CHILDREN IN FEDERAL CUSTODY

Assessment of Federal Policy and Practices

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Assessment of Federal Policy and Practices

Prepared for

The Office of Juvenile Justice
and Delinquency Prevention

U.S. Department of Justice

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CHAPTER 1

INTRODUCTION

The Juvenile Justice and Delinquency Prevention Act of 1974, as amended in 1977, charges the Office of Juvenile Justice and Delinquency Prevention with the implementation of overall policy and development of objectives and priorities for all federal juvenile delinquency programs and activities. Pursuant to this mandate for a concentrated federal commitment to the improvement of the juvenile justice system, the Act provides for the establishment of the Federal Coordinating Council, chaired by the Attorney General and composed of key decisionmakers from cabinet level departments and agencies which have impact on the components of the juvenile justice system, or engage in delinquency prevention-related activities.

This report was prepared at the request of the Office of Juvenile Justice and Delinquency Prevention, with the endorsement of the Federal Coordinating Council, and in response to the legislatively mandated coordination effort. The objective of this study has been to assess the degree to which federal policies and practices result in the detention of youths in circumstances which are inconsistent with the deinstitutionalization and separation provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended in 1977. In recognition of the monitoring requirements of the JJDP Act, attention has been directed to the recordkeeping and data collection systems of the agencies surveyed.

Though federal funding and sponsorship activities affect large groups of youths, this survey and analysis will focus on three groups--federal juvenile offenders, undocumented aliens, and Native Americans. Further, the procedures and terms by which they are placed in custody will be viewed primarily in terms of the legislation, regulations, policies and practices of five agencies, the Federal Bureau of Prisons, Immigration and Naturalization Service, U.S. Marshals Service, Bureau of Indian Affairs, and the National Park Service. These agencies have been targeted because they operate or contract with correctional facilities and, therefore, have a direct and immediate impact on the incarceration of youths. The information presented here was collected in three phases during the period from September, 1979 to April, 1980. The first phase was an analysis of the legislation and case law. This was followed by interviews with key central office agency officials. During these interviews, all available policy guidelines, operating procedures, and statistical information were obtained. In addition, input was derived to form the basis for the selection of facilities and regional offices to be visited during the third phase of the project. On-site visits generally were scheduled to facilities and regional offices handling

the largest relative volume of children in federal custody. With respect to tribal correctional facilities, nine reservations were chosen which, though not representative of all tribal practices, indicated the varying levels of sophistication of tribal juvenile justice systems, and were illustrative of the dynamics of the relationships with the involved federal agencies.

A preliminary report was presented for review to the Office of Juvenile Justice and Delinquency Prevention in July, 1980. The chief officials of the five targeted agencies received a copy of the executive summary of the report, and were requested to attend a meeting on November 7, 1980 to review and comment on the findings. Representatives of the Federal Bureau of Prisons, the U.S. Marshals Service, and the Immigration and Naturalization Service were present at the meeting. The full text of the report was distributed to agency representatives, and was subsequently mailed to all agency heads with a request that comments or corrections be submitted by December 1, 1980. Written comments were received from the National Park Service, the U.S. Marshals Service, the Federal Bureau of Prisons, the Bureau of Indian Affairs, and the Immigration and Naturalization Service. These comments have been addressed in the report, and the full texts of the responses are reprinted in the appendix.

The findings presented in the following pages support two conclusions which are applicable to all five agencies. First, children are not a major priority; the amount of resources and energy directed towards the development of programs for the treatment or handling of youths in custody is minimal, often inadequate. The FBOP, INS, and USMS disputed this finding based on their contention that current efforts and resources directed towards the handling of juveniles are already disproportionate to the relatively small number of juveniles processed. Regional officials, however, repeatedly indicated that central office support was insufficient. Second, possibly because youths were not a priority, the monitoring systems of these agencies neither attempted nor succeeded in accounting for the identification, detention, or disposition of children in the federal system. The coordination of federal effort must begin with the authority to instill in officials of these agencies the sense of urgency communicated by Congress when it enacted and amended the Juvenile Justice and Delinquency Prevention Act.

CHAPTER 2

FEDERAL JUVENILE OFFENDERS

THE LAW

Under 18 U.S.C. §5031, commonly referred to as the Federal Juvenile Delinquency Act, "juvenile delinquency" is defined as the violation of a law of the United States, committed by a person prior to his 18th birthday, which would have been a crime if committed by an adult. Section 5032 states in relevant part that the Attorney General may commence a criminal prosecution after he has certified to an appropriate district court of the United States that the juvenile court or other appropriate district court of a state (1) does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, or (2) does not have available programs and services for the needs of juveniles. Generally, these cases of federal jurisdiction arise when an offense occurs on a government or military reservation, or when a Native American is involved in a crime on an Indian reservation.* A memorandum was issued by then Assistant Attorney General Benjamin Civiletti to all U.S. Attorneys on June 17, 1977 calling attention to Section 5032 and reemphasizing:

> . . . the fact that the major thrust of the new Act is to insure the greatest participation by the states in handling juvenile criminal matters.

If the Attorney General does proceed in federal court, a criminal information is filed through the local United States Attorney. The Act mandates a number of procedural requirements including notification of parents, assignment of counsel, and a speedy trial (§§5033, 5034, 5036). Section 5035 entitled "Detention Prior to Disposition" reads as follows:

> A juvenile alleged to be delinquent may be detained only in a juvenile facility or such other suitable place as the Attorney General may designate. Wherever possible, detention shall be in a foster home or community based facility located in or near his <u>home community</u> [emphasis added]. The Attorney General shall not cause any juvenile alleged to be delinquent to be detained or confined in any institution in which the juvenile has <u>regular contact</u> [emphasis

*Major Crimes Act, 18 U.S.C. §§1152, 1153.

added] with adult persons convicted of a crime or awaiting trial on criminal charges. Insofar as possible, alleged delinquents shall be kept separate from adjudicated delinquents. Every juvenile in custody shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education, and medical care, including necessary psychiatric, psychological, or other care and treatment.

Similarly, Section 5039 entitled "Commitment" provides:

> No juvenile committed to the custody of the Attorney General may be placed or retained in an adult jail or correctional institution in which he has regular contact [emphasis added] with adults incarcerated because they have been convicted of a crime or are awaiting trial on charges.
>
> Every juvenile who has been committed shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counseling, education, training, and medical care including necessary psychiatric, psychological, or other care and treatment.
>
> Whenever possible, the Attorney General shall commit a juvenile to a foster home or community-based facility located in or near his home community [emphasis added].

