in these departments is for tribally funded officers to be supervised by the BIA police department command staff through a formal agreement with the tribe. Because of the implications this arrangement has for department management, it should not be regarded as a “paper” complexity. First, the dual authority structure allows compensation, training, and equipment inequities, which are likely to lead to personnel and management problems. In our survey, for example, tribes frequently reported that the salary and benefit packages of tribal officers tend to be less attractive than those of BIA officers, who, as federal employees, are eligible for the more generous federal packages.⁷⁸ These differences may create an incentive system that results in a group of officers with inferior capacities. When tribal officers have been hired with COPS program funds, the problem worsens.⁷⁹ Because the COPS program does not provide training or equipment funds, some tribes have expressed reluctance to make these kinds of investments in officers who, due to the time limit on COPS grants, may be with their departments for only a few years. Second, the dual authority structure may create a group of officers who have a stronger loyalty to the tribal government than to their BIA managers. In the dynamic political context of Indian Country today, experience has shown that this division of loyalties may be problematic. During intense political conflicts, for example, disputants have ordered “tribal” officers to arrest or detain “federal” officers and vice versa.

V.A.3. Staffing and Personnel

In general, the sworn officers in Indian police departments are high school graduates (100 percent) and graduates of certified law enforcement training academies (85 percent). Although the figures are comparable to those for non-Indian departments across the country, department leaders frequently noted that such figures mask important deficiencies in the qualifications of current police personnel, as well as serious problems with recruiting qualified officers. (In fact, departments ranked problems with recruiting and training qualified applicants as among the most serious they faced.) For instance, more so than in non-Indian communities, required background checks turn up issues that disqualify prospective officers from service. In a few cases, the percentage of graduates from law enforcement academies was substantially lower than 85 percent. It is likely that these departments included large numbers of newly hired officers—often, these additions were made possible with COPS funding—who had not yet had an opportunity to attend a law enforcement academy. Unusually large numbers of new hires can

⁷⁷ Approximately 40 percent of all BIA-administered departments in our survey reported that they employed both tribal and BIA officers.

⁷⁸ The Gila River Indian Community was a prominent exception to this finding. Before the police department was established, tribal officers’ salaries were higher than those of BIA officers due to a 20 percent salary increase given to all tribal employees in September 1996. Federal retirement benefits had not been matched, however.

⁷⁹ The grants were designed to facilitate the implementation of community policing and, as such, were naturally directed to *local* police departments. Therefore, federal agencies, such as BIA police departments, cannot apply for COPS funding, and the new officers must be tribal employees.

result in considerable waiting periods for available slots at nearby city, regional, or state police training academies.

Two-thirds of the officers in the departments we surveyed were Native American, and 56 percent were members of the tribes they served.⁸⁰ In Indian Country, where issues of culture and sovereignty are pronounced, the fact that, on average, only half of the members of a given police force were also members of the tribal community they served may be an important issue for further examination. The point is made more sharply by the finding that only 13 percent of the police officers serving Indian Country spoke a language native to the community served, although this figure may mask important regional differences. For example, it is our experience that many officers serving the Navajo Nation are native speakers, while it is exceedingly rare for officers serving reservations in North Dakota to speak an appropriate native language. Most of the approximately 33 percent of officers who were not Native American were Caucasian, but in some areas, particularly the Southwest, Hispanics predominated. Twelve percent of the police officers in the departments we surveyed were women.

A final, important observation is that many departments we visited and surveyed had additional assistance from local “ranger” programs. These programs are not part of the federal model; that is, they are not a “generic” component of Indian police departments, and in general, rangers are not formal staff members of a department. Instead, the programs are locally generated, quasi-official components of reservation criminal justice systems. They appear to have evolved where coverage needs or community concerns required additional “police” service that the police department itself did not provide. In some cases, rangers provide services predominantly driven by the rural character of reservations, including range and wildlife management. In these cases, their function is close to that of “fish and game” officers. But in other cases, their services are only indirectly tied to the rural features of reservations and are driven more by regional crime issues—such as illegal immigration and drug smuggling on the Tohono O’odham reservation and criminal trespass on the Gila River reservation. In these instances, rangers assume some responsibilities of federal law enforcement agencies also. Because of the programs’ extremely local origins, rangers’ roles and responsibilities vary from tribe to tribe, although in every case the presence of rangers obliquely increases the personnel resources of their local police department.

V.A.4. Facilities and Equipment

During site visits, we saw substantial evidence that the physical resources supporting Indian police departments and their employees were either inadequate or designed in a manner that made them impossible to utilize efficiently. For example, while the square footage of police facilities reported by police departments participating in our survey is on a par with national averages and recommendations, the space is neither well-designed nor in satisfactory condition

⁸⁰ We note, however, that these numbers are moving targets. As tribes continue to pursue 638 contracts and self-governance compacts, departments will fall under tribes’ member-preference guidelines, and the percentages of officers who are Native and who are tribal members will rise.

to support police activities.⁸¹ In most cases, waiting rooms for the public are rare, areas that staff can use to write reports are cramped or non-existent, and amenities for officers (such as locker and changing facilities) are virtually non-existent. Computer capabilities are outmoded, deficient, or absent. Many vehicle fleets are at least three years old. Indeed, most of the facilities we inspected were so old (the typical building is 20-plus years old) and in such poor condition that they could not be said to adequately support a modern, progressive police department. Finally, as has been widely reported elsewhere, jail and detention facilities are inadequate.⁸² In our survey, almost two-thirds of all departments reported that their jail and detention space was overcrowded. At most sites we visited, the jail facilities were variously too small, poorly designed, and in poor repair.

V.A.5. Funding

Although several recent research and policy efforts have cited limited funds as a formidable problem for police departments in Indian Country (including the Executive Committee for Indian Country Law Enforcement Improvements' "Final Report to the Attorney General and the Secretary of the Interior"), just how inadequate the resources supporting police departments in Indian Country are is a somewhat complicated question. While we generally agree that a lack of funding presents an important obstacle to good policing in Indian Country, we also found that available data were sometimes inadequate and sometimes pointed to multiple, conflicting conclusions.⁸³ In the discussion below, we use three reference points—officers per capita, dollars

⁸¹ Other observers agree with this assessment: John A. Kaestle, "Designing a New Police Facility," *Police Chief* 56(10)(October 1989):119-126; and, Lois Pilant, "Spotlight on Planning and Designing Police Facilities," *Police Chief* 65(3)(March 1995):28-36.

⁸² Warren LeBeau, "Juvenile Justice Detention Issues in Indian Country," paper presented at the National Institute of Justice Strategic Planning Meeting on Crime and Justice Research in Indian Country, Portland, Oregon, October 14-15, 1998; and, Office of the Inspector General, Audit Division, "Criminal Justice in Indian Country," above.

⁸³ Indian Country population estimates cause many of the problems. For example, federal figures for 1993 indicate that departments serving communities with populations of 10,000 to 25,000 had an average budget of \$1.6 million dollars (Reaves, "Local Police Departments, 1993," above, p. 7). In the mid-1990s the typical department in Indian Country served a population of approximately 10,000 residents and had a law enforcement budget of \$1 million—or approximately 60 percent of a comparably sized non-Indian community's budget (when inflation is taken into account, the difference is even larger). As we note when describing the typical department, however, 10,000 may be an *overestimate* of the average service population. Then, appropriate budget comparison changes quite dramatically: If the population of the community served by the typical reservation police department is closer to 6,000, the comparable non-Indian community's budget is \$540,000, which suggests that Indian communities have relatively generous budgets. Furthermore, the ratio of officers to citizens jumps from 1.6 per 1,000 population (16 officers serving a community of 10,000) to 2.7 per thousand (16 officers serving a community of 6,000); this figure is substantially higher than that of non-Indian communities of comparable size. Indeed, among the four sites we studied intensively, the ratio of officers to citizens was 3.3 per thousand resident tribal members. Despite these concerns about the effect of population estimates on per capita resource calculations, the discussion in this section relies on the population estimate of 10,000—not only because it is supported by recent important policy pieces in the field (especially the "Final Report" mentioned

spent on law enforcement per capita, and dollars spent per employee—to provide a fuller understanding of the resources available to departments in Indian Country (the information is summarized in Table 2).

- *Officers per capita*: This index compares police coverage in Indian Country to coverage in non-Indian communities, both rural and urban. Our survey findings essentially support the Department of Justice estimate that the ratio of police officers to residents in Indian Country is 1.3 per thousand.⁸⁴ However, the assertion that this ratio represents half the level of police coverage in comparable non-Indian communities is not consistently supported across data sources. For communities of less than 10,000 population, the Federal Bureau of Investigation reported 2.9 officers per 1,000 inhabitants in 1996,⁸⁵ but other federal data contradict this estimate. For example, the BJS census of state and local law enforcement agencies indicates that the 1996 ratio hovered between 1.8 and 2.0 in predominantly rural states like South Dakota, North Dakota, and Montana.⁸⁶
- *Law enforcement dollars per capita*: This figure provides an index of the total financial resources available to the community to provide law enforcement services. The Indian communities responding to our survey spent approximately \$83 in public safety funds on each resident. In contrast, non-Indian communities with population 10,000–25,000 had approximately \$104 to spend on each resident.⁸⁷ If Indian Country compares best to communities at the lower end of this range, it might be assumed that the difference is overestimated—but even for smaller non-Indian communities (with population 2,500-10,000) the figure is still \$101.⁸⁸

above), but also because we feel it is appropriate to draw attention to the lack of reliable service population data. Moreover, higher population estimates may account for the fact that restricting the “community served” figure to resident tribal members alone ignores the many individuals who live off but work on the reservation, travel through the reservation for purposes of business or pleasure, live seasonally on the reservation, or are full-time but non-member or non-Native reservation residents.

⁸⁴ See Executive Committee for Indian Country Law Enforcement Improvements, “Final Report,” above, p. 6.

⁸⁵ Federal Bureau of Investigation, *Crime in the United States, 1996* (Washington, DC: U.S. Department of Justice, 1997), p. 287.

⁸⁶ Brian A. Reaves and Andrew L. Goldberg, “Census of State and Local Law Enforcement Agencies, 1996,” Bureau of Justice Statistics, U.S. Department of Justice, Washington, DC, June 1998, p. 4. It is worth noting that this figure (the 1.8-2.9 ratio) includes both state and local sworn officers. When state police officers are excluded, the ratio drops to between 1.0 and 1.6 officers per thousand population. We believe the appropriate manpower comparison should include state officers, however, since small, rural, non-Indian communities benefit from the services of city, county, and state police.

⁸⁷ Reaves, “Local Police Departments, 1993,” above, p. 7.

⁸⁸ *Ibid.*

- *Dollars spent per employee*: This provides an index of the “support” with which employees, particularly officers, are provided in terms of salaries (and perhaps in terms of equipment, facilities, and training) and the ability of the tribe or department to pay salaries sufficient to recruit and *retain* highly qualified officers. We found that tribes spend significantly less per employee than their non-Indian counterparts. The average operating expenditure per employee for the tribes responding to our survey was approximately \$36,000 as compared with approximately \$43,400 for non-Indian departments serving communities of between 10,000 and 25,000 residents.⁸⁹ The national average is even higher.⁹⁰ Direct data on officer salaries provide additional information. Our survey responses suggest that pay for officers in medium to large tribes is higher than for the smaller Indian police departments described by Luna,⁹¹ but slightly lower than the pay that entry level officers receive in communities of comparable size (\$21,200 to \$24,600).⁹² The salaries of officers in Indian police departments are also highly variable. The range in our sample was as low as \$13,000 and as high as \$32,000.⁹³ Some observers believe that tribes inflate the salaries they report in such surveys, but it is unclear why tribes would want to present evidence of a large resource base while arguing vigorously for increased funding.

⁸⁹ Ibid.

⁹⁰ Theoretically, a low “dollars spent per employee” estimate could reflect tribes’ conscious choice to maximize police coverage instead of hiring fewer officers and allocating increased funding to critical support functions (management information systems, training, improved equipment). Indeed, we speculate that the large size of the areas policed, as well as the social and political dynamics unique to Indian Country, compel tribes to focus on coverage as opposed to support functions. For example, the political pressure outlying reservation communities create as they agitate for increased police services seems to result in more police officers rather than fewer but better-equipped and better-supported officers. However, the fact that *both* “officers per capita” and “dollars per employee” are lower within Indian Country than without suggests that resources are truly deficient and not that tribes have chosen to fund personnel instead of support functions.

⁹¹ Luna and Walker, “Policing in Indian Country: A National Survey of Tribal Law Enforcement Agencies,” above.

⁹² Reaves, “Local Police Departments, 1993,” above, p. 8.

⁹³ The median (\$21,000) falls below the average, but not so far that the figures in the highest range could be said to skew the average, making it unrepresentative of salaries overall.

Table 2: Resources Available to Police Departments in Indian Country⁹⁴

	Indian Country	Comparable Non-Indian Jurisdictions (small, rural)	National Average	Comparable High-Crime Jurisdictions
Officers per capita	1.3	1.8 - 2.0	2.3	3.9 - 6.6
Law enforcement dollars per capita	\$83	\$104	\$131	NA
Dollars spent per employee	\$6,000	\$43,400	\$48,200	NA

In summary, existing data suggest that tribes have between 55 and 75 percent of the resource base available to non-Indian communities. But, for three important reasons, we believe the terms used in this comparison may underestimate the actual budgetary needs of police departments in Indian Country.

First, and most importantly, the appropriate police coverage (police officers per thousand residents) comparison may not be between Indian departments and departments serving communities of similar size, but between Indian departments and communities with similar crime and social problems. Given that the violent crime rate in Indian Country is between double and triple the national average,⁹⁵ comparable communities would be large urban areas with high violent crime rates and attendant social problems. Such communities—for example, Baltimore, Detroit, New York City, and Washington, DC—feature high police-to-citizen ratios, from 3.9 to 6.6 officers per thousand residents.⁹⁶ This comparison suggests that the resource differential between Indian and non-Indian departments is significantly greater than the above estimate.

Second, a particularly important factor in providing police coverage in Indian Country—the immense size of many western reservations—is not reflected in the above estimates. On reservations where the area patrolled is large and the tribal community widely distributed, it is necessary to account for the distances that must be traveled in order to provide adequate police coverage. Service calls in remote areas of all four reservations we studied intensively could occupy a police officer for half a day or longer, especially in cases of inclement weather.

⁹⁴ Data in this table derive from sources cited in footnotes 84-90.

⁹⁵ Lawrence A. Greenfeld and Steven K. Smith, "American Indians and Crime," Bureau of Justice Statistics, U.S. Department of Justice, Washington, DC, February 1999, p. 2.

⁹⁶ Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics—1997* (Washington, DC: U.S. Department of Justice, 1998), Table 3.118, pp. 276-281.

Making police officers as available in Indian communities as they are elsewhere would require resources above and beyond those necessary to rectify the differences noted in Table 2.

Finally, the ratios fail to take account of that fact that capital budgets for policing are exceedingly uncommon in Indian Country. This is despite the fact that the great distances involved in policing western reservations increase the need for facilities and technology (substations and sophisticated communications technology, for example) that improve the ability of police to serve large areas—"infrastructure" that is appropriately financed through capital budgets. Frequently, operating budgets appear to be the only means available to departments to finance and support infrastructure (we were unable to confirm this through a review of police and tribal budgets, however). This shortfall, invisible in the ratios given above, leads to a problem cited earlier in this section: The facilities and technology that support Indian Country police officers are often in poor repair or otherwise inadequate.

Furthermore, capital budget deficiencies extend to other components of the criminal justice system, and they, too, have a direct negative effect on the quality of policing. Detention facilities and the services such facilities often support, such as alcohol-treatment facilities, are an instructive example. Both are wanting.⁹⁷ Thus, officers who attempt to develop a proactive response to a household where alcohol abuse generates repeat calls for service (for child neglect or domestic violence, for instance) often must substitute a brief stay in an overcrowded, outdated jail for alcohol treatment. The result is an uninterrupted demand by that household for police services. In sum, the investment necessary to put the physical infrastructure of Indian Country criminal justice systems on par with their non-Native counterparts is substantial.

V.B. A Closer Look at Four Indian Police Departments

The Indian Country police department we have described thus far is one that is attempting to cope with an increasing workload, in terms of both community demands and increasing crime, and is attempting to do so with a significantly limited resource base. In fact, this characterization does not capture the severity or complexity of the challenges to policing in Indian Country. This section attempts to describe the problems in more contextual detail. An important observation from the description is that while many problems occur on the level of day-to-day operations (for example, poor direct supervision, poorly developed policies and procedures, and poor pre- and in-service training), they point forcefully to an additional and more significant issue: police departments serving Indian reservations face critical challenges in terms of institutional design.

The purposes of this section are, therefore, to: (1) describe the most significant problems with the operation and management of police departments in Indian Country in the context of brief profiles of the departments and tribes we studied, and (2) *begin* to link these problems to the more significant issues of institutional design. We focus on how these problems are tied to the way in which Indian police departments relate to the communities they serve and how they are related to the fact that tribes have yet to recreate the police function in terms of their specific needs, priorities, and resources.⁹⁸ The discussions serve as an introduction to the remainder of

⁹⁷ See LeBeau, "Juvenile Justice Detention Issues in Indian Country," above.

⁹⁸ We note here that it is often claimed that the rural setting and small communities typical of Indian Country generate a sort of informal community policing approach that grows out of officers' close

the paper, which considers more fully the issue of the institutional design of police departments serving Indian reservations.

We preface these profiles by noting that the tribes and departments described are, in fact, making progress. In response to the problems described below, the Tohono O'odham Nation has remade its department into one of the best we observed in Indian Country. Likewise, by investing tribal government resources in policing, the Gila River Indian Community has taken significant steps toward building a police department that can better serve its community. The Flathead department is among the best managed departments we know of in Indian Country, and Fort Berthold's efforts with regard to community policing are among the most ambitious.

