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United States Senate

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Indian Jails: A Clarion Call for Reform

Statement of  
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TESTIMONY OF THE HONORABLE EARL E. DEVANEY  
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BEFORE THE COMMITTEE ON FINANCE  
UNITES STATES SENATE  
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Mr. Chairman and members of the Committee, I want to thank you for the opportunity to address the Committee this morning concerning the state of Indian detention facilities.

As part of the ongoing effort of my office to examine law enforcement and security programs within the Department of the Interior (DOI), we began an assessment of the Bureau of Indian Affairs' (BIA) detention program in September of 2003.

At the very outset, it became abundantly clear that some of the facilities we visited were egregiously unsafe, unsanitary, and a hazard to both inmates and staff alike. Simply stated, we found BIA's detention program riddled with problems and, in our estimation, it is a national disgrace with many facilities having conditions comparable to those found in third-world countries. Our final report, being issued today, found clear evidence of a continuing crisis of inaction, indifference, and mismanagement throughout the entire BIA detention program.

We also discovered a long history of neglect and apathy on the part of BIA senior management officials, despite repeated warnings about the woeful conditions of their detention program. Whether it lacks the organizational will, or infrastructure, or both, BIA has not been able to sustain its focus on the problems at its detention facilities long enough to resolve them. And, absent relentless pressure and the unflagging support of senior Department management, I fear it is unlikely to do so in the future.

In April of this year, I briefed the Secretary and her senior staff about the most serious findings we had discovered up to that point in our assessment. This spring and early summer, I issued an interim report and also testified before the Senate Committee on Indian Affairs to further highlight the egregious conditions we were uncovering. Unfortunately, as we continued our assessment of the detention program, our work exposed a plethora of additional problems.

To her credit, Secretary Norton immediately responded to both my briefing and interim report by directing senior Department and BIA managers to take ownership of these problems and to implement concrete reforms. She also promptly requested the assistance of the Department of Justice, Bureau of Prisons, which resulted in a senior-level detention professional being detailed to the Department to assist BIA.

Sadly, while BIA has now produced a strategic tasking plan, no real progress has been made to make the detention facilities safer or more secure. For instance, since just the first of August, there have been two new deaths, at least 5 more suicide attempts and an alarming 16 new escapes from Indian country jails.

Our final report makes 25 recommendations to help the Secretary realize genuine change for this broken program. These recommendations focus on the following issues:

#### **Oversight and Coordination**

Senior BIA Law Enforcement Services (BIA-LES) officials have acknowledged that the detention program is severely understaffed, that facilities are overcrowded, and that neither has received the attention or funding to adequately address these deficiencies. Not once during our assessment did BIA-LES officials deny the dire condition of the program or the profound and serious maintenance issues at the facilities. These officials

readily admit that they have placed a higher priority on the policing aspect of law enforcement rather than on detention matters.

Since 2000, the detention program has been coordinated by a Detention Program Manager working out of the BIA-LES Central Office. This manager was provided with limited training, virtually no staff and minimal authority to accomplish his duties. At the outset of our assessment, we discovered that he had been assigned as the BIA-LES Acting Deputy Director of Operations, effectively leaving the detention program without a functioning manager.

Six BIA District Commanders are responsible for managing BIA jail day-to-day operations. Our assessment, however, found the oversight of the jails by these District Commanders to be virtually non-existent. In fact, several District Commanders had never visited some of the jails under their command or spoken with the jail administrators.

The Department of the Interior, Office of Law Enforcement Services (DOI-OLES) is responsible for overseeing all Department law enforcement and security programs, including BIA's. However, we found no evidence that they have ever provided any oversight for the Indian detention program.

Our report concludes that BIA-LES simply does not have the administrative infrastructure to properly manage and oversee the detention program. They are further challenged by the frustration, cynicism, and apathy that infect Indian Country detention personnel. The overall mismanagement and neglect of the program has left many personnel with the attitude that management is not interested in the detention program and that nobody cares about the jails, the staff, or the inmates.

## **Safety and Security**

Our report chronicles 11 fatalities, 236 attempted suicides, and 631 escapes at Indian Country jails over the last three years. We believe these numbers to be conservative given that 98% of these incidents have never been reported to BIA-LES. Our efforts to determine more precise numbers were frustrated because local records are often inconsistent or poorly maintained by jail administrators. One jail administrator confirmed our concerns that incidents are underreported when he stated, “What happens on the reservation stays on the reservation.”