The objectives expressed in these Sections are consistent with those in Sections 223(a)(12) and (13) of the Juvenile Justice and Delinquency Prevention Act which, in order to establish eligibility for funding under the Act, requires the states to remove status offenders from secure detention to prevent juveniles who are confined in an institution from having regular contact with adults who have committed crimes, and to report to the Office of Juvenile Justice and Delinquency Prevention progress in placing children in the least restrictive setting in reasonable proximity to the juvenile's family and home community.*

ON-SITE SURVEY METHODOLOGY

The on-site component of this study focused on the three agencies which are largely responsible for designation of the place of detention or commitment of federal juvenile offenders, the U.S. Marshals Service, the Federal Bureau of Prisons, and the National Park Service. The choice of these three agencies was dictated by the criteria that the target agencies either operate or

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*42 U.S.C. §5633.

contract with correctional facilities. However, there are other governmental agencies, not operating facilities, which significantly affect the terms and conditions of a juvenile's confinement, most notably the U.S. Parole Commission.

The inspection and interview scheduled was directed towards facilities housing the largest numbers of juvenile federal offenders, and regional officials supervising the heaviest volume of juvenile federal placements. Federal Bureau of Prisons facilities chosen for on-site visits were the Emerson House in Denver, Colorado, and the California Youth Authority correctional centers. Interviews were scheduled with administrative and program personnel at each facility; with the Federal Bureau of Prisons Community Program officers in Denver and California, the official charged by the Bureau with designating placements of federally committed youths; and with regional legal advocacy group leaders. Selection of the U.S. Marshals to be interviewed was primarily a function of their use of local juvenile detention centers. U.S. Marshals were interviewed in New Mexico, Arizona, the Central District of California and the Southern District of California. As a representative of the National Park Service, the chief law enforcement officer was interviewed at Fort Mason in San Francisco, the only field office established outside of Washington, D.C. or New York City.

CHAIN OF CUSTODY OF THE FEDERAL JUVENILE OFFENDER

Pending federal prosecution under §5032 or transfer to local authorities, a juvenile apprehended for commission of a federal offense is transferred to the custody of the U.S. Marshals Service. The U.S. Marshals Service, the contracting organization between the Justice Department and local sheriffs, police departments, and detention administrators handled 5,527 juveniles, and received 733 in the first five months of 1979.

The Marshals currently contract nationwide with 835 county jails and 37 juvenile detention centers for secure detention pending disposition. At the time the contract is awarded, the facility is identified as to whether it is capable of holding juveniles, females, or sentenced prisoners. The USMS Contracting Procedures Manual provides that:

> (1) Juvenile prisoners will be confined in an all juvenile facility or in a detention area separated visually and acoustically from adult detention areas. In unusual situations, and for short periods of time only, juveniles may be confined in an adult facility, but must be placed in quarters visually and acoustically separate from adult prisoners.
>
> (5) Classification and segregation of prisoners according to age category and sex is to be extended to cells and bathing facilities

. . . Toilet facilities will be segregated by sex. (USM 2330.2 Appendix 3-1)

Although a U.S. Marshal may be present at a facility on a daily or weekly basis, he has no jurisdiction to interfere in the internal operating procedures of the facility. A Marshal who observes a violation may bring it to the attention of the sheriff or jail superintendent; however, there is no formal mechanism for reporting the violation. The Contracting Procedures Manual provides that "under no circumstances should any contract facility be visited less than two times per year by the contract monitor" (USM 2330.2). The monitoring checklist provided includes the categories "acceptable prisoner separation" and "meets juvenile requirements." The Chief of Program Administration at the U.S. Marshals Service maintains that there are no federal juveniles housed in facilities which have not been certified for juveniles; however, he indicated that adult federal prisoners could be placed in a facility which was improperly accommodating state juvenile offenders. Each contract facility reports its daily federal population to the central office but does not provide an adult/juvenile breakdown.

The role of the U.S. Marshals in the handling of federal prosecuted juveniles is substantially limited by the dwindling number of juvenile federal prosecutions, and frustrated by their inability to secure space for juveniles in federally approved facilities. The contracting representative for the U.S. Marshals in Phoenix, Arizona reported that since their contract with the Maricopa County juvenile detention center had been terminated due to overcrowding, juveniles in the custody of the USMS or the Immigration and Naturalization Service had to be housed temporarily in an isolated room in the basement of the Maricopa County Jail. Though this situation was verified by the detention supervisor at the INS district office, representatives at the Maricopa County Jail reported that no federal prisoners were ever held there without a Superior Court order. The U.S. Marshal confirmed the arrangement and verified that no court order was ever supplied. This crisis extended throughout Arizona. Coordination efforts among regional federal representatives from the U.S. Marshals, Immigration and Naturalization Service, and the Federal Bureau of Prisons have been attempted, but have not generated any relief or support from the agencies' respective Central Offices. U.S. Marshals were reported to be negotiating contracts with tribal facilities on isolated reservations in order to fulfill their custodial responsibilities in compliance with the Juvenile Delinquency Act.

The U.S. Marshal will handle a federal juvenile offender, if he is being transferred from one facility to another, or if he has been apprehended after an escape attempt. According to USMS regulations, which do not distinguish between juveniles and adults on this point, all prisoners are chained when being transported. Of greater interest, however, is the circumstance that once juveniles attain the age of 18 they may no longer be treated as juveniles by the Marshals, even though their commitment was originally under the Federal Juvenile Delinquency Act. This information was provided by Bureau of Prisons officials, and verified by a 19-year old ward in a California Youth Authority

facility, who after an attempted escape to Nevada was returned by the U.S. Marshals and held overnight in a Reno jail, where no attempt was made to separate him from the adult inmates.

The U.S. Marshals' responsibilities do not generally encompass juveniles who are apprehended for violation of a federal law in a national park. The National Park Service either maintains its own holding facilities or makes independent arrangements with local jails or detention centers. The U.S. Park Police exercise jurisdiction (not necessary exclusive) over parks, parkways, and reservations in the District of Columbia, Maryland, and Virginia, and operate field offices in the New York and San Francisco areas. U.S. Park Police Guidelines provide that:

> Whenever a juvenile arrest occurs, the arresting officer shall transport the juvenile in unmarked vehicles when possible and not with adult offenders to a substation or similar suitable surrounding.

The Guidelines further state that,

> When a juvenile is detained, detention must be in a federal approved facility. In many areas, local juvenile homes and facilities may be utilized. Juveniles shall not be incarcerated with adults at any time. (General Order No. 90.06)

The officer assigned to juvenile offenders in the Criminal Investigations Branch reported that there were five substations in the D.C./Maryland/Virginia area where juveniles could be temporarily held for intake; however, he stated that the holding period is limited to a couple of hours.