V.B.1. Tohono O'odham Nation

The first tribe we studied intensively was the Tohono O'odham Nation in extreme south central Arizona. Located in the arid but beautiful Sonoran Desert, the Tohono O'odham reservation is characterized not only by the desert landscape but by seasonal monsoons and towering mountain ranges.⁹⁹ The Nation is among the largest in the United States, consisting of almost 2.9 million acres, an area about the size of Connecticut.¹⁰⁰ The size, landscape, climate, and population distribution present many contrasts to typical urban policing; for example, some residences in remote areas can be reached only by horseback and may not be accessible at all during monsoons. The reservation shares approximately 80 miles of border with Mexico, which actually splits the nation; a significant number of tribal members live in Mexico and move freely across the border. Tribal enrollment is 17,500, and approximately 14,000 of these members live on the reservation. The seat of the Nation's government and its population center is the town of Sells, with approximately 7,000 residents.

The Tohono O'odham Nation is relatively unassimilated; native language use and other evidence of the retention of tradition are high. Tribal gatherings and meetings strongly reflect important cultural attributes of "talking things out" and reaching consensus. Traditional tribal ceremonies are well attended. The Nation's chief executive and legislative council are popularly elected. The primary political subdivisions are districts, with each of the Nation's eleven districts electing two representatives to the council. In addition, each district elects a district chairperson, whose role is roughly analogous to that of a mayor. Districts and villages play a substantial role in

relations with citizens and the multiple demands these close relationships generate. But while officers might know more about the citizens and neighborhoods they serve than their urban counterparts, and might occasionally be called upon to perform duties outside of those normally carried out by their urban colleagues, this does not mean that the department itself is organized and managed to effectively respond to (and draw on) tribal values, priorities, and resources.

⁹⁹ These extreme climactic and geographic features complicate travel and therefore the challenge of providing police coverage on the reservation.

¹⁰⁰ Most but not all of the Nation's land holdings are contiguous. The 10,000-acre Gila Bend Reservation is northwest of the reservation and is the site of the Nation's casino operation. The 71,000-acre San Xavier Reservation lies to the east near Tucson. Twenty-acre Florence Village lies north of the reservation, near the city of Florence. The distribution of land holdings also complicates police coverage.

reservation life; the majority of tribal members we interviewed said they identified with their village first, their district second, and the Nation third.¹⁰¹

The Tohono O'odham established their police department in October of 1982, which places it among the earliest tribes to have acquired control over their police departments from the federal government. We first visited the tribe and observed the operation of its police department during the summer and early winter of 1996. The department had 55 positions for sworn officers, which made it, on paper, one of the largest Indian Country police departments; at that time, however, 20 (40 percent) of these positions were unfilled. In addition, the department had approximately 20 civilian employees and 11 detention officers. The department also had a large budget relative to most departments in Indian Country: \$7 million in 1996, which was perhaps the highest in Indian Country regardless of the population served (and much more than a non-Indian department of comparable size).

In sum, the department had a number of advantages: It existed amidst a relatively strong tribal culture that invigorated tribal norms and values, was backed by a lengthy period of direct tribal control of the police department, and had the support of a generous budget. But despite these advantages, crime on the reservation seemed to be increasing rapidly, turnover at the department's executive and staff levels was high, and the department's credibility was suffering from severe management problems. While we emphasize that these were the problems in the Tohono O'odham department of 1996, and that it has improved dramatically since that time,¹⁰² we choose to focus on the department as it was then because the challenges it faced are typical of the challenges that confront departments throughout Indian Country today.

At the time of our first visit, a major cluster of problems for the Tohono O'odham police department concerned basic day-to-day operations. The acting chief, who had been with the department for more than ten years, could not produce documentation as basic as personnel files and policy and procedure manuals, nor in the course of our many conversations could he recall with any degree of specificity recent modifications or revisions to department policies. This was also the case with the department's second in command. In addition, all of the patrol officers we interviewed stated that they could not recall using or being instructed to use departmental manuals, though they assured us the manuals existed. Casual attitudes regarding written policies and procedures are not unusual in the small departments we have visited, where important policies and procedures can be easily communicated in roll calls and other meetings or through informal channels. However, the officers we spoke with could not recall *any* regular practice of communicating and reinforcing departmental policies and procedures.

¹⁰¹ We noticed that while most traditional mechanisms of social order were focused on the local level, the organization of the police department was centralized. This made it difficult for the department to "distribute" its staff in a manner that might facilitate leveraging these community resources. To some extent, the same could be said of the Gila River Indian Community and its department, which is discussed in the next section.

¹⁰² We attribute the improvements not only to new departmental leadership but also to strong support for improved policing on the legislative and executive levels of tribal government.

The lack of attention to basic policies and procedures had a wide range of effects on department operation and on its relations with the community. Some were disturbing but relatively minor; for example, we saw families of some detainees and inmates refused visits during regular visiting hours and others permitted visits during non-visiting hours. We attributed much of this to an overcrowded jail that put tremendous pressure on detention staff. But some effects were clearly more serious; we learned during interviews with representatives of other tribal criminal justice agencies (including those normally friendly to police) that the failure to maintain and enforce departmental policies and procedures had severe consequences for both the department and the community. In the previous year, high-speed pursuits had on more than one occasion led to tragic and (in the view of many tribal members and agency representatives) avoidable traffic accidents. Nevertheless, department representatives were unable to produce for our review either old or new policies and procedures regarding high-speed chases. Interviewees complained that the lack of policies and procedures handicapped even the best-intentioned officers, who were forced to work without useful guidelines for critical police activities. Conversely, these observers complained that it was difficult to hold negligent officers accountable when clear standards were not in place. Our interviews indicated that this lack of accountability had seriously compromised the credibility of the department not only among its criminal justice agency partners but also with the tribal community.

During subsequent visits we learned that these problems were not unusual but were in fact emblematic of department management and operations. As is the case with many departments in crisis, the number and extent of the problems had increasingly isolated the organization from the community.¹⁰³ And, as the department became increasingly insular, its focus on crime problems became more the product of its own priorities than those of the community. Interviews with members of the department and members of the community suggested a mismatch between police and community priorities and between police and community perceptions of the role of police in community life. Police complained that tribal members were pressuring them to pay too much attention to “low-level” problems such as disputes between neighbors, school-age children, and family members—problems that formerly would have been settled at either the village or district level. On the other hand, community members complained that police officers were concerned only with activities like chasing bootleggers and drug smugglers. Community members often acknowledged that these and other conventional police activities were important—that they constituted “real” police business—but they also stated that they needed someone who would *help* them with *their* problems.

This public frustration contributed to the growth of a popular but controversial quasi-official component of the criminal justice system: district-administered “ranger” programs.¹⁰⁴ At the time of our first visit in 1996, several districts had already instituted such ranger programs while other districts were demanding funding from the tribal government to start them. The Tohono O’odham ranger program originally began by patrolling outlying villages and remote areas. Rangers described themselves as the eyes and ears of the police department; they were not

¹⁰³ Sparrow et al., *Beyond 911*, above.

¹⁰⁴ We reiterate that ranger programs have local origins, and hence, rangers’ roles and responsibilities vary from tribe to tribe.

permitted to interact with or detain potential “suspects,” but functioned mostly to reassure residents that they were safe and to respond to the emergencies and needs of elderly or isolated residents. At Tohono O’odham, it may be that the dynamic driving the growth of the ranger program was similar to that driving the growth of private security services in non-Indian communities in the 1970s and 1980s.¹⁰⁵ The poor performance and increasing isolation of the police department precipitated a loss of market share to rangers, who were managed on the district level and directly accountable to the district chairperson (who, as we have noted, functions as a sort of mayor). In effect, rangers were seen as more responsive to the needs of residents than were police officers.

To some extent, the diminished credibility of the police department was both the cause and a result of the growing problem of recruiting and retaining qualified officers. As we note above, approximately 40 percent of the funded patrol positions were unfilled when we first visited. Historically, the ability of tribal candidates to successfully complete certified police training academies has been limited. Prior to 1996, 40-90 percent of tribal recruits failed to successfully complete a certified training program (depending on the year and/or class of recruits).¹⁰⁶ Our interviews suggested the problem that most plagued young recruits from the Tohono O’odham Nation was the inability to complete the academic modules of law enforcement certification courses.¹⁰⁷ Tribal and department leadership attributed this to a lack of well-developed study habits necessary to survive the highly regimented program. They also felt that, for many O’odham youth, attendance at the police academy constituted their first extended period away from family and friends and they were ill-prepared for their intense exposure to a new, sometimes hostile culture.

In summary, the management issues that most plagued the Tohono O’odham department in 1996 were a lack of day-to-day attention to departmental policies and procedures, a disconnect between police and community priorities, and difficulties in the recruitment and training of officers. Our sense is that these problems are widespread in Indian Country.

V.B.2. The Gila River Indian Community

The second tribe we visited¹⁰⁸ was the nearby Gila River Indian Community (GRIC), which is located on 372,000 acres immediately south of Phoenix, Arizona, one of the fastest growing urban areas in the United States. Despite the proximity of Phoenix, however, the geography of the reservation is rural: villages are spread out across the reservation, and much of the desert land is accessible only by off-road vehicles. In 1994, the Gila River Enrollment Office counted approximately 11,550 enrolled members; in 1996, approximately the same number of Indians

¹⁰⁵ Sparrow et al., *Beyond 911*, above, pp. 47-50.

¹⁰⁶ This estimate is based on interviews; no data to support this assertion were available, mostly due to a lack of personnel records.

¹⁰⁷ A related problem at that time was that many members of the force had less than twelfth-grade reading, writing, and math skills.

¹⁰⁸ Researchers conducted site visits at Gila River in July, August, and October of 1996, as well as a follow-up visit in May 1998.

lived on the reservation itself, making it, population-wise, the fourth largest reservation in Arizona and sixth largest in the United States. Although the Gila River reservation was established by an Act of Congress in 1859, the ancestors of Community members have been residents of south central Arizona for hundreds of years. The group is formally called a "community" since members of two tribes call the reservation home: the Akimel O'odham ("the River People," formerly known as the Pima) and the Pee-Posh (also known as the Maricopa). The Akimel O'odham, the larger of the two tribes, is closely related to the Tohono O'odham ("the Desert People"), discussed above.

The Community's proximity to Phoenix and other smaller cities (Chandler, Casa Grande, Coolidge) has both positive and negative ramifications. For instance, when the Community entered the gaming business in the mid-1990s, its access to a large urban market provided quick and enduring financial success. Profits from the gaming enterprise fund a significant fraction of tribal government operations and give GRIC opportunities that many other Native nations do not have. Yet, the Gila River Indian Community also suffers from many problems that are typically considered "urban problems," including youth gang involvement and a high rate of violent crime. In fact, mid-1990s reservation crime rates caused GRIC to be known as one of the most crime-ridden Indian communities in the United States. The ready influence of non-Indian society has also led to a greater loss of tradition and cultural practices than at Tohono O'odham, although efforts are being made to revive traditions and language and, especially, to expose children to them.

The Gila River Indian Community has an elected governor, lieutenant governor, and 17-member Community Council, as well as an appointed community manager. The seat of the Community government is Sacaton, a small town approximately 25 miles from central Phoenix. The reservation is divided into seven districts, each with an elected district leader, a district council, and a district service center coordinator. Like Tohono O'odham's, the Akimel O'odham culture emphasizes "talking things out," a characteristic that is reflected in the many meetings held at all levels of tribal government.

The police department at Gila River has a tumultuous history. When our research began in mid-1996, the department was a Bureau of Indian Affairs department, headed by a BIA police captain (equivalent to a police chief in a municipal police department), who was responsible to an acting Pima Agency Superintendent in Sacaton. Although the tribe had run the department itself for a brief period in the 1970s, law enforcement was returned to the BIA, reportedly because some non-BIA sources of federal funding were no longer available. In subsequent years, police captains came and went, with acting captains filling in the gaps. During the same period, crime at Gila River was increasing and becoming more violent, and the jail became known for its overcrowded, unsanitary, and unsafe conditions.¹⁰⁹

¹⁰⁹ At the time of the initial site visits, Gila River was planning to build a new Justice Center, which would include new adult and juvenile detention facilities. On May 1, 1998, the Community celebrated the ribbon cutting for the state-of-the-art juvenile facility (though it would not be occupied for some time, due to staffing difficulties). On December 4, 1999, the dedication ceremony was held for the main criminal justice facility.

In response to the growing crime problem and fears that the BIA department had too few resources to meet community needs, the tribal government created two additional entities to provide law enforcement services—the rangers and the reserves. The rangers operated briefly in the 1970s and were reorganized in the 1990s under the auspices of the GRIC Department of Land and Water Resources. The reason for this reporting structure is two-fold: first, it acknowledges that one of the rangers' primary functions is to protect the natural and cultural resources of the Gila River Community; second, it is a way to work outside of the BIA to increase the police presence on the reservation. In practice, the rangers patrol and police the vast off-road areas of the reservation *and* cover for and back up regular police officers. While they carry a tribal commission to enforce tribal ordinances (all civil offenses), it is not unusual for them to encounter criminal offenses. In these situations, they either hold the offenders until BIA or county police arrive, confiscate weapons and/or property and transport or accompany the offenders to the reservation boundary, or just ask the offenders to leave. Although the rangers' authority is sometimes questioned (usually by violators or off-reservation police), at the time of our initial visits, they had become a regular and accepted law enforcement presence in the Community.

The reserves' role is somewhat different. They provide "second man" coverage to police officers and rangers who would otherwise work alone. This is back-up that Community members perceive to be necessary given the amount of crime and violence on the reservation. Reserves also provide security services at public events (especially dances), since police officers cannot be spared routinely for these details.

In addition to commissioning the rangers and reserves, the Community began a further effort to improve policing: It renewed attempts to 638 the BIA department. Initially, the tribal government assigned responsibility for the 638 process to the Law Enforcement Commission, a body whose original charge was to hear complaints by Community members against the police as well as concerns of police officers about their department. Commission members found their liaison and advisory roles to be clear—but the 638 assignment was not. The Commission received a contract from the BIA to hire a consultant to assist with the process, and the consultant drafted a 638 application, but by late 1995, progress broke down. The Commission felt it lacked appropriate administrative assistance from the tribal government for creating the necessary policies and structures to support the proposed police department. It wanted to hire a police chief, who would oversee the 638 process and thereby establish his own department. Others in tribal government wanted to hire a "638 consultant" to handle the process. In the midst of this debate, pressure for improved policing became especially intense, and the Community government decided to invest some of its newly gained gaming income in the hiring of 20 *tribal* police officers—that is, officers who were hired and paid by the tribe, but incorporated into the BIA department and supervised by its captain.

When we arrived in August 1996 for a second visit, authority, communication, and administration problems in the department were evident and, in some cases, growing. For example, a new BIA captain had just been assigned to Gila River, the acting Pima Agency BIA superintendent was about to be replaced by a permanent superintendent, and the 20 new tribal police officers were beginning to return from training and integrate into the force. While reporting structures and relationships were clear on paper, they were being newly tested in

practice. The previous acting captain had reverted to his rank of sergeant. Communications from the captain down to the officers generally occurred in three ways: through the sergeants (of which there were three), through memos placed in the officers' department mailboxes, or through memos pinned to the squadroom bulletin board. But at this point, there were no formal roll calls. And, officers who lived on the reservation took their cruisers home and started their shifts in their cars by radioing to the dispatcher, so that timely receipt of even the memos was hit-or-miss. Administratively, record-keeping was in disarray¹¹⁰ and accountability within the department (from officers to sergeants and from sergeants to the captain) was weak. Although the latest captain hoped to make some important changes in community relations (and knew that GRIC was likely to 638 the department), he felt that the administrative problems came first; he saw his first task as "grabbing hold administratively." Community perceptions were that the department was still in poor shape, although residents had hoped that "their officers" would make things better. Most saw eventual tribal management as the only way to both solve the on-going management problems and improve the quality of policing.

Even so, 638 progress remained slow. By 1998, the tribe had removed the Law Enforcement Commission from the core of the process and appointed a five-person "638 committee" to prepare the required application. The committee was headed by the assistant community manager and included a tribal attorney, the chairman of the Law Enforcement Commission, an economic development planner, and a program planner. In addition, a police consultant from San Jose was hired to work with the committee. It was this committee that finally moved ahead.

Meanwhile, some change occurred at the department level, although new problems also arose. The police captain who had arrived in mid-1996 was transferred away from the Gila River Indian Community and replaced by an acting captain—a criminal investigator who would report directly to the BIA Phoenix Area Office, rather than to the Pima Agency Superintendent. The removal of the captain was not related to the 638 process; however, the continuing turmoil in the department and the need to "prepare" the department for tribal management occasioned the specific assignment of the criminal investigator to Gila River. He made substantial progress in putting the department in order. Procedures were more formalized than they had been, greater accountability was established, and preparations were made for transitioning the department and its personnel from BIA to tribal administration.¹¹¹ Nevertheless, before the 638 application was accepted and departmental preparations were complete, the supervising criminal investigator was

¹¹⁰ Although the dispatchers' logs and the incident reports that officers did complete were filed in an orderly fashion, officers did not always turn in reports. Also, in at least one department report to the BIA, the numbers did not reflect data department leaders had provided (e.g., number of homicides), nor were they internally consistent (the number of crimes cleared sometimes exceeded the number of crimes reported).

¹¹¹ One useful but short-lived by-product of his preparations for 638ing arose from the inventory he conducted on the vehicle fleet. During the inventory, officers could not take their cruisers home at the end of each shift, so they needed to report to headquarters in order to begin their next shift. This allowed each shift to start with a roll call, which improved day-to-day communication. However, it was expected that as soon as the inventory was complete, officers would once again be able to take cruisers home, and the roll calls would end.

reassigned, purportedly because the Gila River planners objected to his BIA chain of command—reporting to the Area Office in Phoenix rather than to the Pima Agency Superintendent in Sacaton.

On August 10, 1998, the Gila River Indian Community, its 638 contract with the BIA in place, assumed managerial control of its police department. A member of the department, who had moved from BIA to tribal police earlier in the year and was then promoted to sergeant, was named *acting* police director while applicants for the permanent position were being considered.

The series of short-term and acting BIA captains in the Gila River Police Department and the fractured 638 process are indicative of (and perhaps also a result of) a department in turmoil. For at least a decade, police management at Gila River had been driven by crises: personnel turnover, increasing crime (especially increasing violent crime), a feeling of urgency to increase the size of the department, pressure to 638, and politics. The missing element in the responses to these problems and concerns was any focus on comprehensive or strategic planning. For GRIC (as for other tribes), the most opportune time to develop such capacities would have been during the 638 application process.