We relate the circumstances surrounding all of the fatalities in our report, including the death of Cindy Gilbert, a 16-year old student who died of alcohol poisoning while in a detention cell at the Chemawa Indian School in Oregon, and I note that Miss Gilbert’s aunt and guardian has traveled from Oregon to speak to you today about this tragedy.

Suicide attempts appear to be a regular occurrence at many of these facilities. Data obtained from our 27 site visits alone indicated a total of 236 suicide attempts over a three year period. In addition to our findings, the Bureau of Justice Statistics (BJS) reported that during the period of June 2001-2002, suicide attempts had more than doubled, while there had only been a 32% increase in jail admissions for the same time period.

Mr. Chairman, when I testified before the Committee on Indian Affairs, I spoke about my personal visit to the Yakama jail and the extraordinarily high rate of suicides at that facility. Just two days after my testimony, another inmate hanged himself from a broken light fixture. Only a lone dispatcher was on duty that night, similar to the night in

1997 when another inmate committed suicide at the same jail. Despite assurances to the contrary, BIA inexplicably did not inspect the conditions at this jail until just last week.

While we could not identify a specific cause for what appears to be a high rate of suicides and suicide attempts in Indian Country detention facilities, we do note that many studies have shown that careful and thorough screening is absolutely necessary to identify suicidal tendencies, and the importance of having properly trained personnel on duty to conduct suicide screening, especially during intake. During our site visits, we found little evidence that this kind of screening takes place.

Escapes from Indian jails appear to be routine and are casually viewed by detention officers at the jails we visited as inevitable. Physically rundown and deplorably maintained, many of the facilities provide ample opportunity for escape.

Another means of escape comes when inmates need medical attention. Inmates are regularly left unguarded in the care of medical staff or hospital security personnel who are not trained to handle or restrain inmates. At one facility we visited, inmates who require medical care, which the jail cannot afford to pay for, are actually released from custody on the hope that they will return on their own after treatment. Not surprisingly, detention officers at this facility told us that inmates have learned to feign illness because they know that they will be released if they claim a need for medical treatment.

Perhaps even more disturbing than the actual circumstances and frequency of inmate escapes at these facilities are the lack of response and importance placed on these incidents by both detention officers and facility administrators alike. We found that some facilities do not even notify local law enforcement of prisoner escapes. Clearly, it is irresponsible to allow escaped prisoners to travel freely in a community and surrounding

areas while the local law enforcement authorities have no information about their escapes.

### **Detention Facility Staffing**

When conducting our site visits, we discovered that 79% of the facilities fell below minimum staffing levels on a regular basis. One manager remarked, “We are often down to none”.

In fact, we found that the majority of the detention facilities we visited operated with only one detention officer per shift and often times the officer had several collateral duties that took his/her attention away from the inmates. Even more disturbing was our discovery that a number of jails have shifts with no detention officers on duty. In these instances, dispatchers, cooks or police officers fill in while continuing to do their primary jobs.

It is unreasonable to expect one detention officer to perform all of these duties under normal conditions. During periods of increased inmate population such as weekends and holidays or when jails are overcrowded, the challenges faced by a single detention officer become overwhelming.

Lone detention officers are also at great risk of being assaulted, injured, or even killed during the performance of their duties. During our assessment, we were told of countless incidents of assaults on detention officers. In fact, one BIA District Commander told us, “Every officer here has been assaulted.” BIA management has been aware of the unsafe conditions created by insufficient staffing for over six years, with little evidence to indicate that there has been any more than a token effort to correct the staffing shortage.

## **Detention Facility Maintenance**

We found the condition of the majority of the jails we visited to be abysmal—the result of years of neglect and failure to perform even routine repairs in a timely manner. Records reflect that BIA and the tribes have consistently failed to adequately maintain their detention facilities. In a 1994 Report, my office found that BIA and the tribes had not adequately maintained detention facilities or corrected hazardous health and safety conditions at these detention facilities. Most of the facilities we visited then were unsanitary and in disrepair. Ten years later, in this assessment, we found the very same conditions – unchanged.