Statistics from the Criminal Investigations Branch show that during the months of January through July, 1979, 1,039 juveniles were brought to the attention of the Juvenile Section. This indicates that "juvenile contact forms" were completed on all these youths, and that they were held at least briefly before being released, or referred to a U.S. Magistrate or to the local court.

The Chief of the Law Enforcement Section, Rangers Division, supplied juvenile procedures guidelines dated October, 1975 which state that offenses committed by juveniles are divided into two categories, violations of park regulations and other offenses:

> When a juvenile violates a park regulation requiring a mandatory appearance or when a juvenile or a juvenile's parents request a hearing, the juvenile may be heard before a U.S. Magistrate only when a fine and/or probation would ordinarily be imposed for the offense. However, for those offenses which are likely to result in a jail sentence, the matter must be referred to and coordinated with the U.S. Attorney's Office. The key criterion is whether, in the judgement of the ranger [emphasis added] the offense is one

> where the juvenile may forfeit collateral or the Magistrate will impose only a fine and/or probation rather than the likelihood of the imposition of a jail term.

The guidelines further provide:

> The detention of a juvenile must be in a federal approved facility . . . In many areas, local juvenile homes and facilities may be utilized. When a juvenile is incarcerated, he should be brought before a Magistrate as soon as possible and the U.S. Attorney's office notified. Once the juvenile has been brought before a Magistrate, the responsibility for the custody or detention of the juvenile becomes that of the courts . . . The searching and transporting of juveniles should be the same as for adults, except juveniles should, when possible [emphasis added], be transported in unmarked vehicles and not with adult offenders.

The guidelines also allow a ranger to turn a runaway over to local authorities and to take a juvenile into protective care if in the ranger's judgement the juvenile's health, welfare, or safety is endangered. The Law Enforcement Chief was unable to supply a list of parks with law enforcement personnel or law enforcement facilities.

The National Park Service operates a lockup at Yosemite National Park containing two cells on the park grounds. One cell is for women or juveniles, therefore, in the event that both are apprehended either the women or children must be released. There is audio communication between the cells. The lockup is only federally approved for holding prisoners up to 72 hours. The U.S. Park Police headquarters at Fort Mason in San Francisco has patrol areas of exclusive and proprietary federal jurisdiction in the Bay area. The officer in charge stated that, generally, children apprehended for minor offenses are brought to the police headquarters while an attempt is made to contact their parents. If the child is charged with a felony or with an offense such as violation of the liquor laws or unauthorized entry, and his/her parents cannot be located, s/he will be taken to the San Francisco or Marin County Juvenile Hall. The Park Police in San Francisco do not "ride" a U.S. Marshals contract. Children are booked directly to the authority of the Park Police, however the agreement is informal. There is no written contract, and the city or county absorbs the expense. Therefore, there is not even a billing record to indicate the normal usage of Juvenile Hall, or to compute the average length of stay of juveniles apprehended by the U.S. Park Police. This informal arrangement reduces the field office accountability for the number of juveniles detained and is deficient from a monitoring standpoint.

During the first eight days of 1980, 275 juvenile contact forms had been completed, including traffic offenses. The most recent statistics compiled by the office were for 1978. They show there were a total of 1,750 juveniles charged. Of these, 341 were in the category "all other offenses," and 906 of the juvenile arrests were for violations of liquor laws, disorderly conduct,

violations of traffic and motor laws, violations of roads and motor laws, and suspicion. Of the total 1,750 juveniles charged, only 134 committed Part I offenses, more serious crimes. Therefore, out of a possible universe of 1,616 juveniles who were charged with Part II offenses, including the ambiguous "all other offenses" and "suspicion," the number of juveniles detained by the United States Park Police or the length of time they remain in custody in Juvenile Hall because their parents cannot be located, remains completely unreported to, and unrecorded by, any federal agency.

Sections 5035 and 5039 of the Juvenile Justice and Delinquency Prevention Act quoted above evidence the legislature's clear intent to support the pretrial detention and commitment of children to foster homes or to community-based facilities, whenever possible, and to prohibit "regular contact" between children and incarcerated adults on either the pretrial or postadjudicatory level. Shortly after the enactment of the JJDP Act in 1974, the Federal Bureau of Prisons designated four institutions as classification and confinement centers for offenders committed under the Act. These four institutions are classified by Bureau policy statements as minimum security. However, the Bureau continued to send many youths to other federal prisons, some of which are designated medium security and hold adult prisoners. In 1976 there were approximately 500 juveniles committed under the federal Act. In 1977, the ACLU National Prison Project focused on the Bureau's recorded lack of compliance with its statutory mandate to locate youthful offenders in community-based facilities, and its failure to place juveniles in facilities segregated from adult offenders. In the summer of 1977, partially as a result of a series of meetings between members of the Prison Project and Bureau officials, the Bureau began removing all federally adjudicated juveniles from FBOP institutions and transferring them to state institutions.

On September 26, 1979, a computer printout obtained from the Bureau of Prisons indicated that as of that date, the number of juveniles committed under the Act has been reduced to 113. Of these 113, 21 were at Emerson House in Denver, Colorado, and 25 were in California Youth Authority facilities. The local place of residence was requested for each inmate. What was provided was the district of commitment; however, these are not representative of the initial court commitments, as this information would indicate that all 25 California court commitments were adjudicated in the State of California.

The Community Programs Officer for the Central District of California, charged with responsibility for all placements under the Federal Juvenile Delinquency Act in California, stated that only two of the inmates were residents of or had committed offenses in California. This was confirmed by review of the records. The remaining 23 had been transferred there because CPOs in other states had no placements available. According to the CPO, only California, Kentucky and Colorado will hold juveniles after the age of 18. A review of the state juvenile codes indicates that at least 37 states have continuing juvenile court jurisdiction to the age of 21, therefore state facility administrators are not precluded by law from housing federal prisoners, but

apparently adopted a policy of not accepting out-of-state federal placements over the age of 18.

Commitments under the Federal Juvenile Delinquency Act in California are to the California Youth Authority, a statewide system of schools, clinics, and camps. The Youth Authority has a reputation as a progressive force in the treatment and rehabilitation of juvenile offenders aged 16 to 23. The individual facilities within the system are geared to youths of different ages and are based on different therapeutic models, e.g., behavior modification, reality therapy, and educational programs. However, at the time of admission all wards, including federal prisoners and wards up to age 23, are admitted to one of two reception clinics in either Northern or Southern California, where they undergo a one-month diagnostic/evaluation workshop by CYA psychiatric/psychological staff. Following this evaluation, recommendation for a placement is made.