V.B.3. Confederated Salish and Kootenai Tribes

The Confederated Salish and Kootenai Tribes live on the Flathead Indian Reservation, which is located on 1.2 million acres in northwestern Montana (north of Missoula and south of Kalispell and Glacier National Park, in the Mission Valley).¹¹² Although the tribes owned about 22 million acres in the early 1800s, many lands within the reservation were lost to homesteaders after the Hell Gate Treaty of 1855. The current land ownership pattern is still best described as a “checkerboard,” although the Confederated Tribes have been aggressively repurchasing lands since at least the 1940s. The Tribes and tribal members currently own more than 51 percent of the land within the reservation’s boundaries.

Because of the history of homesteading, more non-Indians than Indians now reside on the reservation. The reservation population comprises approximately 18,000 non-Indians, as compared to 4,100 tribal members and 2,000 other Indians. Another 2,700 enrolled members live off-reservation. This mix of tribal and non-tribal residents creates an even greater jurisdictional complexity than exists on most other reservations. In addition to the state and the tribal police, for example, four counties (Flathead, Lake, Missoula, and Sanders) and four municipalities (Polson, Hot Springs, Ronan, and St. Ignatius) operate their own law enforcement agencies within the reservation boundaries. The governmental seat of the Confederated Salish and Kootenai Tribes (CSKT), including its police department, is in Pablo.

The CSKT governing body is the Tribal Council, which includes a total of ten Council members from eight districts. The Council chairperson, who is elected from and by the ten members, is the Tribes’ chief executive, although the Council also hires an executive secretary to oversee

¹¹² With the Hell Gate Treaty of 1855, 12 Stat. 975, three groups were consolidated onto the Flathead Reservation: “Flatheads,” Pend d’Oreilles, and Kootenais. The Flatheads and Pend d’Oreilles are both Salish peoples, with similar languages but somewhat different cultures. The Kootenais are a non-Salish people, with both a different language and different culture.

many government departments, including "Law and Order" (the police department). The BIA had a strong presence on the reservation until the mid-1970s, but today, its presence and influence are extremely limited. For example, the Flathead police department operates under a self-governance compact, an arrangement in which BIA involvement is minimal.¹¹³

At the time of our visits in mid-1997, the police chief had been with the department for 25 years. He first joined as an officer (one of only four) and four years later was promoted to chief. Ten years later, the department still had only six officers. In 1986, in the wake of local protests over water rates, the department hired five more officers. Just before the 1994 retrocession agreement (described in greater detail below) was implemented, another five officers were hired. As of 1997, the department included 17 sworn positions (including 2 vacancies): 11 patrol officers, 2 investigators (one of whom was on detail to a regional narcotics task force), 2 sergeants, 1 lieutenant, and 1 police chief. All sworn officers, except the drug task force officer, were tribal members. The department also included 13 civilians—5 jailers, 6 dispatchers, 1 clerk, and 1 cook—among whom there was considerable overlap of duties and job sharing. For example, the clerk was once a dispatcher-jailer in the department and sometimes still filled in as dispatcher, jailer, or cook; in addition, because she had been trained to interview child victims of sexual abuse and female victims of domestic violence, she could assist both the police department and social services in their investigative duties. Some of the "civilians" (jailers, dispatchers) had also attended the police academy.

In contrast to most of the other facilities we visited, Flathead police headquarters and its jail were exceptionally clean and orderly. Nevertheless, the police chief was concerned about poor conditions for the inmates: they were isolated in their cells, had little to do, rarely saw the light of day, and had only occasional access to a very small exercise yard. Meals were delivered to cells because there was no common area in which the inmates could gather. However, managers of the Flathead facility were not struggling with overcrowding,¹¹⁴ poor sanitary conditions, or violence.

In general, the Tribal Council and tribal administration have provided strong support to the police department, evidenced in part by departmental budget allocations. Although most of the department's funding comes from the Tribes' BIA funds (in 1997, \$1,228,686 came from BIA funds and \$11,546 directly from the Tribes), the virtue of compacting (as opposed to contracting) is that the local tribal government is responsible for setting budget priorities and allocating BIA funds. The police department, like other departments, submits its budget request to the Tribe. Then, the CSKT Office of Administration and Budget creates an overall tribal budget, the Council approves allocations, and financial officers disperse funds. According to the police chief, FY97 was the first year in which the department received less than it had requested.

By most accounts and by our own observation, the Flathead police department is a well-run, professional department. The department is well-connected to the tribal government for oversight purposes, has been increasing in size consistent with community needs, boasts an

¹¹³ See section III.C. for a discussion of self-governance as well as other administrative arrangements for Indian police departments.

¹¹⁴ Official detention capacity is 20, but the daily average for adults was 12.

extremely competent and generally well-liked staff, and is concerned about the traditional problems under its purview. Yet, we also observed that, institutionally, the department has been struggling to respond to several opportunities for improving the already high quality of policing it has offered the community.

One example is the opportunity offered by a new computer system, Swift Justice, that the department had installed shortly before the site visits began in 1997. It provided officers with report-writing software that allowed new incident data to be immediately incorporated into the system, linked the data with jail and dispatch information, and offered improved storage and reporting functions. While department personnel were generally pleased with the transition to the new system and its capacities, both officers and prosecutors missed the traditional access to paper reports for review of cases. Prosecutors, in particular, suffered from the limited information flow. They had been accustomed to learning about cases promptly by looking through a basket of reports as they (the prosecutors) passed through the police department, but the new computer system, which the prosecutors were not linked into, eliminated these hard copies. Nevertheless, the new system enabled the department to produce incident reports, monthly and annual reports, and other types of analyses more quickly and efficiently than it had before. The department clerk managed the system, creating the reports and providing technical assistance to the officers. It was unclear, however, whether the available statistics were used by the chief or others to determine, or change, departmental strategy. In other words, opportunities for better institutional linkage between the police department and prosecutors' office and for improved strategic planning may have been bypassed.

The retrocession agreement is a second example of challenges faced by the department. Signed by the state of Montana, the Confederated Salish and Kootenai Tribes, and all the jurisdictions (except Lake County) within the reservation boundaries,¹¹⁵ the agreement cedes "exclusive jurisdiction over misdemeanor crimes committed by Indians" back to the Tribes.¹¹⁶ This right had been withdrawn from the Flathead Nation under the provisions of Public Law 280 (which subjected many Indian nations to the criminal misdemeanor jurisdiction of the states). Retrocession engendered a flood of new police activity. Calls to the department nearly doubled between 1993 and 1996, from 4,109 to 7,049. To its credit, the CKST department adjusted well to its increase in size and activity level, as well as to the new jurisdictional rules. Flathead officers reported (and we observed) that they worked well with officers from the other jurisdictions, even the Lake County deputies (although on an administrative level, Lake County

¹¹⁵ Cover memorandum on the "Memorandum of Agreement Between State of Montana, Flathead County, Lake County, Missoula County, Sanders County, City of Hot Springs, City of Ronan, Town of St. Ignatius and the Confederated Salish and Kootenai Tribes of the Flathead Nation," dated October 12, 1994, notes Lake County's decision not to sign. Additionally, the city of Polson, the county seat of Lake County, entered into a *separate* agreement with the Tribes, but Lake County itself did not enter into any similar special agreement.

¹¹⁶ "Memorandum of Agreement," above.

and Flathead did not have a warm relationship).¹¹⁷ Yet, the retrocession agreement continues to implicitly challenge the department to move beyond a reliance on rapid response policing to rethinking its strategy and role in the community.

A final example is that at the time of our site visits, the department had been running smoothly, but both community members and the Tribal Council were starting to ask for a new police strategy—they were explicitly requesting that the department become more involved in and establish better relationships with the community. In July 1997, as part of the budget process, the Council sent memoranda to all departments, specifying its expectations. According to the police chief, the Council always had asked departments to write a list of goals as part of the process, but this was the first time that the Council had given a return list of expectations. For the police department, the Council requested:

- A focus on community law enforcement work rather than traffic enforcement¹¹⁸
- A focus on community relations, to build trust and relationships
- Presence at tribal and community activities

At the same time, some communities were asking for more police presence and involvement. One community at the southern end of the reservation, Arlee, had been experiencing vandalism and other crimes by juveniles, including a bank robbery. Its residents were asking for individual officers to be responsible for specific areas, rather than “running from community to community.” Some tribal members even suggested that officers should live in the specific communities they policed. At an Arlee community meeting in August 1997, the community learned that it would get a resident officer—not by departmental design but by the fortuitous relocation of a new officer. This officer had retired from a police department in another state, owned land in Arlee, and had just been hired by the Flathead department. At the meeting, he expressed his intention to be available to the Arlee community—in the schools, at community activities, and in the neighborhood crime watch group. He also challenged a Lake County deputy sheriff who attended the meeting and lived in Arlee to do the same (according to residents’ private comments, however, this deputy sheriff had not been, and was not likely to be, either visible or responsive to their requests). While the Flathead officer could not promise to be the neighborhood patrol officer (the police department had at various times said it could not give any community its own officer), he did take the initiative to commit himself to an ongoing relationship with *his* community, one that would take him beyond his working hours to bring the presence of a concerned police officer into the neighborhood. We found it notable that a police

¹¹⁷ At least some of this respect arose from the fact that Flathead officers usually attended the state police academy, where they received the same training as all the other officers—an equivalence that facilitated both cooperation and cross-jurisdictional activities.

¹¹⁸ Much police concern and attention is given to traffic problems on Highway 93, which bisects the reservation from north to south. The only limit on speed during the day (except in business districts) is that motorists drive in a “reasonable and prudent” manner; the road is generally only one lane in each direction; cars are turning onto and off of the road as it changes from high-speed to commercial district; and the highway serves local residents, commuters, truckers, and tourists alike. DUIs are a tremendous problem, and fatalities are not uncommon. Traffic-related activities deflect a great deal of police time from other problems.

officer, especially a new one, felt free to make this commitment as a police officer; he was stepping outside the bounds of CSKT police practice but must have felt that he would be supported by his chief.

After years of being a “responsive,” stable, and generally well-respected department, the CSKT police department is facing new challenges. Most striking are the Council’s expectations, which seem to reflect community concerns and which suggest the need for a new policing strategy. At the time of our visits, however, there was little indication that the department was ready to use these new challenges as an opportunity to think strategically and develop a policing style even more tightly bound to the Tribes’ institutions, priorities, values, and needs. As the next site visit example demonstrates, this hesitation is not unique.

V.B.4. Three Affiliated Tribes

The Three Affiliated Tribes (the Mandan, Hidatsa, and Arikara) live on the Fort Berthold Reservation in west-central North Dakota. Tribal membership is approximately 10,000, of whom 4,000 live on the reservation. The tribe has developed a modest gambling enterprise, but poor economic conditions predominate. The geography of this area presents a striking contrast to the desert landscapes of the Tohono O’odham and Gila River reservations and the mountainous vistas of the Flathead reservation: It comprises approximately one million acres of softly rolling wheat fields and prairies. About 11 percent of the reservation is covered by Lake Sakakawea, which was formed by the Garrison Dam in the early 1950s. The lake not only split the reservation, but drove the tribes from the fertile, protected banks of the Missouri River to the surrounding windblown prairie. In the summer, heat encourages residents to take advantage of the cool lakeside, but in winter, long periods of extreme cold and blizzards can slow travel and isolate residents. In brief, the size of the reservation, its geography, and the seasonally intemperate weather complicate the provision of police coverage. The sheer size of the reservation and the presence of the lake mean that a single routine service call to an outlying community can occupy an officer for a substantial period. Poor winter weather can isolate individual residences, and even entire communities, for days at a time.

At the time of our site visits,¹¹⁹ the Fort Berthold police department was a BIA-managed “split” department, comprised of BIA officers and tribal officers funded through COPS grants. Indeed, leaders of this well-managed department have relied on COPS officers to play a critical role in assisting the department in addressing its steadily increasing workload. For example, the increased police coverage these officers provided helped the department head off a threat by the political leadership in an outlying community to organize its own, independently administered police department. Of course, the need for COPS officers correctly implies that the department has a limited resource base (its 1998 budget was \$1 million). Hiring tribal officers is one of many adjustments the department has made to cope with its lack of resources (most of the other adjustments affect police operations). Remarkably, these supervision and resource challenges did not deter the Fort Berthold department from developing and using policies and procedures for essential police practices (such as background checks of new officers and standardized disciplinary procedures). In fact, at the time of our most recent visit, the department was

¹¹⁹ Site visits were conducted in September 1996 and June 1997.

developing new policies and procedures for a community-oriented bicycle patrol in its most concentrated population center, New Town. Department leadership was eager to build on such practices to better address crime in a proactive manner.

Even so, and even though the community exhibited a higher level of satisfaction with its police department than was present at other sites, there was little congruence between the department's conception of its role in the community and the community's conception of that role. In interviews, tribal members consistently focused on their desire for police to employ methods built on tribal values and culture; they felt that police could play a powerful role in preserving and extending tribal values and culture and that, in doing so, the police could more effectively address crime. In this way, tribal members seemed to be pressing police to expand their mission beyond "crime fighting" and to become an institution equally concerned with maintaining and contributing to social order.

The notion may have come to mind—and seemed immediately logical—because of the existence of a traditional society with precisely that purpose. Almost every tribal member we interviewed brought up the Black Mouth Society, an association of wise and courageous older males who played a central role in maintaining social order during pre- and early reservation life. One elder, now in her nineties, recalled that as a child she was warned that if she didn't behave, her relatives and neighbors "would tell the Blackmouths." She recalled that almost always a warning was enough.¹²⁰

In contrast, most members of the police department saw their role primarily in conventional law enforcement terms. Officers talked regularly about responding more quickly and efficiently to problems such as gangs, violence, and substance abuse. More to the point, the department was organized and managed to address these conventional problems. This is to be expected in the context of an apparently rapidly growing crime problem and substantial political pressure to respond to it. Indeed, the Three Affiliated Tribes' police department had the strongest orientation to proactive strategies that we were able to identify in the course of our study. But, department leadership said they were caught between standard crime control tasks and community demands to devote increased resources to prevention, a dilemma made more acute by the department's limited resource base.

When we asked departmental and tribal representatives why they had not 638ed their police function, they frequently replied that the tribe did not want to get into the "law enforcement business." Conceived of in this way, policing was not a function that the Tribes' political history and culture had prepared them to adopt. Policing was seen as a necessary accommodation to modern reservation life, rather than as a means of maintaining social order through the assertion of tribal values and culture (in a manner similar to that of the Black Mouth Society). Given that the current 638 contracting process does not invite a consideration of the police function in these terms, but focuses instead on ensuring the provision of a standard menu of police services, it is

¹²⁰ Alfred Bowers, *Hidatsa Social and Ceremonial Organization* (Lincoln: University of Nebraska Press, 1992); Carolyn Gilman and Mary Jane Schneider, *The Way to Independence: Memories of a Hidatsa Indian Family, 1840-1920* (St. Paul: Minnesota Historical Society Press, 1987); and, author's interview with Cora Baker, May 1998.

not surprising that departmental and tribal leaders did not view 638 as an opportunity to reconsider the fundamental role of police in community life.

Of course, there were other reasons department members were not fully supportive of the possible transition to tribal management. While they recognized that their current approach to law enforcement distanced them from the community, they also asserted that in the volatile political context of tribal life, federal employment provided them with the job security they needed to perform their job in an independent, responsible manner, without the threat of political reprisals. Such dynamics were evident in a heated dispute overheard between two officers who were trying to decide which one should arrest a prominent tribal official: Should it be the BIA officer, a *federal* employee, who was in danger of only social reprisals for arresting the official, or should it be the COPS-funded officer, a *tribal* employee, who would be in danger of not only social reprisals but also economic ones?

Nonetheless, department leaders predicted that the question of tribal involvement in the “law enforcement business” would come to the fore in the near future. Already, tribal leadership objected to BIA plans to consolidate line authority for policing at the regional level of the BIA Law Enforcement Division. They felt that the loss of local control, as line authority shifted away from the local BIA superintendent, was unacceptable and would push them to 638 their police function. Once COPS funding was eliminated, the loss of police officers would combine with the loss of local BIA control and the continuing reservation crime problem to test the Tribes’ reluctance to actively invest in law enforcement.

In sum, the Three Affiliated Tribes face a challenge common to communities in Indian Country—reconciling “policing” with indigenous means of social control. The follow-on challenge is to redesign police departments as core institutions of tribal government. As at Flathead, community members’ requests for a different style of service constituted an opportunity to seize these challenges, but to date—and particularly due to tribal members’ current conceptions of the 638 process—the Three Affiliated Tribes have not done so.

V.C. Conclusions on the Organization and Management of Indian Police Departments

In the view of many researchers, policymakers, and police professionals, there is a crisis in reservation policing. In addition to the examples we describe, a thorough audit of one of the largest police departments in Indian Country, performed in 1996 by the BIA’s Division of Law Enforcement Services, provides evidence for this assertion. The audit identified problems that were similar to—and in some cases more severe than—those we found:

- poor employee morale and high turnover resulted in a lack of well-qualified and experienced officers;
- basic departmental management was flawed (for example, there was little effective direct supervision of officers and investigative practices were poor);
- inadequate budgets, fiscal mismanagement, and even corruption created serious obstacles to the effective delivery of important police services and programs;

- undue political interference in police operations inhibited the ability of the police to perform their duties in a fair and equitable manner and reduced the credibility of the police in the eyes of the community;
- these and other problems created widespread and serious community dissatisfaction with the police.¹²¹

A number of special reports, commissions, conferences, and blue-ribbon committees have grappled with these problems and, in response, have offered a number of recommendations and proposals. These include increased funding, tightened management, clarifications in ambiguous reporting relationships, and better technology.¹²² Many of these responses are necessary steps for improving policing in Indian Country, but they may be a case of treating the symptoms rather than the disease. Our research suggests that many problems with Indian Country policing do not originate in the contemporary administration of policing by tribes. Rather, they originate in the history and current administration of federal Indian policing policy. To better understand this proposition, we turn next to an extended discussion of the foundations of policing in Indian Country.

¹²¹ Naranjo et al., “Oglala Sioux Tribe, Department of Public Safety Program Review,” above.

¹²² See, for example, Silverman, “Patterns of Native American Crime,” above; and Executive Committee for Indian Country Law Enforcement Improvements, “Final Report,” above.