Unless this trend is reversed, many of the newer jails in Indian Country will prematurely deteriorate due to a similar lack of upkeep and maintenance. In fact, many of the newer jails we visited are already showing signs of accelerated aging and wear due to delay of necessary repairs.

Maintenance shortcomings can have a direct impact upon officer and inmate safety; yet there is little indication that any emphasis is placed on expediting repairs. For example, we found sprinkler systems inoperable; keys so worn that they cannot reliably lock or unlock cell doors; and an observation camera in a high-risk cell facing the ceiling.

Many other maintenance shortcomings impact sanitation. We observed toilets that do not flush, showers and sinks that do not work, and inoperative hot water heaters that have not been replaced.

BIA has an enormous maintenance backlog, but little has been done to correct the majority of the problems. Our examination of BIA's Facility Management Information System found it sorely lacking in accuracy or reliability. In July 2003, GAO expressed



similar concerns about the quality of data being entered into this system.

### **Funding of the Detention Program**

In the last four years, Congress has given BIA \$637 million for law enforcement. In addition, since 1999, BIA has also received supplemental funding totaling \$31.5 million specifically designated for hiring detention officers and preparing new detention facilities for operation.

BIA-LES was unable to produce any annual budget submissions for our review. We later learned that BIA-LES managers use historical funding levels as their new annual budget requests and have rarely asked for actual budget increases. In addition, we discovered that BIA-LES does not seek to obtain accurate or realistic budget projections from detention facility administrators. In fact, funds allocated to individual jails by BIA-LES are not even tracked. Their failure to make an effort to assess the true cost of operations or to have any internal controls in place becomes a self-fulfilling prophecy.

These fiscal management failures also impact new detention facilities built with funds awarded as grants by the Department of Justice (DOJ). Since 1997, DOJ has provided over \$150 million in construction grants for new detention facilities. However, these grants are only for construction of the facility. BIA is then responsible for providing the funding for operational costs. Given the poor budget planning and execution by BIA-LES, it was not surprising to learn that facilities completed with DOJ grant monies often do not get the necessary funding to actually open for business.

### **Other Concerns**

Training for detention staff presents yet another challenge in Indian Country. We found that 52% of all the detention officers at the sites we visited had not received

detention officer training. We learned of two officers who were on the job for twelve and seven years, respectively, before attending any detention office training. Untrained or poorly trained personnel place both inmates and officers at great risk.

Another finding that caused us concern, was the housing of juveniles together with adults. At one facility, we were told that a juvenile had been raped by an inmate while being held in the jail for social services, because there was no other place to hold the child.

Overcrowding is the norm. Of the facilities we visited, over half of the jail personnel said their facilities were habitually overcrowded. Inmates often sleep on the floor.

Although a detention policy handbook was published in 1996, BIA consistently fails to follow its own guidelines for the detention program, in part, because the handbook imposes one-size-fits-all policies and procedures. In response to our interim report, BIA-LES reports that they are working to develop new standards that finally will be tailored to facility size, staff and inmate population.

BIA's neglect and mismanagement of the detention program has resulted in over \$850,000 being paid to settle lawsuits over the last three years. Another \$11 million in claims is pending. Obviously BIA is sitting on a liability time bomb and must act to diffuse it now so that the modest funds available can be used for their intended purpose, instead of potentially being consumed by legal fees, fines, and judgments.

### **Positive Findings**

Mr. Chairman and members of the Committee, to be fair, I feel I should indicate to you that BIA-LES officials readily acknowledged the deplorable conditions at the

detention facilities and have expressed grave concern over our findings. They have also made some recent management and staffing changes at various levels of the detention program which are positive developments. A strategic task management plan with assigned personnel has been proffered and they are beginning to seek assistance from outside professional corrections organizations. A process to ensure that maintenance issues are promptly communicated has been implemented.

We also cite in our report a number of facilities we visited with best practices, which might be used as models to advance the needed improvements in Indian detention facilities.

### **Conclusion**

The responsibility for the conditions and failings we found at Indian Country detention facilities cannot be attributed to any particular individual or administration. Some of these problems are decades old. Thus, the solutions will not be easy to achieve and may take considerable time, effort, and funding. Although a tasking plan for improving detention facilities is admirable, absent strong leadership, tireless management and extensive hard work, plans alone will not do anything to correct the many failings chronicled here. As we say in our final report, nothing less than a Herculean effort to turn these conditions around would be morally acceptable.