The California Youth Authority official charged with approving the placement of federal wards was questioned about the viability of the federal contract with the California Youth Authority System. He stated that due to overcrowding within the system all outside contracts had been cancelled effective April 1, 1979. Therefore, although CYA continues to hold the federal prisoners previously committed, they are not currently accepting new commitments. Both officials confirmed that the majority of federal placements were either Native Americans or illegal aliens. The official in charge of federal placement stated that the federal ward, though he may be committed for a serious offense, was not likely to be as criminally sophisticated as the state ward. Juveniles committed by the State of California to the Youth Authority are not first offenders, but generally have a history of serious misconduct.

Three facilities were visited in the CYA system: the Fred Nelles School in Whittier, California on January 2, 1980, and the Karl Holton School, and Dewitt Nelson Training Center on January 4, 1980. All Youth Authority facilities can hold children committed under the Juvenile Delinquency Act or the Youth Offenders Act. The diagnostic evaluation program and referral reports aim to segregate children by facility according to age; however, other factors such as the lack of sophistication of a 20-year old youth offender may result in juveniles and youth offenders living in the same environment in "regular contact."

On the day of the visit to the Fred Nelles School, the Chief Probation Officer reported that there were two federal prisoners in residence, a Native American who had committed a crime on an Indian reservation, and an illegal entrant, prosecuted and adjudicated for violation of the Immigration laws 47 times. The probation officer verified that the federal wards were "different," that state inmates were more likely to have committed more aggressive offenses. When questioned further about the potential for unique problems among juveniles committed under the Federal Act, the probation officer stated that the Youth Authority staff did not have as much discretion over federal wards, particularly over their length of stay. The length of stay of California

state wards is determined by the Youth Authority Board, and governed by their successful completion of the program, whereas the federal juvenile's release date is determined at the outset by the U.S. Parole Commission.

The program administrator and a team training supervisor at the Karl Holton School agreed that the federal ward tended to be a less sophisticated criminal. The staff at the facilities visited indicated that federal wards were disadvantaged in comparison to state wards in several additional ways. The federal ward is usually a Native American at a long distance from his home, and in an environment totally alien to his customs, and possibly, language. The individual facilities are sensitive to this matter and have tried to compensate for it in several ways, either by keeping the Native Americans together in one cottage, or by developing cultural programs and rap sessions for Indian youths and staff, as was done at the Karl Holton School. The federal juvenile is also deprived by the distance from his home of that part of the CYA program which reaches out to the family and tries to involve them in the rehabilitation model. Another problem referred to repeatedly by the staff is the fact that the federal offender usually is serving a longer term than the state offender who may have committed the same offense. This naturally yields resentment and is not practical from a programmatic standpoint. The CYA program is designed to have maximum rehabilitative effect for a shorter term of commitment.

This profile of the Native American or alien youth placed in a state system suggests constitutional issues as well as indicating illegal practices inconsistent with the JJDP Act. Only two out of 23 juveniles in California are confined by the FBOP in their home states, and the Act even more strongly mandates home communities whenever possible. The Bureau's activities on that level are in violation of Section 5039 of the Juvenile Justice and Delinquency Prevention Act. In addition, with respect to the discrepancy between the length of time served by federal and state youths committed for the same offense, the Bureau's placement strategies may result in violations of the equal protection guarantees of the due process clause of the Fifth Amendment. The FBOP is handling a population principally comprising Native Americans and aliens, both of whom have been referred to as suspect classifications by the Supreme Court. Therefore, the Bureau could be placed in the position of being forced to show a compelling interest necessitating racially discriminating treatment, in this case longer terms of confinement.

Two of the landmark cases in the area are worth noting. U.S. v. Antelope* held that equal protection requirements implicit in the due process clause of the Fifth Amendment are not violated by the convictions of certain enrolled tribal Indians, under the felony murder provisions of the federal enclave murder statute as made applicable to Indians by the Major Crimes Act, which provides that any Indian who commits any of certain specified offenses within

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*430 U.S. 641 (1977).

Indian country shall be subject to the same laws and penalties as other persons committing any such offenses within the exclusive jurisdiction of the United States. The court stated that if a non-Indian had committed this crime, the killing of a non-Indian during a burglary and robbery within the boundaries of an Indian reservation, the case would have been prosecuted under state law, which would have required proof of premeditation. The court held first that the federal statutes are not based upon impermissible racial classifications; the defendants were not subjected to federal criminal jurisdiction because they were of the Indian race, but because they were enrolled members of the tribe, and secondly, the statutes do not otherwise violate equal protection, as the defendants were subjected to the same body of law as any other individual, Indian or non-Indian, charged with first-degree murder committed in a federal enclosure, and it being of no consequence that the federal scheme differs from the state criminal code otherwise applicable within the boundaries of the state where the reservation is located.

In a footnote, however, the court specifically distinguished the case of U.S. v. Big Crow* which held that the defendant, an Indian who was charged under the Major Crimes Act, with assaults resulting in serious bodily injury on the Rosebud Indian Reservation in South Dakota, was denied equal protection of the laws in violation of the due process clause of the Fifth Amendment, since a non-Indian on the Reservation would be subject under the statutory scheme to only six months imprisonment, whereas an Indian committing the identical crime is subject to up to five years imprisonment. It may be that Native American and alien juveniles are enduring harsher penalties for committing the same offenses committed by juveniles prosecuted through the state system.

On January 4, 1980, the day of the on-site visit to the California Youth Authority facilities, there were 23 juveniles in federal custody in the CYA system; of these, 13 were Native Americans and two were alien youths being held for violation of the Immigration laws. The Bureau Community Programs Officer had responsibility for monitoring the facilities twice a year, however, he noted that he had not been to several of the facilities in over a year. All the monitoring reports noted that separation of juveniles from adults was inadequate due to the 16-23 age spread of those admitted to the facility.

The Emerson House in Denver, Colorado contracts with the Federal Bureau of Prisons to provide safekeeping, care, and subsistence of Federal Juvenile Delinquency Act offenders held under authority of any United States statute. The Emerson Juvenile Unit is housed in a converted hotel building which also includes a halfway house. It is a privately run, self-described, not-for-profit corporation. On January 10, 1980 here were 32 juveniles in federal custody in Emerson House. Twenty-three were Native Americans. The Federal Bureau of Prisons Community Program Office acknowledged that Emerson House was

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*523 F2d 955 (8th Cir., 1976) Cert. denied 424 U.S. 920 (1976).

less than ideal as a placement for juveniles. He cited it as having inadequate programs and as constituting a cultural shock to Native Americans accustomed to life on a reservation. In 1977, the ACLU National Prison Project evaluated Emerson House after several reported incidents of violence by the staff, and a suicide by one of the Native American residents. At that time, they documented the existence of strict disciplinary procedures for new admissions and a lack of programs, and noted that there was easy access between the juvenile and halfway house portions of Emerson House, thus, separation of juveniles from adults was inadequate.