VI. Federal Policy and Policing in Indian Country

In this section, we look to the history of reservation policing and how that history combines with current federal policies to influence the effectiveness of tribal police. A core issue that emerges is the failure of federal policy to promote the ability of Indian nations to design and exert meaningful control over their own policing institutions. This failure of federal policy is sharpened when contrasted with findings from research in Indian Country on the characteristics of effective governing institutions. The research indicates that governing institutions are more effective when they reflect, in a functionally meaningful way, a tribe's underlying cultural norms and values. In general, it is self-determined institutions, rather than externally imposed structures, that are more likely to be effective—in part because there is an increased likelihood of a “match” between their design and citizens’ jointly held social, cultural, and political expectations and values.

VI.A. The History of Reservation Policing

When the reservation system was established in the early 1800s, law enforcement was mostly provided by federal troops, whose responsibilities reflected the U.S. government’s interest in limiting Indians’ ability to interfere with the economic pursuits of non-Indian settlers. For example, soldiers were responsible for maintaining levels of order sufficient to prevent violent activity common to reservations from spilling beyond reservation boundaries,¹²³ for enforcing the laws and policies that restricted tribes to reservations, for prohibiting a wide range of traditional activities that were viewed as immoral or criminal, and for overseeing the rationing of food and other supplies. (It was not until passage of the Major Crimes Act in 1885 that crimes whose effects were not felt outside of reservation boundaries—that is, crimes *by* Indians *against* Indians—drew the official attention of the federal government.) In short, Indian communities were policed by the military arm of a colonial government.¹²⁴

Official U.S. government permission for Native Americans to participate in the policing of reservations was first granted in the 1860s. Over the next 20 years, a wide variety of policing arrangements evolved: About a third of all reservation police forces consisted primarily of tribal members; others included a mix of tribal members, Indians from other reservations, and non-

¹²³ Hagan and Peak, for example, both note that reservations were extremely violent places, where natural mechanisms of social control were disrupted and armed bands preyed on the weak: William T. Hagan, *American Indians* (Chicago: University of Chicago Press, 1961); William T. Hagan, *Indian Police and Judges* (Lincoln: University of Nebraska Press, 1980); and, Ken Peak, “Criminal Justice, Law, and Policy in Indian Country: A Historical Perspective,” *Journal of Criminal Justice* 17(1989):485-494.

¹²⁴ David Barlow, “Minorities Policing Minorities as a Strategy of Social Control: A Historical Analysis of Tribal Police in the United States,” *Criminal Justice History* 15(1994):141-163; David Wachtel, “An Historical Look at BIA Police on the Reservations,” *American Indian Journal*, May 1980, p. 13; and, Peak, “Criminal Justice, Law, and Policy in Indian Country,” above.

Indians.¹²⁵ Significantly, Native representation on these police forces should not be interpreted as a sign of increased control by tribes over their own affairs. The U.S. government, not tribes, supervised a majority of the forces, and police continued to act in its interest.

Indians themselves viewed the Native Americans on these forces as agents of the U.S. government. The officers were required to emulate non-Indians. They “were expected to set an example by wearing white man’s attire, cutting their hair, practicing monogamy and taking an allotment. Their duties included determining whether a fellow tribesman was working enough to merit his sugar, coffee, and tobacco rations.”¹²⁶ Indeed, as one U.S. Indian agent is reported to have remarked, “The police are looked upon as the common foe, and the multitude are bitterly opposed to them.”¹²⁷ Furthermore, one of the reasons tribal members were favored as police officers by the U.S. government was because they were more adept in dealing with traditional leaders than were federal troops.¹²⁸ In this sense, the increased representation of Native Americans on reservation police forces was motivated primarily by the tactical advantage their knowledge and experience provided the federal government in maintaining an orderly reservation system, rather than a recognition that tribes should be accorded increased rights to self-determination.¹²⁹

The historical record regarding reservation policing from the turn of the century through the 1950s is limited. The General Allotment Act of 1887 transferred nearly 90 million (of an original 138 million) acres of Indian land to state and federal jurisdiction,¹³⁰ and by the 1920s most reservations had only one or two officers. The number briefly swelled during Prohibition, but with the close of that era, the budget for and number of reservation police dropped once again.¹³¹ In 1956, for example, the ratio of police to residents on Indian reservations was two per 5,000 compared to a ratio of *ten* per 5,000 in the country as a whole.¹³² It was this small nucleus

¹²⁵ Paul Knepper and Michael Puckett, “The Historicity of Tony Hillerman’s Indian Police,” *Journal of the West*, January 1995, pp. 12-18.

¹²⁶ Bureau of Indian Affairs, Division of Law Enforcement Services, “Indian Law Enforcement History,” U.S. Department of the Interior, Washington, DC, February 1995, p. 24.

¹²⁷ John L. Gasmann (Indian agent), “Annual Report, 1885” quoted in Hagan, *Indian Police and Judges*, above, pp. 49-50.

¹²⁸ Kevin Meissner, “Modern Problems of Criminal Jurisdiction in Indian Country,” *American Indian Law Review* 17(1)(1995):175-207.

¹²⁹ Hagan, *Indian Police and Judges*, above; Barlow, “Minorities Policing Minorities,” above; and, Bureau of Indian Affairs, Division of Law Enforcement Services, “Indian Law Enforcement History,” above.

¹³⁰ 24 Stat. 388, also known as the Dawes, or General Allotment, Act; see Canby, *American Indian Law in a Nutshell*, above, p. 22.

¹³¹ Vine Deloria, Jr., and Clifford M. Lytle, *American Indians, American Justice* (Austin: University of Texas Press, 1983).

¹³² Bureau of Indian Affairs, Division of Law Enforcement Services, “Indian Law Enforcement History,” above, p. 64.

of officers that the Bureau of Indian Affairs organized into the first modern reservation police forces.¹³³

During the first 60 years of this century, tribes themselves supported at least some of the law enforcement presence on reservations. Even so, the support was grudging. For example, many accounts of reservation life during the period allude to the role of reservation police in forcibly removing children from their families and sending them to federal boarding schools, which were infamous for their hostility to Native culture. We received first-hand accounts of these activities in our research at the Fort Berthold and Flathead reservations; the phenomenon is also documented in research literature.¹³⁴

During the late 1960s and the 1970s, the occupation of BIA offices in Washington, DC, and the siege of Wounded Knee drew new attention to the problems of crime on reservations. This attention generated efforts to increase funds for policing and to professionalize police departments and other components of the Indian criminal justice system. In this period, the number of police in Indian Country increased significantly and Congress appropriated funds to establish the BIA Law Enforcement Academy.¹³⁵ These changes had two important results for Indian police management and policy—results with long-lasting implications. First, efforts to organize and manage the rapidly growing police presence in Indian Country were based on the “professional” model of policing, the dominant approach to non-reservation (municipal) policing in the 1960s and 1970s.¹³⁶ Second, the influence of the BIA Division of Law Enforcement Services over reservation policing greatly increased.

The professional model is characterized by a centralized organizational hierarchy (with military-style ranks and structure), insulation between the police and community and political leaders, and a narrowing of the focus of the police function to crime fighting (and away from other problem solving). The activities of police operating within this model include preventive patrol by automobile, rapid response to centrally dispatched calls for service, and the control of crime through the apprehension and incapacitation of offenders.¹³⁷

In part, the professional approach evolved as a result of new technologies. Automobiles, two-way car radios, dispatch capabilities, and even early computers made it possible to respond to emergencies. But the professional approach was also a reaction to the “political” policing that had previously dominated in America’s cities, in which police were so closely linked to neighborhoods and local politicians that they were virtually an adjunct to local political

¹³³ David Wachtel, “Indian Law Enforcement,” in Laurence French, ed., *Indians and Criminal Justice* (Totowa, NJ: Allanheld, Osmun Press, 1982), p. 112.

¹³⁴ Gilman and Schneider, *The Way to Independence*, above.

¹³⁵ Bureau of Indian Affairs, Division of Law Enforcement Services, “Indian Reservation Criminal Justice Task Force Analysis 1974-1975,” U.S. Department of the Interior, Washington, DC, 1975.

¹³⁶ See especially, Bureau of Indian Affairs, “Indian Reservation Criminal Justice Task Force Analysis, 1974-1975,” above, pp. 83 and 91.

¹³⁷ Kelling and Moore, “The Evolving Strategy of Policing,” above.

machines.¹³⁸ While police operating within the political model were thoroughly integrated into neighborhood and community life, knew neighborhood residents, understood community norms and customs, and were able to rely on community connections in providing services, preventing crimes, and solving crimes, the approach had substantial downsides. Intimacy with the community, closeness to political leaders, and a decentralized organizational structure gave rise to numerous forms of corruption. As a result, architects of the professional model sought to reform policing by severing the close link between police and citizens and insulating the police from political pressure. In combination with new technologies, this new attitude about what police officers should be doing led to the elimination of neighborhood foot patrols and the demise of “personalized” responses to community crime and safety problems.

As noted, the second important result for reservation police policy and management was the growing prominence of the Bureau of Indian Affairs Division of Law Enforcement Services. During the long period from the turn of the century to the early 1960s, responsibility for reservation policing had (by virtue of neglect) fallen to the tribes and, to a lesser extent, a variety of federal entities. In the late 1960s and early 1970s, however, law enforcement services rapidly came under the authority of the BIA. Both the increased presence and professionalization of police on reservations were driven by the Bureau through a series of requests to Congress for increased funds. Consequently, it secured and institutionalized primary control over Indian police policy and management.¹³⁹

As a result of these two factors, not only did tribes have less direct control over general police policy, but because of the influence of the professional model, Indian communities were also further distanced from the police departments that served them. In fact, these factors preserved the legacy of police as an occupying army—federal agencies imposed both the design and administration of policing on Indian nations with little regard for indigenous mechanisms of social control, just as they had in the late nineteenth century.

VI.B. The Contemporary Problem

Ironically, at the same time the BIA Division of Law Enforcement Services was growing in prominence and the professional model of policing was in ascendance, the movement toward sovereignty was the dominant political force in Indian Country. During the late 1960s and early 1970s, Indians worked intensively to acquire increased levels of self-determination and self-governance. As a result of their advocacy, tribal governments acquired the power to legislate, regulate, and adjudicate public policy on their reservations. Tribal governments came to include legislatures and courts; to possess taxation, economic development, and environmental regulatory authority; and to provide infrastructure and public services.¹⁴⁰ In large part, tribes

¹³⁸ Moore and Kelling coined the phrase “political model”: Kelling and Moore, “The Evolving Strategy of Policing,” above. Fogelson discusses the alliance of police with urban political machines: Robert M. Fogelson, *Big-City Police* (Cambridge, MA: Harvard University Press, 1977), chapter 1.

¹³⁹ Wachtel, “An Historical Look at Police on the Reservations,” above.

¹⁴⁰ Stephen Cornell and Joseph P. Kalt, “Culture as Explanation in Racial and Ethnic Inequality: American Indians, Reservation Poverty, and Collective Action,” HPAIED Project Report Series, Cambridge, MA, April 1993, see especially, p. 7; and, Sharon O’Brien, *American Indian Tribal*

acquired increased control of these governmental functions through Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975, which, as we note above, allows tribes to contract with the federal government to regain management control over programs otherwise administered by the BIA and other federal agencies.

Policing services were not exempt from this movement. But despite PL 638 (and the accelerated pace at which tribes are contracting with the U.S. government to deliver their own police services), police policy in Indian Country is still driven, both directly and indirectly, by federal agencies rather than by tribes.

The arrangement is not without advantages. For example, employees of departments that are still managed by the BIA are federal employees and, as such, are provided with job security, livable salaries, competitive retirement packages, and protection from undue political pressure in the uncertain political environment typical of many tribes. Certainly, these benefits and protections help attract qualified candidates to the field, as well as assist police officers in carrying out their duties. Another advantage of federal involvement is the provision of free training for police officers and criminal investigators at the BIA police academy in New Mexico, which has improved the overall quality of policing in many reservation departments. The improved quality of criminal investigation under the leadership of the BIA Division of Law Enforcement Services is yet another benefit. Nonetheless, U.S. government policy has created a number of problems for policing in Indian Country—in both BIA and 638ed departments—which we describe below.

VI.B.1. Multiple Lines of Authority Decrease Accountability and Create a Tribal Capacity “Vacuum”

A key aspect of the BIA management structure is control over policing, which occurs through two quite separate administrative paths (illustrated in Figure 5). The first path begins with the patrol function of BIA police departments, which is supervised by the department’s commanding officer (usually a police captain). Until very recently, this officer was supervised in turn by the local BIA superintendent, who was responsible for policing as well as all the other BIA programs run through the agency¹⁴¹—and so on up to the highest levels of BIA administration in Washington, DC. Now, BIA police captains report directly to the BIA Division of Law Enforcement Services, which is headquartered in New Mexico. The second administrative path begins with the investigative function, over which the department’s commanding officer does *not* have line authority. Instead, line authority for this function also lies with the BIA Division of Law Enforcement Services. This complicated arrangement means that: (1) until very recently, the patrol and investigative functions in the *same* police department were under the authority of *different* departments within the BIA; (2) BIA police departments’ commanding officers do not

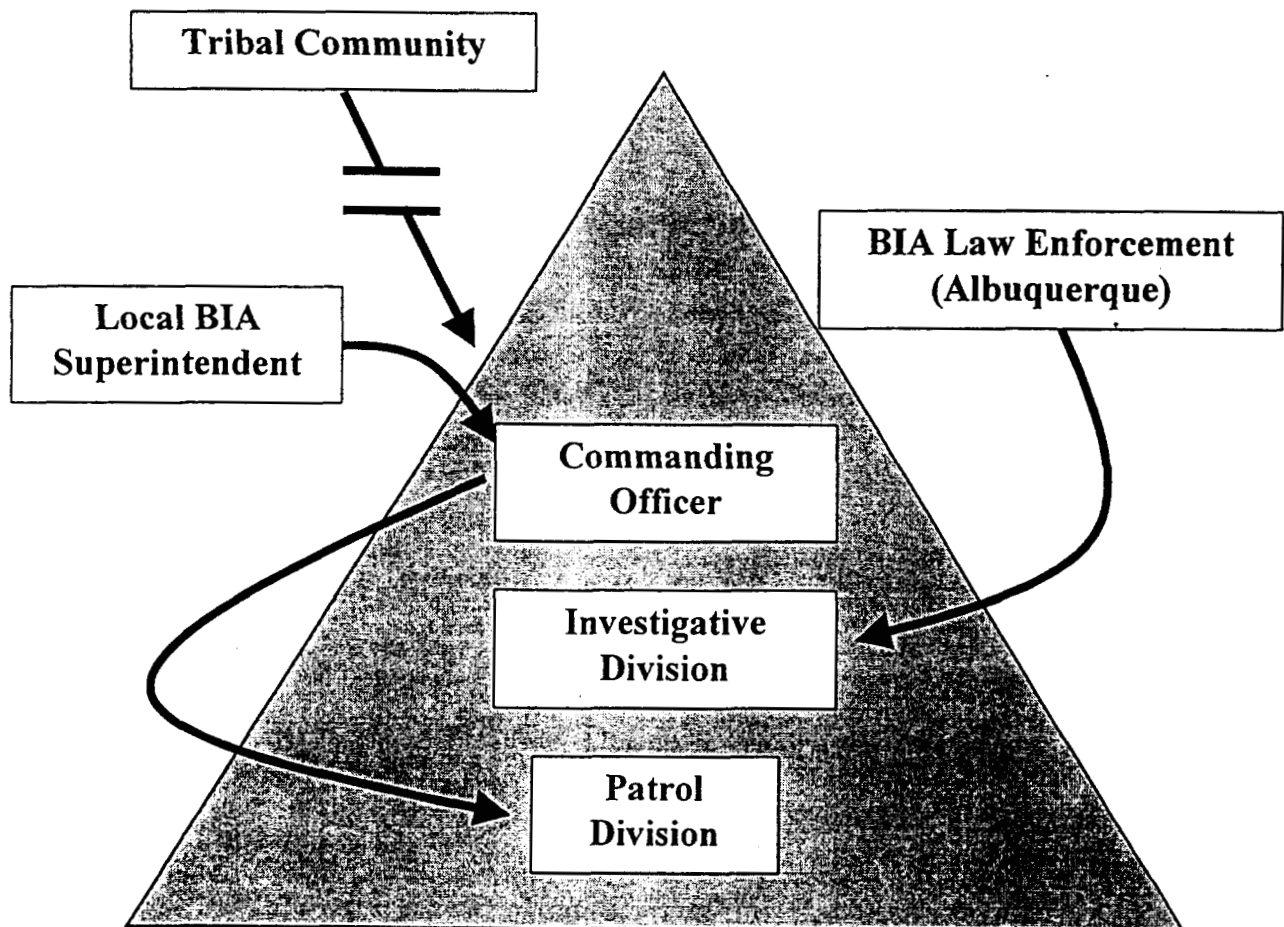
Governments (Norman: University of Oklahoma Press, 1989), especially Chapter 11, “Powers of Tribal Government,” pp. 197-254.

¹⁴¹ An “agency” is the smallest BIA administrative unit. Most large Indian nations have a dedicated agency; smaller nations are grouped together or attached to an agency that primarily serves a larger nation. This structure adds to the problems cited in the text—in multi-tribe agencies, authority over a single tribe’s patrol function quickly devolves to a tribal outsider whose interests and responsibilities are *extremely* diffuse.

have line authority over their own criminal investigators; and (3) authority and *accountability* for BIA police management and policy are diffused among multiple individuals and bureaucratic entities (although policy changes have made the group less diffuse than before).

The justification for placing both patrol and criminal investigation under the authority of the BIA Division of Law Enforcement is sound: it places supervision of these functions under a single division of the Bureau that has substantial expertise in law enforcement.

Figure 5: BIA Supervisory Paths (through 1997).



But the arrangement is not without difficulties. Local BIA police captains still do not have line authority over their criminal investigators. Many tribal leaders and BIA superintendents we interviewed were concerned that the Division of Law Enforcement Services seated in New Mexico might know less about and be less responsive to tribal needs, resources, and priorities than the superintendents. Further, the arrangement is roughly analogous to having city police departments supervised by state or federal authorities—a degree of external control that is contemplated only in those rare instances when a police department is either so corrupt or so poorly managed that it must be placed in receivership. In sum, the potential for accountability problems persists.

The complexity of the management structure overall also requires tribes to exert political pressure and build their cases for new policies with a wide variety of overseers. We found that tribal criminal justice planning bodies often allocated more of their limited resources to lobbying oversight agencies (to *getting* authority) than they did to *exercising* authority in the service of sound strategic planning. The result is that even when tribes devote increased energies to policing, these energies are not used efficiently in developing effective police departments. Another result is that even those tribes intent on improving policing do not seem to know where to start—they are unclear as to which political players to engage to further tribal aims and are frequently unaware of the substantive planning challenges that the tribe must address. As described in section V.B.2., this was a problem for the Gila River Indian Community as they pursued 638. Both of these results are examples of tribal capacity “vacuums.”

VI.B.2. Jurisdictional Complexities Prevent Strategic Planning

The Major Crimes Act of 1885, which places jurisdiction for most serious crimes with federal agencies, also works to diffuse authority and accountability for criminal justice policy and management in Indian Country. The Act arose from the Supreme Court’s decision in *Ex parte Crow Dog*.¹⁴² In *Crow Dog*, the Supreme Court held that the United States District Court of South Dakota lacked jurisdiction over a Sioux Indian who already had been punished by his tribe for killing another Indian. Congress, which considered the punishment far too lenient, responded to the Supreme Court’s decision by quickly passing the Act. As its title implies, the Major Crimes Act granted the federal government jurisdiction over a number of crimes committed on Indian reservations, including murder, kidnapping, rape, and robbery. It now also covers arson, assault, maiming, larceny, receiving stolen property, manslaughter, attempted homicide, conspiracy to commit murder, and statutory rape.¹⁴³

Besides the obvious loss of sovereignty, an important implication of *Crow Dog* is that the development of comprehensive, tribally driven crime strategies—such as those relating to serious youth violence, drug-related crime, child abuse, domestic violence, or sexual assault—now depends on shared priorities or the sustained attention of federal agencies, since so many of these crimes fall under federal jurisdiction. Not only must tribes engage the BIA in developing responses to crime, they must engage the FBI, the U.S. Attorney’s Office, and the federal courts.

¹⁴² *Ex parte Crow Dog*, 109 U.S. 556 (1883).

¹⁴³ United States Code, Title 18.

When control of policy and management is so divided, tribes feel they have neither the opportunity *nor the obligation* to develop their own approaches to policing.

VI.B.3. 638 Process Diverts Tribes from the Consideration of Community Priorities and Goals

Theoretically, the 638 contracting process should provide tribes with the opportunity to design and implement police departments well-matched to tribal needs, resources, values, and priorities. In practice, however, this has not been the case, and examples of tribes that have used this opportunity to carefully consider the police function are exceedingly rare. There are several reasons for this. First, as detailed above, tribes enter the process without adequate planning capacities and, therefore, are unable to use 638 planning as a means of furthering their own goals. Second, the contracting process is focused on implementing policing on the most basic level. From the federal government's standpoint, the contract must address basic operational, organizational, and personnel issues and provide a stream of funding to support these functions, so that the basic police services once provided by the BIA can now be provided by the tribe. But neither the contract process, nor the contract itself focuses on (1) building planning capacity on the tribal level; (2) strategic planning on the departmental level; or (3) systematically considering tribally driven criteria (such as resources, needs, values, and priorities) in designing a department that functions as a core institution of tribal government.

These issues were clear impediments in two of the communities we visited. As noted above, over the course of three or four years of planning, Gila River Indian Community's government had charged several bodies with the planning task for contracting, including the Law Enforcement Commission and, finally, a special planning committee headed by the assistant community manager (the other members were an economic development planner, a program planner, a tribal attorney, and the chairman of the Law Enforcement Commission). Concordant with the federal government's focus on operational, organizational, personnel, and funding issues, these groups had few, if any, members with policing expertise, saw the 638 contract primarily as a stream of funding to acquire rather than an opportunity to plan how the Community itself hoped to be policed, and did not provide for an on-going strategic "check-up" on the department's progress toward Community goals. Similarly, the Three Affiliated Tribes' government had long declined to 638 the police department, largely because they did not see the 638 process as an opportunity to regain traditional methods of social control but, rather, simply as a means of entering "the law enforcement business."

VI.B.4. Federal Management and the Influence of the Professional Model Discourage Community Partnership

While the lack of planning capacity hampers the development of effective police institutions, the continued control of police policy and management by the federal government (for tribes with BIA departments) and the lingering effect of the "professional" model of policing (for tribes with 638ed departments) generate a more fundamental flaw in policing in Indian Country. To better understand this flaw, we must look to an underlying philosophy of policing in a free society.

Specifically, communities grant police tremendous power—the power to detain, to arrest, and even to use deadly force. Communities do this because they rightly place a high value on what police do in protecting freedom and keeping communities safe. This is a contract between

communities and police.¹⁴⁴ But Native American communities have not participated in designing their own police institutions and then consented to be policed by those methods. Departments administered by the BIA are not agents of tribes but of the federal government and, as such, have no incentive to look to the communities they serve for legitimacy or for authorization of the police function. Even those departments operating under “self-determination” contracts adopted—as a byproduct of the contracting process—the organization and methods of the professional era of policing. They look primarily to the law and to external “professional standards” rather than to the community for authorization. This has created a significant gap between tribal police and the communities they serve, a gap that is reflected in mismatches between police and community priorities and between police methods and tribal norms and values.

We offer several examples of the way this plays out in practice. The first comes from Tohono O’odham, where we found that one of the most successful strategies for reducing youth violence was formulated by the local DARE officer.¹⁴⁵ This program had an especially productive though unintended goal. It provided an opportunity for the DARE officer to simply talk with students. To an outsider, the long meetings and discussions typical of the Tohono O’odham can seem unproductive, but for the DARE officer, this culturally appropriate activity permitted him to build strong relationships with youth. In fact, many of the tribal members we spoke with described the ideal O’odham officer as one who simply talked—talked with people to understand their motivation for committing crimes, to find a solution to problems, and to quietly but firmly persuade those involved to implement that solution. Significantly, however, few members of the police department looked on this activity as falling within the definition of “real” police work, though they pointed to interventions the DARE officer had developed as among the most effective crime prevention strategies present on the reservation. Because vestiges of the professional model of policing determined Tohono O’odham police officers’ “methods,” the fact that this officer’s approach to problem solving had a strong fit with tribal norms and values had gone largely unrecognized.

At Flathead, several communities had called upon the police for an increased presence, in one case to control drug marketing and in the other to prevent cars from speeding along the side roads on which children walked to school. In the first instance, residents used 911 to complain about the drug-marketing activity, but the police response proved inadequate—a squad car either arrived on the scene too late or arrived only to break up a single deal, and these responses did not affect violator behavior. The local Indian housing authority finally addressed community concerns; it hired a tribal officer who had been detailed to the federal drug enforcement task force as a resident manager. Besides prominently parking a police vehicle outside his home (which was near the usual site of drug-selling activities), the officer organized community meetings. The group of resident “activists” that emerged from these meetings organized a neighborhood watch, neighborhood clean-ups, and a storage-shed building day. With these

¹⁴⁴ Herman Goldstein, *Policing a Free Society* (Cambridge, MA: Ballinger, 1977).

¹⁴⁵ Project DARE (Drug Abuse Resistance Education) is a school-based substance abuse prevention program that is taught by specially trained police officers in schools across the United States and in other countries.

interventions, the community transformed itself from being the least desirable housing project on the reservation to one of the most desirable. In the second instance, community members also organized meetings, but were more effective on the political level. Council members, the Tribal Chairwoman, and other members of the executive branch explicitly requested the police to become more involved in that particular town and with the community in general. In a Council meeting we attended, one Council member admonished the police chief, “We don’t want you just picking up more people on Highway 93.”¹⁴⁶

In discussions with us, the Chairwoman explained, “The Council would like to see more community involvement and partnership, so people don’t just see [the police] in times of crisis. Instead of just traffic [enforcement], we’d like to see more focus on community participation—a presence in the community, talking to people, assisting them, involvement in education and community activities.”¹⁴⁷ To their credit, police officers and police leadership at Flathead told us both of these stories, and yet, they stressed that doing more to meet community requests for involvement was beyond their official function. Again, police responsiveness was constrained by the professional model of police work and by the fact that, customarily, Indian police departments are not organized and managed to look to the community for authorization and direction.

More generally, we found at most sites that tribal citizens rely increasingly on police and on the courts to settle disputes and problems that not so long ago might have been mediated by neighbors, elders, tribal leadership, or other traditional means. These problems—disputes between neighbors, family quarrels, abandoned and disorderly properties, and unsupervised youth—are more closely linked to the quality of community life than they are to conventional definitions of crime. Police cited the rapidly increasing burden on 911 systems as the product of this phenomenon, and tribal criminal and civil attorneys complained that their caseloads have ballooned beyond reason. On the one hand, police protest that the community demands that they solve too many problems that are not really crimes. On the other hand, citizens complain that police are unresponsive to the real needs of the community.

It is probably unjust to blame such conflicting expectations solely on police policy. The erosion of traditional culture has also contributed to the problem. The mechanisms of social control that might be brought to bear on “non-crime” problems are simply fewer and weaker; thus tribal communities ask more of their police. Yet even this has a connection to federal policy (although this time to broad policy objectives, not policing policy specifically): through at least the 1960s, federal procedures exacerbated the loss of cultural knowledge, discouraged community problem solving, and helped create an expectation that “someone else” should deal with difficult problems. For example, individuals with substance abuse problems were sent to off-reservation treatment centers; economically productive adults were offered relocation to “job-rich” urban areas; housing programs aimed at nuclear families separated extended family groups; children were sent to distant boarding schools; and, even after the general demise of boarding schools,

¹⁴⁶ Meeting of the Confederated Salish and Kootenai Tribal Council, July 16, 1997.

¹⁴⁷ Interview with the Chairwoman, Confederated Salish and Kootenai Tribes of the Flathead Reservation, July 18, 1997.

children were removed from “poor” families and placed in long-term off-reservation foster care. As a result, culturally appropriate means of social problem solving have been displaced, and incentives to adapt those methods to contemporary times and current problems have been suppressed.

In many tribal communities, residents have no one to turn to for help with a wide range of issues except their law enforcement agencies. A very telling example came from the Director of the Juvenile Detention and Rehabilitation Center in the Gila River Indian Community, who told us she (and the tribal police) regularly received phone calls from parents requesting that the police “arrest,” and the juvenile facility house, a “problem” child. Because these parents had little experience of being parented themselves, she concluded that their own parenting skills were extremely limited.

However, we continue to stress this point: when tribal members do turn to the police with their problems, they encounter organizations whose priorities have been shaped by a model of policing that limits responses to a narrow band of strategies and attention to a narrow band of crime problems. An emblematic example of this philosophy came from the acting Pima Agency Superintendent at the time of our first site visit (the nominal head of the then-BIA police department), who stated, “law enforcement is law enforcement”—a claim that seems to exempt Indian police departments from adapting their strategies, policies, and procedures to local needs. As a result, disputes, conflicts, and problems that police and citizens see as each others’ responsibility can continue to simmer and, eventually, escalate into real crimes. In addition, as tribal members conclude that the police are insensitive and unresponsive to community needs, support for the police is diminished. This, of course, further isolates police and communities from each other, and in its worst form, the isolation develops into barely concealed hostility.¹⁴⁸ This is not an atmosphere in which partnership is possible.

VI.C. Research on Effective Governing Institutions in Indian Country

There is a substantial body of research that suggests a roadmap for understanding and beginning to remedy the problems with policing that are rooted in federal policy. Beginning in the 1970s, given the opportunity of increased self-determination offered by PL 93-638, a handful of Indian nations embarked on successful paths of social and economic development. Research by the Harvard Project on American Indian Economic Development indicates that the common denominator among these successful tribes was an *effective government*—one that was capable of both determining and implementing the policy priorities of the community.

One indicator of a tribal government’s ability to effectively make and implement decisions is whether or not it has increased control over its own institutions (seizing sovereignty in a *de facto* and not merely *de jure* way). Stability, the separation of powers, and competent, respected bureaucracies are further indicators of a tribal government’s effectiveness. Significantly, the research also indicates that an alignment between the form and powers of a government’s contemporary institutions and the form and powers of its pre-reservation institutions is most

¹⁴⁸ For example, on ride-alongs we observed officers “patrol” by driving through the front and back yards of homes, shining their floodlights into residents’ porches, kitchens, and living rooms.

likely to create this stability, respect, and *legitimacy*. Yet that “match” between present and pre-reservation political systems is not typical: The U.S. government created the twentieth-century governments of most tribes, over-riding indigenous institutions. In cases where tribes were fortunate enough to avoid imposed constitutions or where, fortuitously, the imposed structure is well matched to pre-reservation forms, tribes are performing well; but where match is poor, tribes are struggling.¹⁴⁹

Table 3: Indian Nations’ Diverse Economic Performance

	Change in Income 1977-1989	Adults with 1989 Income > \$7000	1989 BLS Unemployment	1989 Total Unemployment
Flathead	16%	39%	20%	41%
White Mountain Apache	12%	33%	11%	21%
Cochiti Pueblo	10%	43%	10%	22%
Mescalero Apache	9%	18%	52%	58%
Mississippi Choctaw	9%	36%	26%	27%
Muckleshoot	6%	16%	50%	57%
Pine Ridge Sioux	-1%	21%	61%	73%
Passamaquoddy	-3%	19%	56%	66%
San Carlos Apache	-7%	16%	51%	62%
Rosebud Sioux	-10%	4%	90%	93%
Lummi	-11%	19%	46%	58%
Hualapai	-11%	11%	45%	74%
Yakama	-12%	20%	61%	63%
Crow	-12%	11%	67%	78%
Northern Cheyenne	-15%	29%	48%	55%
All Reservation Indians	-1%	24%	40%	48%

Note: “Change in Income” refers to the change in the percentage of adults with incomes in excess of BIA poverty levels (\$5000 in 1977 and \$7000 in 1989). “BLS Unemployment” measures adults looking for employment but not finding it. “Total Unemployment” measures the percent of the tribal workforce not working.

Source: The table is from Stephen Cornell and Joseph P. Kalt, *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development* (Los Angeles: UCLA Press, 1992), p. 4; data are from the Bureau of Indian Affairs, “Indian Service Population and Labor Force Estimates,” U.S. Department of the Interior, 1989.

¹⁴⁹ This point is based on research by Stephen Cornell and Joseph P. Kalt, especially “Where Does Economic Development Really Come From? Constitutional Rule Among the Contemporary Sioux and Apache,” *Economic Inquiry* 33(July 1995):402-426. The independent variable “match” was derived by comparing tribes’ immediate pre-reservation governmental systems (as documented in ethnographic sources) with their present-day systems. Pre-reservation Indian societies can be characterized as self-governing societies that had passed the tests of environmental adaptation to that point in time; thus, the indigenous, diverse cultures of the tribes were embedded in their political systems.

Data from the last U.S. Census (Table 3) illustrate the diversity in reservation performance that underlies the Harvard Project research. On paper, the Crow are one of the wealthiest societies in the world. They own vast coal resources, extensive timber supplies, rich wheat-growing land, and arguably the best grazing grass in the West. In the last decade, they have also received significant infusions of financial capital—totaling well over 100 million dollars—through a number of highly remunerative legal settlements. The Tribe’s emphasis on education gives it a rate of high school graduation that is well above the average for Natives living on reservations. Yet, the community’s wealth of physical, financial, and human capital generates a negligible annual return, and the reservation unemployment rate is in the 80-90 percent range.¹⁵⁰ By contrast, some tribal communities have been booming economically and rapidly progressing in terms of social conditions. For example, the Mississippi Choctaw’s home in Philadelphia, Mississippi, is hardly rich in natural resources, but the tribe is now one of the largest employers in Mississippi. More than 3000 non-Indians commute daily to work in the Choctaw’s manufacturing, service, and public sector enterprises.¹⁵¹

With reference to Indian policing, the first important lesson from this research is the effect of increased tribal control over tribal institutions. Only those tribes that have acquired meaningful control over their governing institutions—that have increased their actual sovereignty—have experienced improvements in local economic and social conditions. The research has not found a single case of sustained economic development where the tribe is not in the driver’s seat. While tribal-BIA relationships in thriving Indian nations range from cooperative to contentious, they are all characterized by a demotion of the BIA (and of other Federal agencies) from decisionmaker to advisor and provider of technical assistance. The reason that tribal sovereignty is crucial to successful development is clear: As long as the BIA (or some other outside organization) has decision-making authority, the actions, policies, and procedures of tribal government will reflect outsiders’ agendas. For example, the BIA’s bureaucratic standards of success (protecting a budget, expanding authority) will tend to be given more weight than tribal standards, and decision outcomes that meet these external standards will be considered successful even if they lead to lost opportunities, failed policies, or other bad outcomes for a tribe. Without tribal sovereignty over the institutions of government, there is an injurious separation between the recipients of policy benefits and the bearers of policy costs. An important study of tribes’ forest products industries—some operated directly by the BIA, others by tribes themselves under PL 638 contracts—provides hard evidence of this claim. When tribes replaced the BIA administration of forestry programs with their own management, institutional

¹⁵⁰ As in the final column of Table 3, this rate has been adjusted to account for discouraged workers, or those who are unemployed but have stopped actively seeking a job.

¹⁵¹ It may be tempting to credit such phenomenal growth to gaming, a niche market opportunity available to Indian tribes. But the example of the Mississippi Choctaw is telling: economic growth *started* in the 1980s, long before July 1994, when the tribe opened its casino. Further, Harvard Project research is general enough to suggest that, while gaming may contribute significant financial capital to some Native economies, even casinos thrive only when they are underwritten by the basic supports of effective governance.

performance improved. As predicted, tribes operated their timber programs more efficiently than the BIA and received better prices for the products sold.¹⁵²

As discussed, the federal policies that regulate Indian policing have the twin effect of reducing tribal control and diffusing accountability for institutional performance. In our interviews, tribes regularly blamed federal agencies for the poor state of policing in Indian Country; not only were the resources provided by federal agencies inadequate, but it also appeared that federal policies were driven by a misreading of tribes' real needs and priorities. On the other hand, representatives of federal agencies expressed skepticism about the ability and intention of tribes to develop and manage effective police departments. The truth is a mixture of these impressions. The very fact that power is *shared* between tribal and federal authorities allows each to avoid their more appropriate roles and, thus, to perpetuate poor policing. By contrast, if police perform poorly in the typical American city, the citizenry signal their leadership that performance must improve. If conditions do not change, elected officials and police executives are at serious risk of being replaced. In Indian Country, this direct line of accountability and control is often absent. As in other areas of Indian policy, it is both appropriate *and beneficial* for tribal political and police department leaders to take on those tasks; the more appropriate federal role is as the provider of advice, technical assistance, financial aid, and supporter of effective local policing efforts.