Since that time there have been some structural changes made in the facility. A single door at the entrance has been replaced by a "trap" which divides the halfway house from the juvenile unit, and significantly decreases the opportunities for contact between children and adults. The objectionable disciplinary procedures described by ACLU have been relaxed somewhat, although according to members of the Native American Rights Fund there continue to be some questionable physical tactics employed, specifically the handcuffing of residents to their beds for rule violations. The program is divided into four residential units with varying degrees of privileges. The rate at which inmates progress from one level to another is largely determined by the amount of time served. The program includes educational and occupational components, its goal being to secure a General Education Degree for each inmate and a part-time job in the community.

The facility's administrators stressed the efforts made by the Emerson House staff to create a setting which is culturally acceptable to a population largely comprising Native American youths. They proudly display an impressive art collection created by residents, state that they encourage residents to maintain family contacts, that they allow them to speak their native language, and that they recruit prominent Native Americans from the Denver area to come to the facility and teach classes or participate in workshops. However, according to the Bureau of Prisons Community Program Officer, Emerson House has not cooperated with Eagle Lodge, a new alcoholism program for Native American youths in Denver, though the facility's administrators stated that over 90 percent of the offenses committed by the federal youths were alcohol-related. When asked about therapeutical potential, an administrator stated that the facility was not operated as a "medical model," meaning that psychological services were not routinely provided. The director of the psychological counseling unit at Emerson House has not yet completed a master's degree in counseling or psychology. Though the FBOP will refund the facility for the consulting services of a private psychologist when necessary, the administrators said that no inmate currently required or has received such services. In a previous conversation, they stated that most residents came from disrupted families.

The facility was last monitored in July, 1979. The FBOP Programs Officer commented in the report, "The current residents would be better off if placement resources were available in their home areas. Services problems are created by bringing young Indian offenders to a large metropolitan areas.

Hopefully, in the near future, resources will be available." This comment is indicative of the sentiments of the Community Programs Officers which have been repeatedly expressed to the FBOP Central Office. There is no official exclusively assigned to juvenile offenders in the Federal Bureau of Prisons. In pursuing the objective of "getting out of the juvenile business," the FBOP ignores the legislative mandate to place juveniles in their home communities, the urging of Congressional subcommittees, the study by the ACLU National Prison Project, the objectives of Native American advocacy organizations, the findings of a task force which it commissioned, and the sentiments of its own regional employees.

CHAPTER 3

UNDOCUMENTED ALIEN YOUTHS

YOUTHS IN FEDERAL CUSTODY

Undocumented alien youths in custody fall into three categories: illegal entrants, material witnesses, and juveniles who have committed state offenses. Generally, an undocumented youth apprehended for illegal entry, will be detained temporarily under the authority of Section 242 of the Immigration and Naturalization Act (Title 8 USC 1252) pending his "voluntary return" to his native country, or he will be held for deportation proceedings. During this time he is legally assigned to the custody of the Immigration and Naturalization Service. An undocumented alien youth who is a material witness to a crime against the U.S., including smuggling, or a youth who is the dependent of such a material witness, will be in the custody of the U.S. Marshals. Following his/her testimony the youth is subject to prosecution as an illegal entrant, and to transfer to the custody of INS. Due to some confusion in the transfer of prisoners, the situation is further complicated by interagency agreements, such as the one existing between INS and USMS in Arizona where the extremely large volume of prisoners is predictable if not consistent. INS may assume financial responsibility for the dependents of material witnesses in custody while the USMS will be charged for the witnesses.

The U.S. Marshal Service states in its comments on this report, "Our technical custody of both children and adults is established after the issuance of a remand order by a Federal magistrate or judge. In some past instances, remand orders did not specifically name alien juveniles, thus presenting the dilemma of custodial responsibility between the arresting agency and the marshal. We have assumed responsibility for alien children even in the absence of a court order in most cases."

The third group of detained undocumented alien youths are the children arrested by local police for commission of nonfederal crimes, and placed in local jails or detention centers. This group is of interest, for the purpose of this evaluation, only insofar as they are subject to transfer to INS custody. Judge Enrique Pena, a leading advocate for relief to alien youths in El Paso, Texas, described the placement problem in part as jurisdictional. These children often carry no identification at all, and supply incorrect information as to the names of their families or their ages. Without proof that a youth is a juvenile, according to state law, he cannot be held in a juvenile detention center for a period exceeding 24 hours. These children are frequently transferred to INS custody at the end of the 24-hour period, or

during the criminal proceedings, if they are discovered by an INS agent during a daily check through local facilities. Presumably, while they remain in state custody, they are held in a manner consistent with the mandates of the Juvenile Justice and Delinquency Prevention Act.

ON-SITE SURVEY METHODOLOGY

The U.S. Marshals Service, as noted above, does not break down jail statistics according to juveniles and adults, therefore, it is impossible from a review of any Service compiled report to determine which jail facilities are most heavily populated by juveniles. However, the USMS also contracts with 37 juvenile detention centers. The statistics compiled on juvenile detention centers reflect the number of person-days, providing an indicator of which facilities were the most frequently used. Of the 18 facilities holding prisoners during the fiscal year--October, 1978 to September, 1979--four facilities which accounted for 989 of the total number of jail days used were scheduled for inspection. Interviews were scheduled with the U.S. Marshal in each of these districts. These include the Bernalillo County Juvenile Detention Center (223 jail days), and the U.S. Marshal in New Mexico, the Los Angeles County Juvenile Hall (393 jail days), and the U.S. Marshal of the Central District of California, the Imperial County Juvenile Hall (377 jail days), and the U.S. Marshal of the Southern District of California. These facilities are located in areas where there is significant involvement with undocumented aliens. On-site visits were also scheduled to the three service process centers operated by Immigration and Naturalization Service in the Southwest at Port Isabel, and El Paso, Texas, and El Centro, California, and to the staging area at Chula Vista, California. Interviews were conducted with detention and deportation supervisors at these facilities, and with the Chiefs of Border Patrol sector headquarters at Tucson, Arizona; El Paso, Texas; Chula Vista, California; and El Centro, California. The volume of aliens handled was the governing selection factor. Additional interviews were held with INS district office detention supervisors in Albuquerque, New Mexico and Phoenix, Arizona. Most interviews and on-site visits were scheduled in advance with approval of the INS Central Office and were conducted pursuant to an interview and inspection guide.

ILLEGAL ENTRANTS

The Immigration Law does not distinguish between children and adults. For statistical purposes children are under the age 15. The detention of juveniles is governed by Immigration and Naturalization Service policy:

> Aliens who are defined as juveniles by state regulation [emphasis added] are placed in a juvenile facility or with an appropriate responsible agency or institution, recognized or licensed to

> accommodate juveniles by the laws of that state. Children of tender years who are too young to be placed in a juvenile facility or youth hall are placed with local youth care services, or with relatives or friends. In those extreme cases where it is impossible to accommodate a child of tender years accompanied by an adult, consideration is given to releasing the accompanying adult to a responsible agency, relative or friend.
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> Service policy further dictates that arrangements are made with local foreign consular officers when expelling unaccompanied juveniles.

A "Record of Deportable Alien Located" is completed on any person apprehended for illegal entry to the United States. This is the I-213 form. An alien may be offered the opportunity to depart from the United States without the institution of formal deportation proceedings, and large numbers of aliens are removed in this manner. The order to show cause will be the basis for the deportation proceedings. The deportation proceeding is not a criminal proceeding. Though an alien is advised of his right to counsel prior to the initiation of proceedings, as a practical matter, the hearings are usually held for up to 30 illegal entrants at a time and an insignificant number are represented. Usually, the information from the alien on the I-213 in response to questions by the Border Patrol Agent is given without the aid of counsel. Further, it will be presented in the form of a narrative as interpreted by the examining officer and not as a formal admission or statement.

The vast majority of juveniles apprehended for illegally entering the United States will be offered the opportunity to voluntarily return to their native country, usually Mexico. According to the Border Patrol Sector Chief at El Centro, California, 99 percent of juveniles are voluntarily returned. If no order to show cause is completed, there is no constitutional right to counsel, and juveniles consequently will be advised of this opportunity. According to the Border Patrol Sector Chief at El Paso, Texas, out of a total of 149,722 aliens apprehended in 1979, only one or two juveniles were held for deportation. Usually, juveniles are only prosecuted for illegal entry when they are chronic repeaters, or when they have some involvement in a smuggling case. Mexican juveniles apprehended at the border are detained in a holding cell pending their return to Mexico. At this point, as reflected in the INS policy cited above, each child is to be interviewed by an official from the Mexican consulate to assure that the child is actually Mexican. Presumably, arrangements are then made with the Mexican Immigration Service for the return of the juvenile to an area near his home. Mexican juveniles who are not apprehended at the border will be transported by bus to one of the deportation offices or service centers. They are accompanied by an INS officer, but are intermingled with adults during transport. Though INS policy requires that Mexican juveniles be interviewed routinely by the consulate before being returned to Mexico, in El Centro, California, a memo issued by the Supervising Detention and Deportation Officer to all Detention Personnel at the Service Processing Center, dated June 5, 1979, stated:

> I have recently concluded discussions with the Mexican Consulate and Mexican Immigration concerning the problems we face with juveniles. A tentative agreement has been reached in our handling of juveniles which will require the cooperation of all of us. The Mexican authorities have agreed to permit us to take juveniles to the Border without an interview with the Mexican Consul. However, we are to make every reasonable attempt to locate a Mexican Immigration Officer at the gate and personally present the juveniles to him. This can be done 24 hours a day, seven days a week. The Mexican Officer will not always be right at the gate, therefore there may be an occasion when we shall have to step over to the booth or office to locate him. Do not cross the line without first securing your weapon. We are not authorized to carry a weapon into Mexico. As long as we attempt to assist the Mexican authorities in their efforts to screen juveniles, we should continue to receive this kind of cooperation. I expect every employee to try to cultivate good liaison with the Mexican officials we come in contact with.

The deportation supervisor offered assurances that juveniles with complaints about their treatment or questions for the consultate would be given the opportunity to meet with him in the lobby of the detention and deportation offices. The INS officer admitted that this arrangement increased the likelihood of a non-Mexican unaccompanied juvenile being erroneously sent to Mexico, however, he justified this change in procedure by saying that the questioning had become routine, the Border Patrol agents were adept at discerning accents, and the Mexican Immigration Service had a reputation for being conscientious. This would appear to be an area that merits further investigation. The children affected by this order are not the ones that are apprehended right at the Mexican border, but those that have been transported to El Centro after being transferred by INS officials throughout California, the Southwest, or Pacific Northwest. As noted earlier, many of these children travel without any identification and may provide false information when questioned. If this streamlined procedure is apt to result in unaccompanied juveniles being dispatched to a strange country, then perhaps these procedures should be reevaluated particularly since they are inconsistent with the above cited INS policy.

When evaluating the holding and detention alternatives for juveniles available to the Immigration and Naturalization Service, it is necessary to distinguish Mexican aliens from other than Mexicans, commonly referred to OTMs. As indicated above, a Mexican juvenile alien will usually be transported to the nearest border station, possibly held for several hours, and then returned on a bus to Mexico. During this holding period, an attempt is made in Tucson, Arizona and El Centro, California to place juveniles in a separate cell from adults, however, intermingling will occur if women prisoners are also being held. It is probable, however, that OTMs will be held for a longer time, from a period of four days to several weeks or months. If the initial Border Patrol apprehension was not in a major metropolitan area, then a child will

first be held in one of the local juvenile detention centers, or in an alternative child care placement, and then transported to a large city, usually Los Angeles, so that proper documentation can be secured from the consulate, and the child can be booked on a flight back to his home country. The potential for delay in this process is great, and as a result, it is reportedly not unusual for a child to remain confined for a month or longer. According to INS regulations, an undocumented alien cannot be confined for longer than six months pending the procurement of travel documents.

The Immigration and Naturalization Service contracts with a variety of types of facilities for the placement of juveniles. The officials interviewed in all phases of the INS organization were in agreement that the lack of facilities to house juveniles was a serious problem, but was attested to as particularly critical in Arizona, where there was no nearby juvenile detention center to provide backup support. According to INS policy, the service process centers (located in Port Isabel and El Paso, Texas and El Centro, California) are not to be used for juveniles who are to be placed with local youth/child services. The problem from the perspective of the objectives of the federal juvenile justice legislation is that for purposes of determining appropriate placements, "juvenile is defined by state law." According to Texas law, a juvenile is under the age of 17, therefore, a 17-year old can be held in an INS operated service process center in Port Isabel without violating INS policy or state law.

On December 11, 1979, the day of the on-site visit to Port Isabel, one 17-year old male was detained at the center. He was from El Salvador and had been at the center since December 7, 1979. On December 12, 1979, the date of the on-site visit to the service process center at El Paso, there were five 17-year olds in detention at the service process center in El Paso, three from Mexico, one from Belize, and one from Guatemala. The youth from Belize had been in custody since November 29, 1979; the youth from Guatemala had been confined since November 24, 1979. He had been ordered deported on November 29, 1979, but was awaiting travel documents. Two of the three Mexicans had been apprehended on December 10, 1979, one of December 3, 1979. The detention and deportation supervisor stated that it usually takes at least four or five days until a file is transferred from the Border Patrol to Deportation.