An additional observation that emerges from this line of inquiry concerns timing. The legal and *de facto* sovereignty of tribes has been subject to constant challenge, and it is frequently asserted that if tribes wish to be sovereign, they must first establish sound, non-dependent economies. A similar assertion is often made with regard to policing—that if Indian communities wish to have greater authority over criminal justice administration, then they must first demonstrate the ability to responsibly manage their own criminal justice institutions. But Harvard Project research indicates that this reasoning is backward. Sovereignty brings with it accountability: being in charge makes tribal leaders and tribal citizens realize that their own resources and *well-being* are at stake.¹⁵³

The second important lesson for Indian policing from the Harvard Project research is the importance of cultural match. Table 4 summarizes the general research findings. For each Indian nation listed, it presents the contemporary form of government, whether or not this structure matches pre-reservation form, and whether or not the reservation economy is growing. For example, the economically prosperous community of Cochiti Pueblo has never given up its traditional theocracy and has no written constitution. At the other extreme, modern Crow government bears little or no resemblance to the hierarchical and two-branch governmental

¹⁵² Matthew B. Krepps and Richard E. Caves, "Bureaucrats and Indians: Principal-Agent Relations and Efficient Management of Tribal Forest Resources," *Journal of Economic Behavior and Organization* 24(1994):133-151. Also see Matthew B. Krepps, "Can Tribes Manage Their Own Resources? The 638 Program and American Indian Forestry," in Stephen Cornell and Joseph P. Kalt, eds., *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development* (Los Angeles: UCLA Press, 1992), pp. 179-203.

¹⁵³ Joseph P. Kalt, "Policies for Promoting American Indian Economic Development," statement to U.S. Senate Committee on Indian Affairs, September 17, 1997.

structure of pre-reservation Crow society, and economic conditions on the Crow reservation, as discussed above, are dismal. While the list in Table 4 is not exhaustive, the pattern is strong enough to suggest that match matters. A consonance between present and pre-reservation institutional forms confers legitimacy on the methods and outcomes of government decision making and channels political energies in productive directions.

Table 4: Cultural Match

	Form of Government	Cultural Match to Governmental Form	Sustaining Significant Economic Development
Cochiti Pueblo	Theocracy	Yes	Yes
Crow	Athenian	No	No
Flathead	Parliamentary	Yes	Yes
Hualapai	Strong Chief Executive	No	No
Mescalero Apache	Strong Chief Executive	Yes	Yes
Muckleshoot	Parliamentary	Yes	Yes
Northern Cheyenne	Strong Chief Executive	No	No
Pine Ridge Sioux	Strong Chief Executive	No	No
Rosebud Sioux	Strong Chief Executive	No	No
San Carlos Apache	Strong Chief Executive	?	No
White Mountain Apache	Strong Chief Executive	Yes	Yes
Yakama	Athenian	No	No

Source: Table derived from Stephen Cornell and Joseph P. Kalt, "Where's the Glue? Institutional Bases of American Indian Economic Development," Report Series, Harvard Project on American Indian Economic Development, Cambridge, MA, February 1991, p. 49.

How do the dynamics of cultural match play out in practical terms? Before turning our attention to policing, we offer two examples from business and government relations. They highlight the aspects of government structure that appear to be most important for institutional legitimacy and effectiveness—coherence between institutional rules and citizens' jointly held expectations about *who* should hold authority, *how* it should be exercised, and *what* the decision-making structure should be. First, the central government of the Oglala Sioux Tribe of the Pine Ridge Reservation has sometimes tried to launch tribally owned businesses, which are relatively common in Indian Country. Yet in Lakota political culture, allegiance to authority is located at the sub-tribal level of the reservation's districts (political divisions that more closely replicate the quasi-autonomous family bands, or *tiyospaye*, of pre-reservation days). Time and time again, when a financial or management crisis arises for a business promulgated by the central government, the lack of connection to appropriate authority structures causes oversight mechanisms to fail, support for the enterprise to wither, and an eventual business failure.¹⁵⁴ Second, among the White Mountain

¹⁵⁴ One dramatic example of this dynamic is described in "Nebraska Sioux Lean Beef," a teaching case study about a meat-packing plant: Miriam Jorgensen, "Nebraska Sioux Lean Beef, Part A," Teaching

Apache, the formal role of the tribe's chief executive includes being the lead negotiator of external agreements with businesses and other governments. When a dispute arose between the Tribe and the U.S. Fish and Wildlife Service (USFWS) about appropriate means for species protection, the Tribal Chairman gathered a team of advisors and negotiated directly with the USFWS on behalf of the tribe. Today, because cultural norms support this activist, "presidential" leadership role (in fact, the Apache word for "leader" has been variously interpreted as "our smart one," "he who directs," or "he who convinces us"¹⁵⁵), tribal politicians, wildlife biologists, enterprise managers, and citizens are willing to together exert the effort required to make this historic agreement work.¹⁵⁶

To reiterate, these positive and negative outcomes result from matches and mismatches between indigenous and imposed norms and values. Unless there is a match between these factors, the imposed norms and values will consistently generate conflicts with customary "ways of doing business" across social, political, and economic dimensions of reservation life. We observed the same with respect to policing. The police officer at Tohono O'odham or Gila River who aggressively confronts a suspect not only will have offended longstanding tribal norms, but will have failed to draw on them in the service of obtaining the suspect's compliance. By contrast, the police officer at Turtle Mountain or one of the Sioux tribes who *fails* to confront a suspect is guilty of the same error. To the extent that the ethos of the organization in which these officers work mandates or otherwise perpetuates such conflicts, both public support for and the effectiveness of the organization are diminished.

A final note about cultural match deserves attention: it is important not to be naïve about the possibilities. While research shows the potential that match has to contribute to institutional success, there are, unfortunately, no guarantees that culturally legitimate institutions will be effective in a contemporary setting. A society might find itself with institutions that are firmly grounded in cultural norms and yet confront an environment that renders those institutions ineffective. If old forms cannot be adapted to modern problems, a new institution will be necessary. Then, the challenge to the group is to design one that both makes cultural sense and *works*. Having a legitimate institution that is capable of meeting contemporary challenges is the over-arching goal.

Case Study in Tribal Management for Oglala Lakota College, Harvard Project on American Indian Economic Development, Cambridge, MA, August 1990.

¹⁵⁵ Quotations are from Cornell and Kalt, "Where Does Economic Development Really Come From?" above, p. 420; original sources are Grenville Goodwin, *The Social Organization of the Western Apache* (Chicago: University of Chicago Press, 1942); Morris E. Opler, "Lipan Apache Culture," *Southern Journal of Anthropology* 9(1953):92-95; and, Tribal Cultural Director, White Mountain Apache Tribe, personal interview, 1987.

¹⁵⁶ John Wald, "Apaches and U.S. Sign Groundbreaking Treaty," John F. Kennedy School of Government *Bulletin*, Winter 1995, pp. 2-3; and, "Tribe, U.S. Fish & Wildlife Sign Historic Agreement: Statement of Relationship Recognizes Tribe as Steward of its Ancestral Land," *Fort Apache Scout* 33(17)(December 9, 1994):1.

In summary, two lines of evidence, one based on a careful examination of the impact of federal policy on Indian policing and the other based on the effectiveness of governing institutions in Indian Country generally, support this conclusion: The ongoing dominance of the BIA and other federal agencies on policing in Indian Country has diffused accountability for Indian policing, limited tribal capacity to improve policing, deterred tribes from strategic and long-term planning, discouraged community priority-setting, and prevented tribal communities and police departments from aligning their priorities, values, and resources. The seriousness of these issues varies across tribes and, individually, their influence may appear subtle—but in combination they have a powerful negative effect on the overall quality of policing in Indian Country. Moreover, they are concerns that an examination of Indian policing based only on crime trends, management issues, and budget constraints fails to bring into focus.

VII. Conclusions and Recommendations

The preceding sections demonstrate that the task of policing in Indian Country is difficult and complex. Reservation police confront significant crime problems and an array of related social concerns. They struggle under the pressures of limited resources, answer to multiple authorities, and function within a complicated jurisdictional web. Frequently, departments operate in the absence of strategic direction from their tribal governments and lack methods for communicating directly with their service population, deficiencies that limit their knowledge of and ability to address community goals. Consequently, it can be difficult for police in Indian Country to generate community support for—let alone partnership in—their activities.

These problems, concerns, and challenges have a substantial effect on the quality and effectiveness of policing in Indian Country. We argue that many of these issues are linked in important ways to federal policy. Certainly, there is strong evidence of long, cumulative negative effects of federal policy on the practice of policing in Indian Country. The historical record shows how federal policy created a system that served the interests of the U.S. government and non-tribal citizens and failed to promote the ability of Indian nations to design and exert meaningful control over their own policing institutions. The key assertion of this paper is that reversing this failure, through the creation of more indigenous policing institutions, may give Indian police departments purchase on many of the problems they face.

Two important bodies of research and experience inform this conclusion and the recommendations to tribal and non-tribal (especially federal) policymakers that follow from it. The first body of information, discussed in depth above and summarized below, demonstrates the influence that appropriate and effective governing institutions have on the successful development of reservation societies (recognizing that police constitute a governing institution of central importance). The second body of information, which describes the experiences of communities whose police departments practice “community policing,” is introduced below. These two distinct bodies of research—with strikingly similar conclusions—provide critical lessons for building a foundation for policing in Indian Country, a foundation that ensures strong public support for the police function and that effectively leverages a wide range of resources (not just funding, but political, social, and cultural capital as well) in the service of addressing crime.

Before proceeding, we highlight an important aspect of our work: While we are critical of *past* federal policy, we assert that federal agencies can play a useful *future* role in assisting tribes as they build a new foundation for policing. Many federal agencies are directing increased attention and considerable new resources to efforts to better protect tribal communities from crime and to better support tribal criminal justice agencies.¹⁵⁷ The BIA has made substantial progress in improving training and practice, especially with regard to the investigative function. Police professionals within the BIA’s Division of Law Enforcement Services possess significant

¹⁵⁷ See, for example, Executive Committee for Indian Country Law Enforcement Improvements, “Final Report,” above; National Institute of Justice Strategic Planning Meeting on Crime and Justice Research in Indian Country, Portland, Oregon, October 14-15, 1998; and Summit on Charting the Future of Justice in Indian Country, Washington, DC, October 28, 1997.

resources in terms of experience and expertise. Many processes already in place, such as the 638 contracting process, could be modified to assist tribes as they undertake efforts to fundamentally rethink policing. In making recommendations, we suggest how these resources can best be brought to bear on improving policing in Indian Country.

VII.A. Reprise of Research on Effective Governing Institutions

Research on Indian economies indicates that economic and social problems can be solved *only* if tribes first focus on building strong and effective governing institutions. This task properly begins with increased tribal control of institutions, an activity that has been part and parcel of tribes' drive for substantially increased sovereignty—which has itself been the dominant political force in Indian Country over the last three decades. Thus, it is not by coincidence that many of the tribes that have been most active in reclaiming sovereignty are also those that have achieved the greatest success in combating the problems of poverty.

The research on Indian economies further concludes that institutional design matters to institutional effectiveness. Strong and effective governing institutions reflect the values and priorities—the culture—of the community. This “match” increases the probability that the methods and outcomes of government action are supported by the population.

In general, Indian policing has continued on a trajectory outside of the national movement toward increased tribal sovereignty.¹⁵⁸ Likewise, the idea that institutions might be tailored to fit tribal conceptions of the appropriate methods for social control is not common among Indian police and policymakers. Yet if tribes took greater control over the management and design of policing, it is likely that, as in the economic sphere, their criminal justice institutions would become more effective. Parallel to the research findings on Indian economies, some of the major “wins” afforded by greater self-determination and cultural match in policing might be: (1) focused accountability; (2) the increased likelihood of a consonance between the capabilities of policing institutions and the demands made on them by the social, cultural, and political environments in which they operate; and (3) increased public support for the police mission.

VII.B. The Possibilities for Community Policing in Indian Country

“Community policing is a problem-solving partnership between the police and the community that is incorporated throughout a police department’s culture and operations. In community policing, the police and the community collaboratively analyze problems, set operational priorities, and implement strategies appropriate for the resolution of each problem.”¹⁵⁹ In other

¹⁵⁸ This is despite the fact that policing institutions are of such central importance to government that indigenous administration should be a top priority for tribes. On a fundamental theoretical level, the gift of people to their sovereign government—and the defining right of government—is the right to wield coercive power over the citizenry. It is impossible to be truly sovereign without exercising real self-determination in policing. See Thomas Hobbes, *Leviathan* (London: Andrew Crooke, 1651), especially chapter 17.

¹⁵⁹ Susan Michaelson, George Kelling, and Robert Wasserman, “Toward a Working Definition of Community Policing,” Program in Criminal Justice Policy and Management, Working Paper #88-05-09, Harvard University, Cambridge, MA, January 1988.

words, because community policing is a method by which communities lend *their* authority to the police enterprise, see *their* norms and values (their culture) reflected in the police mission, and employ *their* considerable formal and informal resources to address both crime and other social concerns, it gives rise to institutions that have the important characteristics cited above—self-determination and cultural appropriateness. Experience and research show that the community policing strategy enhances the capacity of police to address crime and to assist communities in becoming strong, independent, and resourceful. It leads to *more effective* policing.¹⁶⁰ In sum, the growing body of experience and research on community policing is remarkably congruent with the findings on effective governing institutions in Indian Country. We conclude that community policing provides a framework that tribes might use to design and implement new, Native approaches to policing—approaches that should improve the quality of policing in Indian Country and, further, do so in the context of tribal nation building. The paragraphs that follow provide a more in-depth explanation of what it means to implement the community policing strategy and how it succeeds.

How does a department practice community policing? It does so by supporting police officers in the activities that communities most demand of them, not only in the narrow band of activities that constitute reactive crime fighting. Departments implement community policing by promoting a broader definition of the police function than is permitted in the professional approach. In this definition, an improved quality of community life becomes a desirable outcome of good police service, which means that activities such as order maintenance, conflict resolution, and problem solving through the organization and provision of a wide range of services become acceptable and important police duties. The results of this broader definition are significant. For example, police practices that bring police into close contact with the public have always been politically popular, but research shows that they are advantageous in other ways as well. They contribute to community life, reduce fear, increase citizen satisfaction with police, improve police attitudes toward citizens, and increase the morale and job satisfaction of police.¹⁶¹ Similarly, police activities that both engage citizens in solving problems and provide citizens with new tools (such as conflict resolution capacities) contribute to community strength, independence, and resourcefulness.¹⁶² Establishing and following practices with these wider effects is a central task of the community policing approach.

The broader definition of the police function also helps align police priorities and values with those of the community (which, as we have seen, is rarely the case in Indian Country). In large part, the alignment occurs as the source of authorization for police activities shifts from professional and/or bureaucratic standards to the citizens being policed. Where community

¹⁶⁰ See, for example, Sparrow et al., *Beyond 911*, above; *Perspectives on Policing*, a series of 17 papers published jointly by the National Institute of Justice and Harvard University (Washington, DC: U.S. Department of Justice, 1988-1993); and, Mark H. Moore and Margaret Poethig, "The Police as an Agency of Municipal Government: Implications for Measuring Police Effectiveness," paper prepared for the National Institute of Justice's Police Research Institute, "Measuring What Matters," March 1998.

¹⁶¹ Robert Trojanowicz, *An Evaluation of the Neighborhood Foot Patrol Program in Flint, Michigan* (East Lansing: Michigan State University, 1982).

¹⁶² Herman Goldstein, *Problem-Oriented Policing* (New York: McGraw-Hill, 1990).

policing is already practiced, police have realized that ambiguities inevitably surround the new kinds of police activities and that, to make their interventions effective, they must seek authorization *regularly* from citizens. Police departments have learned that professional and/or bureaucratic authority—especially that which tends to isolate police and insulate them from community or neighborhood influences—decreases as citizens contribute more to the definition of problems and identification of solutions. In this sense, community policing relies on an intimate relationship between police and citizens, a relationship that is determined less by past practice *than by the particular attributes of the community to be policed*. The tight linkage between police action and citizen authorization is also a locale-specific application of a broader idea in law enforcement, that “behind the badge is the Constitution.” That is, to be legitimate in the eyes of citizens, the *actual ways* in which police maintain order, resolve conflicts, and solve problems must themselves uphold the priorities, norms, and values of the community.

Police departments implementing community policing have found that community concerns are often important indicators of ongoing, underlying problems that might escalate into crimes if ignored. Today, community policing’s problem-solving approach and attention to order maintenance are widely recognized as playing important roles in communities’ efforts to rebuild their neighborhoods and in increasing the quality and safety of community life.¹⁶³

The non-Native experience with community policing and data from our site visits suggest that community policing has great promise in Indian Country. For example, we have noted that many tribal citizens rely increasingly on their police departments to settle disputes, conflicts, and problems that police themselves do not consistently treat as legitimate crime problems. The over-arching lesson of community policing is that if reservation police were to pay attention to these problems, and if they utilized credible tribal approaches as remedies, they would become more effective problem-solvers, more respected by tribal citizens, and better able to “nip in the bud” problems with the potential to escalate into more serious crimes.

Despite the success of community policing, it is not a wholesale prescription for transforming police departments and eliminating crime. Nonetheless, we conclude that, by changing the foundation on which policing occurs, it is the appropriate first step for improving policing in Indian Country. For any given Indian nation, the systems that animate and guide policing—such as the organizational structures of the police department and overall criminal justice system, tribal personnel and training systems, local management information and control systems, and tribal agencies that conduct strategic planning—can be linked to a vision of policing shaped by that nation’s needs, beliefs, priorities, and resources.¹⁶⁴ As a result, the tribe’s policing

¹⁶³ Examples of successful initiatives are found in Sparrow et al., *Beyond 911*, above; George L. Kelling and Catherine M. Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities* (New York: The Free Press, 1996); and, Anthony A. Braga et al., “Problem-Oriented Policing in Violent Crime Places: A Randomized Controlled Experiment,” *Criminology* 37(4)(August 1999):541-580.

¹⁶⁴ Again, it is important to note that critical elements of policing are determined by the particular (or unique) attributes of a community and, therefore, that *community policing in Indian Country may look dramatically different from tribe to tribe*.

institutions would become more indigenous (or self-determined), more likely to build upon and reinforce important cultural norms and values, and more valuable to the community.

Changing an Indian police department's policies and procedures is one nuts-and-bolts way this linkage between policing systems and tribal priorities might occur. Depending on the dispatcher's assessment of a call, for instance, a local elder or other accepted authority could accompany the responding officer; in many instances, the officer might be there only to support the elder's authority (or vice versa). Such an effort would lend credibility to the modern police function while simultaneously showing respect for important tribal traditions. Similarly, if a tribal value is to "talk things out" (as in O'odham culture), new policies and procedures might specify situations in which this approach would be appropriate and offer guidelines for ensuring that such conversations were effective.¹⁶⁵ Different policies and procedures could be developed for cultures in which the direct, physical assertion of authority is appropriate (the Turtle Mountain Chippewa might fit this description); the challenge would be to develop guidelines that made the physical exercise of authority controlled and also effective in maintaining order.

Another nuts-and-bolts approach might be to modify both the organization of a department and its personnel system to reflect tribal culture. In many of the interviews we conducted at Fort Berthold, interviewees mourned the decline of the Black Mouth Society, an association of respected, mature men who historically acted as the "police" for these tribes. A practical arrangement that would strengthen important traditional values, draw on the cultural power of the Society for greater authority, and yet meet modern needs might be a two-tier department in which junior officers serve an "apprenticeship" under the supervision of "tenured," highly experienced, and well-qualified senior officers (in effect, a Black Mouth Society).¹⁶⁶ The selection, promotion, and evaluation of officers could be geared not only to their ability to carry out the conventional functions of policing (good investigative work, safe driving, making arrests), but also to their fitness to serve as members of the Society.

¹⁶⁵ Many writers stress the importance of "talking things out" in O'odham culture. Several sources are: Alice Joseph, Rosamond B. Spicer, and Jane Chesky, *The Desert People* (Chicago: University of Chicago Press, 1949); William S. King and Delmo J. Jones, "Papago Indians: Papago Population Studies," in *American Indian Ethnohistory Series: Indians of the Southwest* (New York: Garland Publishing Co., 1974), pp. 125-136; Lynn S. Teague, "Prehistory and the Traditions of the O'odham and Hopi," *Kiva* 58(4)(1993):435-454; Ruth M. Underhill, "Papago Indian Religion," *Columbia University Contributions to Anthropology Series*, vol. 33 (New York: Columbia University, 1969); and, Ruth Underhill, *The Papago Indians of Arizona and Their Relatives the Pima* (Washington, DC: Bureau of American Ethnology, U.S. Department of the Interior, 1940). We further observe, however, that although both the Tohono O'odham and Akimel O'odham have similar cultural roots, their recent history is quite different. Thus, the two communities might find markedly different ways to incorporate cultural values into their policing methods; the differences would not imply that one group was less "Indian" or less "O'odham" but would simply reflect modern cultural differences.

¹⁶⁶ Robert H. Lowie, "Societies of the Crow, Hidatsa, and Mandan Indians," in *Anthropological Papers of the American Museum of Natural History*, vol. XI, pt. III (New York: The Trustees, American Museum of Natural History, 1903); Bowers, *Hidatsa Social and Ceremonial Organization*, above; Gilman and Schneider, *The Way to Independence*, above; and, Cora Baker interview, above.

In reflecting on this description of community policing and its possible application in Indian Country, we emphasize that the model is not a tactic or set of tactics but, rather, a *process* by which police partner with communities to establish shared priorities, to support community efforts to address crime, and to obtain the authorization of communities to act on their behalf. Thus, a department practicing community policing is characterized not merely by a set of general tactics such as neighborhood foot patrols or stable geographic beats, but by the fact that it has found multiple (and usually locale-specific) ways to encourage officers to pay attention to citizens' priorities and values, to respond to the fears citizens feel in the face of certain social problems and crimes, and to employ programs that emphasize collaboration between citizens and police. Even so, the confusion between *tactics* and *process* (also sometimes called *strategy* or *philosophy*) has discouraged police in Indian Country from moving beyond the professional approach to using the community policing approach in the way that we describe. On numerous occasions, police leadership and policymakers working in Indian Country informed us that staff shortages coupled with the tremendous distances characteristic of western reservations—that is, obstacles to tactics—made community policing an impractical goal. As the scenarios we present demonstrate, our view is counter to this. Community policing can be implemented in practical ways, without compromising the effectiveness of police. It should not require excessive funds and should not reduce a department's ability to carry out its mission. Instead, existing departmental values, priorities, and resources can be reoriented to community values, priorities, and resources. Misunderstandings about the requirements of community policing should not be allowed to stand in the way of its implementation.¹⁶⁷

VII.C. What the Federal Government Can Do

We recommend that the federal government pursue a more fully developed and more cohesive policy of self-determination in Indian policing. This approach requires amendments to several important federal programs and activities, including the 638 contracting process, the way various agencies invest in policing in Indian Country, the training of BIA and other Indian Country police, and the administration of law enforcement within the Bureau of Indian Affairs. Our specific recommendations follow.

The federal contracting process is a crucial program to which changes should be made. Contracting should be about more than gaining control of a stream of money, and therefore, we feel that the process should emphasize not only tribal management (the present focus) but also organizational planning. Because contracted police departments do not need to replicate the BIA departments they replace, the contracting process should encourage tribes to rethink the way policing occurs. To do this, it may be necessary for the federal government to invest directly in qualitative change. One possibility is to offer police department and political planners incentives to explore the specific implications of community policing for their department, tribal government, and nation and to pursue organizational change based on the findings. Yet, any amendments to 638 policy should avoid making the requirements for contracting more stringent.

¹⁶⁷ See Malcolm K. Sparrow, "Implementing Community Policing," *Perspectives on Policing*, No. 9 (Washington, DC: U.S. Department of Justice, November 1988); and, David M. Kennedy, "The Strategic Management of Police Resources," *Perspectives on Policing*, No. 14 (Washington, DC: U.S. Department of Justice, January 1993).

We believe that tribes can think best about policing when they control policing, and thus, federal contracting policy should offer assistance in ways that both improve policing and promote sovereignty.¹⁶⁸

Contracting is only one of the channels by which the federal government invests in Indian Country policing. Indeed, many departments and agencies of the federal government invest in Indian Country policing, and the way they do so is of great importance. Past investment activities have tended to have an ad hoc quality, and while many have had positive effects, a more coherent “investment policy” could increase the usefulness of future spending. We propose that two related principles guide federal spending (regardless of the department or agency initiating the funding) on policing in Indian Country. First, investments should strengthen tribal managers’ ability to think in new ways about policing. That is, investments should encourage both departmental and political managers to address questions such as: How does and how should policing promote the nation’s goals to be more resourceful and independent? What policing strategies are particularly effective at accomplishing this? What are the tribal norms and values that should be embodied in tribal policing practices? How can tribal political and police department leaders ensure that this happens? Second, investments should strengthen tribal capacity to form and administer more self-determined police departments. As noted with respect to contracting, investments should not only assist tribes financially, but also increase their organizational and strategic capability to oversee reservation policing. Funding that helps tribes reform the organizational structure of their criminal justice systems (so that, if desired, they have the freedom to become less compartmentalized), rewrite police policies and procedures (to create a culturally and task-appropriate set), professionalize personnel systems (including recruitment, training, and promotion requirements), and develop strategic planning entities is particularly vital.

Two examples reveal the ways in which investments that do not accord with these principles may misdirect police department and political policymakers. The first is federal spending on technology. While the need to improve the collection and management of information in Indian Country police departments is pronounced, a caveat is in order. The statistics that such systems generate emphasize only one part of the police mission—crime fighting. Other roles that police might play in promoting community values and ensuring order and security will be de-emphasized. In other words, isolated investments in policing technology can lead departmental and political leaders away from the challenge of thinking in new ways about policing. Tribes and federal policymakers with an interest in community policing (or any other approaches that generate new police roles and responsibilities) must bear this outcome in mind and, if possible,

¹⁶⁸ In the current political climate, this will be much more difficult than it sounds. Since the autumn of 1998, Congressional budget battles have disallowed new 638 and self-governance contracts. Preventing contracting—either through overly strict contracting requirements or a lack of funds—does Indian policing no good. In fact, it perpetuates the negative influence of federal policy on policing, by allowing community needs and concerns to fester, department management and facilities to further deteriorate, and “catch as catch can” programs (drug enforcement or anti-gang violence programs, for example) to take the place of comprehensive strategic planning.

support investments in technology with funding for activities that help connect the information system to the tribe's other important policing goals.¹⁶⁹

A second example is the response of national-level law enforcement authorities to reports of rising crime in Indian Country: They have called for the assignment of more federal officers to Indian Country. These officers are already making their presence felt. They are members of federal drug enforcement and anti-gang violence task forces, Border Patrol officers, agents of the U.S. Attorney's Office, and FBI agents. While many Indian police departments want the additional resources that an increased federal presence brings to bear on reservation crime problems, many Indian communities justifiably see this increased presence as a further loss of sovereignty (or even an "occupation"). From the standpoint of self-determination, such fractionated injections of resources prevent tribes from developing truly comprehensive responses to their social disorder and crime problems, especially as they are complicated by offense and geographical jurisdiction issues. It would be better to spend the same money on Indian policing directly—so that a tribe could develop its own, targeted strategy for dealing with its particular problems—and have similar officers and agencies available to serve as professional advisors and partners in the implementation of tribally driven anti-crime programs. The principles we propose push investment in this more fruitful direction.¹⁷⁰

Our final comment on investment is that increasing the impact of the current flow of funds to Indian Country policing should not become an argument for freezing or limiting investment. On the contrary, we believe that funding should increase. In part, this is because police in Indian Country operate with a limited resource base relative to the crime problems they face. It is also because of long-term under-investment in the reservation criminal justice system overall.

¹⁶⁹ With regard to management information systems, additional caveats are important. First, increasing the availability of automated call management and management information systems does not change the fact that much of the data collected by these systems is of poor quality. The data can only be improved by breaking down the social and cultural barriers that exist between police and many tribal communities, and thought should be given to this problem. Second, automated information systems will provide needed information to tribes, but the technology and training that accompany these systems must recognize that the typical department in Indian Country is much smaller than its urban and suburban counterparts. These small staffs could be easily swamped by demands expressed through 911 systems, inhibiting their ability to do sound proactive planning. On the other hand, small departments will benefit greatly from systems that will enable them to identify the truly high priority calls and to focus on the underlying problems driving crime. Third, not only police personnel, but also tribal leadership must be educated on how to best use the data in the service of broad tribal goals.

¹⁷⁰ The COPS program also places federally funded officers in Indian Country, but because the tribe has great flexibility in how it utilizes these officers, the program is less likely to divert police and tribal policymakers from their most important tasks. As noted in section V.A.2., the problems with the COPS program are much different in nature: its restrictions on federal employment create a dual authority structure in BIA-managed departments and further complicate oversight issues; the lack of training and equipment funds in COPS grants may create a group of officers with inferior capacities; and the statute's sunset clause and lack of specific phase-out provisions will test the already limited resources of Indian police departments severely and, thus, have a larger impact in Indian Country than elsewhere.

Federal policy concerning the training of police officers serving Indian Country must also change. Most of the training that tribal police receive is provided through state police academies, which have little focus on either community policing or the important economic, geographic, social, and cultural features of policing in Indian Country. These deficits might be eliminated by adjusting the current curriculum at the federally administered Indian Policing Academy in Artesia, New Mexico, to support the vision of tribal policing offered in this paper and by expanding the number of academies to adequately serve all of Indian Country. At the same time, we acknowledge that municipal, county, and state police often gain comfort in working with Indian police (and vice versa) from the fact that they have all attended the same training academy. If tribes continue to choose to send their police to state academies, the federal government could fund additional training in the self-determined approach to reservation policing we describe. These courses could be included in the curricula of state training academies or could simply be coordinated with the state offerings. They must, however, be more than minor postscripts to state curricula; they must provide substantive training that is appropriately tailored to the demands of policing in Indian Country.¹⁷¹

A final federal policy that deserves careful consideration (and potentially, amendment) is the centralization of authority over all BIA law enforcement functions in Area Offices and the elimination of any agency-level control. While this reorganization eliminates the separate lines of authority over criminal investigation and patrol that we criticized earlier and might increase the professionalization of police management within the BIA, tribes appear to appreciate access to a local reporting structure. In fact, loss of local authority was an explicit issue for two of our four site-visit tribes. At Gila River, key tribal administrators protested centralization, and their objections led to the early and untimely departure of the acting BIA police captain charged with putting the department “in order” for contracting. At Fort Berthold, centralization led many community members to agitate for contracting. It may be better for Area Office policing supervisors—experienced officers themselves—to shift their focus from managing policing for non-contracted tribes to serving as professional advisors to all area tribes, so that they become real partners in the process of rethinking reservation policing and implementing new, tribally driven efforts.

VII.D. What Tribes Can Do

Our primary recommendation to tribes has been laid out earlier in this conclusion: They should pursue real self-determination in Indian policing. This is a process in which Indian nations seek both the financial and organizational capacity to oversee policing, find ways for the community, tribal leadership, and police to think strategically about policing, and weave culturally appropriate methods into policing. Significantly, the community policing philosophy advocates a very similar process. According to this approach, reservation police and the tribal community “together analyze problems, set operational priorities, and implement strategies appropriate for

¹⁷¹ Notably, this discussion also implies that state-level changes in training will be necessary: Whether or not tribal police attend state academies, those institutions must inform their students of the appropriateness of Indian self-determination over policing and of the professionalism of Indian police. Police graduating from state academies must be prepared to work with *all* of their colleagues—in state, out-of-state, federal, and tribal.

the resolution of each problem.”¹⁷² Thus, our correlate recommendation is that Indian nations should strive to implement their own versions of community policing.

That said, we have a few additional recommendations for tribes, which may increase the effectiveness of new policing approaches. These recommendations concern tribes’ commitments to fairness and impartiality and tribal responsibilities toward training.

First, we recommend that tribes commit themselves to the development of impartial and fair police departments. Typically, reservation police are indicted for *not* having these characteristics. In some cases, political, clan, and family relationships influence police practice and policy. Many interviewees claimed that ties of this nature between suspects and department members often influenced the disposition of crimes. In other cases, political dynamics drive the management of departments. For example, corrupt tribal governments co-opt police departments to protect illegitimate activities and enterprises from scrutiny or prosecution. Cases of nepotism in the hiring and promotion of police officers and staff are also still in evidence.¹⁷³ Of course, these problems are similar in character and frequency to those that plague small and large police departments outside of Indian Country. For them, one important solution has been to develop and publicize sound personnel policies—ones that eliminate or minimize nepotism, for example—so that the department can maintain its credibility among citizens and with other government agencies. Tribes would benefit from similar policies.

Second, we recommend that tribes themselves take an active role in the appropriate training of their police officers. Certainly, if the goals of tribal policing include the preservation and promotion of important tribal norms and values, the training officers receive at state or federal academies is insufficient. *Local* police training and education is necessary to provide officers with a better understanding of the government and culture of the tribe they serve and with a better idea of how policing gives meaning to those principles. Tribe-specific research, preferably conducted by tribal members and tribal police themselves, is the only real way to meet this goal—although the federal government could productively support this process in a number of ways, including the provision of direct financial support or of various forms of technical assistance.

VII.E. Conclusion

Our core conclusions and recommendations focus on what we assert is a fundamental issue: Tribes, with the support of the federal government, must reconsider the foundations of policing on American Indian reservations. Our supporting recommendations grow out of this fundamental issue and are relatively simple. First, the lessons drawn by tribes, academics, and policymakers from the research on and accumulating experience in community policing and the design of effective governing institutions in Indian Country can productively inform the development of federal policy. Second, this same evidence and experience provide the necessary starting points for tribes as they undertake the task of rethinking policing. Significantly, we do

¹⁷² Michaelson et al., “Toward a Working Definition of Community Policing,” above.

¹⁷³ Other observers confirm these findings: Naranjo et al., “Oglala Sioux Tribe, Department of Public Safety Review,” above.

not recommend that federal and tribal policymakers direct their full attention and resources to increased funding for reservation police departments, the development of new specialized crime-fighting task forces, and improved technology. While these activities have both appeal and short-run potential, in the long run, they will add little to the ability of Indian police departments and tribal communities to independently address the substantial problems they face.

Also in conclusion, we reemphasize that neither community policing nor the research on the design of effective governing institutions in Indian Country offers a wholesale prescription for transforming police departments and eliminating crime. Instead they provide a framework for linking research and action in designing approaches to policing that both make cultural sense and work. And that is the overarching goal—the creation of legitimate policing institutions that are capable of meeting contemporary challenges (which may be as divergent as neighborhood disputes, family violence, and the manufacture and sale of methamphetamines).

Two possible misinterpretations of this statement deserve mention. In recommending that tribes rethink policing in the context of culture, we are not recommending that they reflexively resurrect dormant pre-reservation methods of social control and policing, nor are we giving a blanket endorsement to the “restorative justice” policies now popular in many Indian (and non-Indian) jurisdictions.¹⁷⁴ Rather, our advice to tribes is to create workable, nation-specific policing institutions and approaches that are informed by traditional customs. The workability criterion means that the policing policies and practices individual tribes develop must recognize the reality of day-to-day life and politics in Indian Country and be capable of getting things done in this “real world.” Police department and political leadership should not be left vulnerable to charges that they have failed to address modern crime problems (ranging from gang violence to driving while under the influence of alcohol). Our argument is simply that basing policing activities on a cultural foundation is a powerful means of establishing legitimacy, and that when policing activities are viewed by the population as “legitimate,” the police may become more effective.¹⁷⁵ The nation-specific criterion highlights the problem with implementing restorative justice approaches across the board. Anthropological evidence makes clear that while many Native American cultures employed such approaches to ensure adherence to social norms, many others employed strikingly authoritarian, retributive methods of social control. In sum, establishing culturally appropriate policing means that, *on a tribe by tribe basis*, Indian nations must make a substantial investment in identifying social norms relevant to policing and the function and influence of these norms in contemporary life. We feel that this can be accomplished only as tribes make a strong, sustained commitment to fundamentally rethinking their approach to policing.