The physical aspects of the service process center facilities visited were similar. They are secured by fences and barbed wire and backed up with sensory and television monitoring devices. At El Paso, which was representative, there were two 100-bed barracks, with 49 aliens in custody on December 12, 1979. There is a television in each barracks and a "recreation pen" outside. There are no medical facilities on the premises and no provision for any kind of routine medical care, including an examination at the time of admission.* There is no attempt to prevent 17-year olds from mingling with

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*INS reports that since December, 1979, a nurse has been hired.

the other aliens. Neither the Texas nor the El Centro detention officers stated that they ever held a juvenile younger than 17 or 18, respectively. However, according to a report from the proprietor of one of the alternative placements in El Paso, Texas, an occasional "trouble-maker" will be returned to custody at the Service Process Center. Clearly, however, it is INS policy on a regional as well as a national basis to discourage these incidents. In a memo dated March 19, 1979, the INS Acting Regional Director in Dallas, Texas stated that in the event juveniles under the age of 17 were brought to the attention of the District Director,

> . . . and other suitable facilities are not available, it is recommended that they be granted immediate voluntary departure. If this is not possible as in a case relating to a male OTM juvenile without a travel document, I would go along with your recommendation to house him in a vacant house at the Service housing project provided you furnish constant surveillance. This approval is granted because it is more economical and I understand it is also easier to feed and keep constant surveillance on aliens at the housing project than it would be at a local motel. This procedure, however, must be kept at a minimum and, when used, I would like to be informed by telegram of each and every occurrence including the need for such detention and the length of time such temporary detention is anticipated.

Even this policy with substantial qualifications and safeguards has subsequently been revoked. Juveniles (under the age of 17) cannot be held on service center grounds at all.

Since the number of INS owned and operated facilities is limited and cannot accommodate juveniles, regional and local officials are obliged to look to contract facilities to provide appropriate juvenile placements. Often, these contracts are the same ones negotiated by the U.S. Marshal Service. This is the case with the Imperial County Juvenile Detention Center Service in El Centro, California, with the Los Angeles County Juvenile Hall in Los Angeles, California, and with the Bernalillo County Juvenile Hall in Albuquerque, New Mexico. During September, 1979, 14 children were detained by INS at the Imperial County Juvenile Detention Center, a secure facility. One child was detained for two weeks; the remaining juveniles were held overnight. Nine children were detained in November, 1979 for a total of 15 person-days. Six juveniles were admitted by INS to the Los Angeles County Juvenile Hall between November 29, 1979 and December 3, 1979. Of these, four were released to INS on December 10, 1979. There were no federal juveniles in the Bernalillo County Juvenile Hall on December 14, 1979. These centers are all secure detention facilities housing youths who have committed serious offenses. Though the Los Angeles County Juvenile Hall makes an attempt to place all INS prisoners in a ward with less aggressive prisoners, none of the facilities segregates the undocumented aliens from the mainstream detention center population.

INS is also enabled by an emergency clause to negotiate its own contracts on the local and regional level. Local officials are motivated to find alternatives to juvenile detention centers by the total absence of suitable placements or by budgetary constraints. INS officials seek, when possible, to avoid placing children for an extended period in high-cost county detention centers, e.g., Los Angeles County at $85 a day. The outcome of this shortage of resources and funds in all the areas surveyed is that INS has resorted to contracting or entering into informal agreements with home-like settings, operated by humanitarian organizations such as the Salvation Army, or occasionally by altruistic individuals who charge the service minimal per diem rates. Most areas have developed some of these alternatives. With respect to the services provided, a worker in the Albuquerque INS District Office stated, that he "would not walk into the All Faiths Home, Salvation Army, which holds families and children, and try to jeopardize this arrangement." He attributed his reluctance to disrupt the status quo to the caring atmosphere at the All Faiths Home and the unusually low rate of $12 per day.

In El Paso, INS places families and young children in the "Mossman House," a private home 20 miles outside of the city. On the day of the visit, December 12, 1979, there were three children at the Mossman Home, two in the custody of the U.S. Marshals, one in the custody of INS. The Home's Director reported that often U.S. Marshals or INS officials come to pick up a child without possessing the release papers. During the visit an employee of the USMS telephoned in search of a child who had "slipped through their fingers." She stated that there were no inspections by USMS or INS, and that there were no written terms or agreements. Children and their mothers were usually placed with her when they were OTM, she said, and did not have travel documents. She estimated the average length of stay as several months and recounted the story of a woman who was held for five months pending her testimony at a trial which never took place. The environment at the Mossman Home was warm and homelike, though physically in a state of disrepair.

The Tucson Border patrol has developed similar alternatives in Arizona, the Abrams Ranch and the House of Samuel, though these arrangements are more formal insofar as there are FBOP contracts. Due to the lack of space in juvenile detention centers in Arizona, jails with federal contracts are also used for housing juvenile aliens on a limited basis. Sight and sound separation has been verified to exist in the Nogalles County Jail. Since January, 1980, the Douglas County Jail will no longer accept federal juveniles, and the Pima County Jail will hold them for a maximum of 15 days pursuant to an informal agreement. Review of the records indicated that during the month of November, a mother (USMS) and her two children (INS) were placed at Abrams Ranch, and still remained there on December 20, 1979; a 16-year old Mexican female (USMS) was detained at House of Samuel from November 23 to November 28, 1979. The deputy chief agent at the Tucson Border Sector Headquarters estimated that five or six juveniles are detained in an average month.

With respect to placement of juveniles, Border Patrol and Deportation officials can be summarized as paternalistic and frustrated by the lack of

financial or program support they receive and the continuous media trials and political criticism which they endure. They maintain that they are attempting to do their job, enforcing the Immigration laws of the United States in the most humanitarian way. These good intentions are evidenced in the local and regional efforts of the Border patrol to develop homelike alternatives to jail cells and detention centers. What emerges as a matter of concern, however, is the failure to formalize these arrangements. The absence of written agreements affects the accountability of the placement facility. There is also the lack of recognition by the Central Office of the desperate situation faced by the regional officials, a situation made even more critical because the scarcity of adequate placements for women and children is known to smugglers, and has resulted in women and children being routinely interspersed in smuggling loads to reduce the probability of prosecution.