Finally, we note that the ultimate success of “rethinking policing” with an eye toward increased self-determination, cultural appropriateness, and Native approaches to community policing

¹⁷⁴ Marlene A. Young, “Restorative Community Justice: A Call to Action,” National Organization for Victim Assistance, Washington, DC, 1995.

¹⁷⁵ Of course, the opposite configuration also presents a problem. Workable but illegitimate institutions are as unhelpful as legitimate but unworkable ones. If a department makes a limited set of cosmetic changes that leave in place old ways of doing business—no matter how functional—it will not succeed in better aligning the efforts of police departments with community priorities.

depends on research. The agenda must include research that helps to identify the appropriate process for undertaking this initiative on a tribal level (perhaps using lessons learned from successful constitutional reform efforts) and research that helps practitioners understand how the approach we advocate can be reconciled both with the contemporary thicket of state and federal jurisdictional issues and with PL 280. Besides the cultural research noted above, tribal-level research that focuses on strengthening tribal managers' ability to think in new ways about policing and on helping tribes' political and police department leaders ensure change will be particularly important.

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VIII.B. Legal Citations

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- Hell Gate Treaty of 1855, 12 Stat. 975
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- Major Crimes Act of 1885, 18 U.S.C.A. § 1553
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Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638), 25
U.S.C.A. § 450 et seq.

Native American Languages Act of 1990 (Public Law 101-477)

Native American Languages Act of 1992 (Public Law 102-254)

Appendix A

Survey Respondents

Questionnaire, Part I

Questionnaire, Part II

The chart below provides information on our survey universe and the tribes responding to each part.

Survey Universe (Harvard Project Tribes)	Survey Responses		
	Part I	Part II	Both
1. Bad River Band of Lake Superior Chippewa (WI)			
2. Blackfeet Tribe (MT)	√	√	√
3. Cheyenne River Sioux Tribe (SD)	√		
4. Chippewa-Cree Tribe (Rocky Boys Reservation) (MT)	√	√	√
5. Coeur D'Alene Tribe (ID)		√	
6. Colorado River Indian Tribes (AZ)			
7. Confederated Salish and Kootenai Tribes (Flathead Reservation) (MT)	√	√	√
8. Confederated Tribes of the Colville Reservation (WA)	√	√	√
9. Confederated Tribes of the Umatilla Indian Reservation (OR)	√	√	√
10. Confederated Tribes of the Warm Springs Reservation (OR)	√	√	√
11. Crow Tribe (MT)	√		
12. Eastern Band of Cherokee Indians (NC)		√	
13. Fond Du Lac Tribe of the Minnesota Chippewa (MN)			
14. Fort Belknap Indian Community, Gros Ventre & Assiniboine Tribes (MT)	√	√	√
15. Fort Peck Assiniboine & Sioux Tribes (MT)	√	√	√
16. Gila River Indian Community (AZ)	√	√	√
17. Hoopa Valley Tribe (CA)	√	√	√
18. Hopi Tribe (AZ)	√	√	√
19. Hualapai Tribe (AZ)			
20. Jicarilla Apache Tribe (NM)			
21. Lac Courte Oreilles Ojibwa Tribe (WI)			
22. Lac Du Flambeau Band of Lake Superior Chippewa Indians (WI)	√	√	√
23. Leech Lake Tribe of the Minnesota Chippewa (MN)			
24. Lower Brule Sioux Tribe (SD)	√		
25. Lummi Indian Nation (WA)	√	√	√
26. Makah Tribe (WA)			
27. Menominee Indian Tribe (WI)	√		
28. Mescalero Apache Tribe (NM)			
29. Mississippi Band of Choctaw Indians (MS)			
30. Muckleshoot Indian Tribe (WA)	√	√	√
31. Navajo Nation (AZ, NM, UT)	√	√	√
32. Nez Perce Tribe (ID)	√	√	√
33. Northern Cheyenne Tribe (MT)	√		
34. Northern Ute Indian Tribe (Uintah And Ouray Reservation) (UT)	√	√	√
35. Oglala Sioux Tribe (SD)	√		
36. Omaha Tribe (NE)	√		
37. Oneida Nation of Wisconsin (WI)		√	
38. Pueblo of Cochiti (NM)		√	
39. Pueblo of Isleta (NM)	√	√	√
40. Pueblo of Laguna (NM)	√		
41. Pueblo of Zuni (NM)	√	√	√
42. Puyallup Tribe (WA)	√	√	√
43. Pyramid Lake Paiute Tribe (NV)	√	√	√

Survey Universe (Harvard Project Tribes), continued	Survey Responses		
	Part I	Part II	Both
44. Quechan Tribe (Fort Yuma Reservation) (AZ)	√	√	√
45. Quinault Tribe (WA)	√	√	√
46. Red Cliff Tribe (WI)			
47. Red Lake Band of Chippewa Indians (MN)			
48. Rosebud Sioux Tribe (SD)			
49. Saginaw Chippewa Tribe (Isabella Reservation) (MI)	√	√	√
50. Salt River Indian Community (AZ)	√	√	√
51. San Carlos Apache Tribe (AZ)	√	√	√
52. Shoshone and Paiute Tribes of the Duck Valley Reservation (NV, ID)			
53. Shoshone-Bannock Tribes (Fort Hall Reservation) (ID)	√		
54. Sisseton-Whapeton Sioux Tribe (Lake Traverse Reservation) (SD)	√	√	√
55. Southern Ute Tribe (CO)			
56. Spirit Lake Sioux Tribe (formerly Devils Lake Sioux Tribe) (ND)	√	√	√
57. Spokane Tribe of Indians (WA)	√		
58. Standing Rock Sioux Tribe (ND, SD)	√	√	√
59. Three Affiliated Tribes (Fort Berthold Reservation) (ND)	√	√	√
60. Tohono O'odham Nation (AZ)	√	√	√
61. Tulalip Tribes (WA)			
62. Turtle Mountain Band of Chippewa (ND)	√	√	√
63. Ute Mountain Indian Tribe (CO, NM)	√	√	√
64. White Earth Tribe of the Minnesota Chippewa (MN)			
65. White Mountain Apache Tribe (Fort Apache Reservation) (AZ)	√		
66. Yakama Nation (WA)	√	√	√
67. Yankton Sioux Tribe	√	√	√
Totals	46	39	35

1.0 What type of policing program do you have? **(CHECK ALL THAT APPLY)**

- BIA
- PL 93-638 (date that you "638ed") _____
- PL 280
- Self-Governance
- Other (please describe) _____
- Currently planning to "638" department

- 2.0 What is the total number of employees in your department today? _____
- 2.1 What is the total number of sworn police officers in your department today? _____
- 2.2 What is the total number of civilian employees in your department today? _____
- 2.3 What is the total number of detention officers in your department today? _____
- 2.4 Do you have any part-time sworn officers? yes no If so, how many? _____
- 2.5 Do you use police officers to work in your jail or detention department? yes no

3.0 Please fill in the current number of officers in each category:

Rank	Total Number of Officers (including vacancies)	Number of Current Vacancies	Number Assigned to Patrol	Number Assigned to Investigation	Number of Female Officers
Line level officers					
Sergeants					
Lieutenants					
Captains					
Deputy Chiefs					
Chief					

4.0 Please fill in the current number of officers in each category:

	Number of Officers	Number of Native Speakers
Tribal Members		
Other Native Americans		
Hispanic/African American		
Caucasian/Other		

5.0 What is your annual departmental budget? \$ _____ for 199__

5.1 About how much of your budget is provided by the BIA? \$ _____

5.2 About how much is provided by the tribe? \$ _____

5.3 Does the figure in Question 5.0 include your budget for criminal investigation? yes no

5.4 If you know, how much is your criminal investigation budget? \$ _____

5.5 Does the figure in Question 5.0 include your detention budget? yes no

5.6 If you know, how much is your detention budget? \$ _____

6.0 Does your department have both TRIBAL and BIA police? yes no

6.1 Number of TRIBAL police _____ Number of BIA police _____

7.0 Please list the starting salary for the following TRIBAL positions:

Patrol officer: \$ _____ Sergeant: \$ _____ Lieutenant: \$ _____

7.1 Please check all those the benefits received by TRIBAL Officers: (CHECK ALL THAT APPLY)

- medical
- sick leave
- life insurance
- retirement
- annual leave

7.2 How do benefits for TRIBAL officers compare to those for BIA officers?

- much better
- better
- the same
- worse
- much worse

8.0 What are the entry level requirements for new hires? (PLEASE CHECK ALL THAT APPLY)

- high school diploma or GED
- no felony convictions
- physical examination (including vision and hearing requirements)
- physical agility test
- psychological screening (for example, MMPI)
- graduation from a state or federally certified law enforcement training program
- tribal membership
- language requirement
- Indian preference

8.1 Do you require background checks on new hires? yes no

8.2 Do you maintain written records of these background checks? yes no

8.3 Please fill in the number of officers in your department with the following degrees or training:

Degree/Training	Number
High school diploma	
Community college, bachelor's, or other college degree	
Graduation from a state or federally certified law enforcement training program	

9.0 Does your department have: (PLEASE CHECK ALL THAT APPLY)

- a personnel officer
- a special youth officer (Juvenile/Gang, DARE, GREAT, other)
- a field training officer (FTO)
- a narcotics squad or unit
- domestic violence and/or sexual assault
- other specialized units? Please list: _____

10.0 Does your department have a 911 system? yes no

**If Your Department Does Not Keep Crime Statistics,
Feel Free to Provide the Best Estimates Possible for Question 11.**

11.0 How many calls for service/incidents did your department receive in 1996? _____

11.1 How many incident reports did your officers prepare/file in 1996? _____

11.2 What is the total number of arrests your department made in 1996? _____

11.3 Does your answer in Question 14 include arrests for major crimes? yes no

11.4 If not, how many arrests for major crimes were made on your reservation in 1996? _____

11.5 Does your answer in Question 14 include arrests of juveniles? yes no

11.6 What is the total number of arrests of juveniles on your reservation in 1996? _____

12.0 Please check all the law enforcement agencies with which your officers are cross deputized:

(PLEASE CHECK ALL THAT APPLY)

- Other Tribal Police Departments
- City Police
- County Sheriffs
- State Police

13.0 Please CHECK ALL the law enforcement agencies your department has a mutual aid agreement with:

- Other Tribal Police Departments
- City Police
- County Sheriffs
- State Police
- Other: _____

14.0 What other agencies do you rely on to co-investigate criminal activity?

(PLEASE CHECK ALL THAT APPLY)

- County Sheriff
- State law enforcement agencies
- Federal Bureau of Investigations
- Bureau of Indian Affairs

15.0 Do you have a written policy on the use of deadly force? yes no

If yes, what is the policy?

- Defense of life only
- Threat of harm to officer or another person
- Armed fleeing felon
- Any fleeing felon

16.0 Do you have a written policy on domestic violence incidents? yes no

If yes, what is the policy?

- Arrest preferred
- Mandatory arrest
- Mediation as an alternative to arrest
- Other

16.1 Approximately how many domestic violence arrests were made by your department last year?

17.0 Do you have a formal procedure for handling citizen complaints? yes no

17.1 What is the rank and title of the officer responsible for handling citizen complaints?

17.2 Do you have a citizen review board for handling police complaints? yes no

17.3 Do you have a brochure available that explains complaint procedures? yes no

17.4 What is the most frequent type of citizen complaint that you receive?

1.0 How long is your outstanding warrant list (approximate number of warrants)? _____

2.0 Do you assign officers to geographic beats? (For example, to a district, village, or town.)

- no
 - yes, all patrol officers
 - yes, some patrol officers. If so, how many? _____
 - permanent
 - rotating? If so, how long are the rotations? _____
-

3.0 Have any of your officers been disciplined in the last 3 years? yes no

3.1 If yes, how many? _____

3.2 How many outstanding torts/claims against your department are pending in courts or the Department of Interior right now? _____

4.0 What kinds of programs does your department have a working relationship with?

(CHECK ALL THAT APPLY)

- Mediation, Alternative Dispute Resolution, Peacemaker, Etc.
 - Domestic Violence, Battered Women's Shelters, Child Protective Services
 - Schools, Delinquency Prevention Programs
 - Drug and Alcohol Abuse Programs
 - Neighborhood or Community Watches
 - Other (please describe: _____)
-

5.0 Does your department use any of the following to obtain feedback from the community regarding department performance, enforcement priorities, or other matters? (CHECK ALL THAT APPLY)

- Surveys
 - Advertising in local papers/radio stations
 - Foot patrol in neighborhoods with crime problems
 - Attendance at community meetings
 - Other (please describe: _____)
-

6.0 Does your department do any of the following to get input from the community?
(CHECK ALL THAT APPLY)

⇒ Attend community, neighborhood, church, or other non-governmental group meetings.

- 0-2 times a year
- 3-6 times a year
- 7 or more times a year

⇒ Attend village, district, or other local government meetings.

- 0-2 times a year
- 3-6 times a year
- 7 or more times a year

⇒ Attend meetings of the tribal council or other legislative or executive bodies.

- 0-2 times a year
- 3-6 times a year
- 7 or more times a year

7.0 Does your tribal government have a committee on law enforcement or other police oversight committee? yes no

7.1 Who serves on that committee? (CHECK ALL THAT APPLY)

- members of the tribal council
- judges
- representatives from community groups
- police chief
- citizens
- tribal elders
- other. Please list: _____

7.2 What are the committee's duties? (PLEASE CHECK ALL THAT APPLY)

- handling citizen complaints
- review departmental policies and procedures
- review police department budget
- departmental hiring
- other. Please describe: _____

8.0 What is your commanding officer's title? _____

8.1 Who does your commanding officer report to?

- tribal chairman
- tribal council
- BIA Supervisor
- other. Please describe:

8.2 How is your commanding officer hired?

- appointment
- competitive process
- other. Please describe: _____

8.3 How many police chiefs (commanding officers) has your department had in the last 10 years?

- 1-2
- 3 or more

8.4 Must the commanding officer be a tribal member? yes no

9.0 Many tribes have "ranger" programs in which civilians or deputized officers patrol rural and other areas for signs of problems like poaching, smuggling, rustling, and illegal dumping. Does your tribe have such a program? yes no

9.1 Does your department work closely with that program? yes no

10.0 What is the approximate size (square footage) of your police department building? _____

10.1 What is the approximate size (square footage) of your squad room? _____

10.2 What is the age of the building?

- 0-5 years
 - 5-10 years
 - 10-15 years
 - 15-20 years
 - more than 20 years.
-

11.0 How many patrol cars does the department have? _____

11.1 What's the overall age of your fleet?

- less than 1 year
- 1-2 years
- 3-4 years
- 5+ years

11.2 How many of your patrol cars are out of service today? _____

12.0 Is your jail in a building separate from the police department? yes no

12.1 If yes, what is the approximate age of the jail building?

- 0-5 years
- 5-10 years
- 10-15 years
- 15-20 years
- more than 20 years.

12.2 Is your jail population over the jail's design capacity? yes no

12.3 Do you use police officers to work in your jail or detention department? yes no

12.4 Do you have a separate facility for juveniles? yes no

13.0 Please rate the importance of the following problems for your police department:

	Not a Problem	Significant Problem	Major Problem
Recruiting qualified officers....	.....1.....	.....2.....	.....3.....4.....5.....
Officer turnover.....	.....1.....	.....2.....	.....3.....4.....5.....
Training officers in tribal customs and values.....	.....1.....	.....2.....	.....3.....4.....5.....
Department budget.....	.....1.....	.....2.....	.....3.....4.....5.....
Community relations.....	.....1.....	.....2.....	.....3.....4.....5.....
Tribal politics.....	.....1.....	.....2.....	.....3.....4.....5.....

14.0 Does your department have a "community policing" unit? yes no

14.1 If so, how many officers are assigned to this unit? _____

15.0 What are you most proud of about your department? _____

16.0 Please check any crime statistics your department collects (any information your department keeps on the number and type of arrests by month, year, area, or other category):

(PLEASE CHECK ALL THAT APPLY)

- service calls (for example, 911 calls)
- incident reports written up by officers
- arrests
- arrests for major crimes or cases referred for federal investigation/prosecution
- juvenile arrests/crime
- other: _____

17.0 On an average shift, about how many calls (911 and other) does an officer respond to? _____

17.1 About how many of these calls will an officer write out a report on? _____

17.2 On a very busy shift, about how many calls does an officer respond to? _____

17.3 About how many of these calls will an officer write out a report on? _____

**If your department does not keep crime statistics,
 feel free to provide the best estimates possible for questions 18-22.
Don't worry if you can't estimate these answers,
 simply return the survey to us in the envelope we have provided,
 or you can fax it to us at (617) 496-9053.**

18.0 Please list the 3 most frequent types of calls for service your department received in 1996:

Type of Service Call/Incident	Approximate Number of Calls/Incidents →
1.	
2.	
3.	

18.1 This answer is based on: an estimate statistics/department records

19.0 Please list the 3 most frequent types of incident reports your officers filed in 1996:

Type of Report	Approximate Number of Reports
1.	
2.	
3.	

19.1 This answer is based on: an estimate statistics/department records

20.0 Please list the 3 most frequent types of arrests made by your department in 1996:

Type of Crime	Approximate Number of Arrests
1.	
2.	
3.	

20.1 This answer is based on: an estimate statistics/department records

21.0 Please list the 3 most frequent major crimes (crimes referred for federal prosecution) on your reservation in 1996:

Type of Major Crime	Approximate Number of Arrests
1.	
2.	
3.	

21.1 This answer is based on: an estimate statistics/department records

22.0 If possible, please list the most frequent juvenile crimes on your reservation in 1996:

Type of Juvenile Crime	Approximate Number of Arrests
1.	
2.	
3.	

22.1 This answer is based on: an estimate statistics/department records