MATERIAL WITNESSES

The U.S. Marshals Service is charged with the custody and detention, if necessary, of material witnesses pending their testimony in federal court. The increase in the volume of alien material witnesses in detention can be traced to INS and Drug Enforcement Administration policies advocating an intensified effort to apprehend alien smugglers, and to the Ninth Circuit Court of Appeals decision, U.S. v. Mendez-Rodriguez,* which applies to both California and Arizona, border states with the greatest influx of aliens. While all Border Patrol officials conceded that there was a critical shortage of appropriate placements for the increasing numbers of female and juvenile material witnesses, there was no service-wide compilation in either agency of the actual numbers of juvenile material witnesses, thereby precluding any meaningful assessment of the dimensions of the problem. The U.S. Marshals Service stated in its response to this report that a data reporting system for aliens held in Marshals Service custody has been established to provide increased conformation to the Prisoner Support Division.** The low priority placed on documenting the number and length of stay of juvenile witnesses was illustrated most clearly by the Director of the Pretrial Services Bureau of Los Angeles. The Pretrial Services Program was created by the Speedy Trial Act of 1964 on an experimental basis in ten districts to reduce unnecessary detention. He stated that while material witnesses were placed by the Bureau, and while the best criminal statistics existent were kept on most clients to indicate the level of pretrial services delivered by the Bureau, there were no

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*450 F.2d 1 (9th Cir., 1971).

**During FY 1980, approximately 79,000 individuals were remanded to U.S. Marshal secure custody. Of these individuals, 975 were juveniles of which 469 were processed in the District of Southern California. There is still a breakdown of juvenile placements in the number of juveniles in jail.

statistics required on material witnesses because no credit was awarded. In addition, there was a 24-hour delay among those alien cases which were assigned to Pretrial Services, and most children had already spent one night in custody. In all other cases, the Bureau is notified immediately of a child's detention status. He attributed the delay to the enormous amount of paperwork which is required by INS regulations to be completed within 24 hours. Therefore, it is not unlikely that a mother and her children will be held overnight in a Federal Bureau of Prisons community treatment center, a placement which inevitably results in the intermingling of juveniles with adults incarcerated for commission of a crime.

Los Angeles is the largest metropolitan area in the Southwest Border region and for this reason undocumented alien youths, especially those from other than Mexico, may be transported there so that travel documents can be procured from the appropriate consulate, and airline flights can be arranged to their native countries. Los Angeles serves as the focal point for deportation of undocumented alien youths, however, neither the U.S. Marshals nor the Immigration and Naturalization Service have developed any significant placements for youths other than the Los Angeles County Juvenile Hall. Therefore, juvenile alien witnesses charged with no violation of law are, according to the statements of the director and staff of the Los Angeles County Juvenile Hall, routinely intermingled with adjudicated delinquents, frequently for up to three months. There is a convent in Los Angeles which by agreement with the U.S. Marshals will hold five or six young female children, but a prior FBOP contract for an alternative placement was not reviewed, and according to the Chief Deputy U.S. Marshal in Los Angeles, no real effort has been made to develop replacement facilities. The detention supervisor at the Los Angeles District Office of INS declined to be interviewed for this study stating, "We have nothing to do with juveniles in this office."

As indicated above, a contributing factor significant to the recent increase in the number of material witnesses in custody is the Ninth Circuit decision U.S. v. Mendez-Rodriguez. A breakdown from the U.S. Marshals Office of Southern District of California, the only office or district to compile comprehensive statistics, indicates that for the calendar year 1978, 38 percent of all prisoners and 56.8 percent of all alien prisoners were material witnesses. During the peak years of 1972, 1973, and 1974, following the Mendez-Rodriguez decision, 42-43 percent of all prisoners were material witnesses. The Mendez-Rodriguez decision held that the defendant charged with conspiring to smuggle aliens into the United States, and transporting aliens within the Southern District of California, was denied due process, and the right to compulsory process, by the government's action in returning to Mexico three of the six witnesses to the offenses before the defendant had the opportunity to interview them. The result of this holding is that in the absence of a stipulation of "no showing of materiality" by the U.S. Attorney and the defense counsel at the preliminary hearing, all witnesses are compelled to testify and can be detained pursuant to 18 U.S.C. 3149. The Border Patrol sector deputy chief in Tucson stated that in Arizona, the defense attorneys are not cooperative, and are unlikely to agree to the release of witnesses.

In Arizona, the Mendez-Rodriguez decision acts to increase the pressure on Border Patrol agents and U.S. Marshals to locate appropriate placements for juveniles in an area where there is already a desperate shortage of such facilities. The U.S. Marshals currently are inquiring into contracting for space at the Pappago Tribal Detention Center in Sells, Arizona, an isolated area over 60 miles from from Tucson.

The participants in the federal judicial process in the Southern District of California merit a closer look because they are extremely sensitive to the plight of the juvenile material witness, and in a spirit of cooperation and innovation, have made substantial progress in minimizing the trauma to the detained alien youth. U.S. Magistrate Edward Infante stated that the Mendez-Rodriguez decision reflects a situation where the defendant, the prosecution, and the witness all have conflicting due process rights. At a preliminary hearing held five to ten days after the initial hearing, the burden is on the defense counsel and the U.S. Attorney to show cause why they need a particular witness. Usually, in San Diego, the prosection will retain two or three witnesses, but the U.S. Magistrate urges the parties to take depositions and sometimes the Court will order them. Judge Infante acknowledged the irony that a juvenile prosecuted under the Federal Juvenile Delinquency Act must be tried within 30 days, whereas a juvenile witness or dependent of a material witness can remain in custody a much longer time. Similarly, the defendant smuggler is likely to be immediately released on bond while the material witness remains confined.

The U.S. Marshals' Annual Report for Fiscal Year 1979 indicates that in the Southern District of California, of the 384,407 undocumented persons apprehended, 49,420 were juveniles. The U.S. Marshals Service has contracted with the Salvation Army which operates a home within San Diego, capable of holding up to 40 material witneses and their children, or unaccompanied juvenile material witnesses. Though this facility provides as near an ideal setting as possible for mothers and children, including an infirmary, an outdoor recreational area, and semi-private rooms, the Salvation Army will not accept any resident who has not undergone a complete medical examination at the Federal Bureau of Prisons operated Metroplitan Correction Center. The MCC in San Diego is a maximum security facility. On December 28, 1979, there were 12 alien children incarcerated there. A child's minimum stay pending transfer to the Salvation Army is three to four days. Children are held on the hospital floor and are effectively separated from adult prisoners. Therefore, even in Southern California, the model district in the humanitarian treatment of alien juveniles and materials witnesses, children who have not committed a crime are routinely confined in a maximum security setting.

The monitoring and reporting aspects of the undocumented alien issue demand further emphasis. The records of the juveniles apprehended, voluntarily returned, confined, or deported are kept by the Border Patrol, and copies are sent to the central office. Other than in Southern California, the number of juveniles is not statistically broken down. The only breakdown is the combined number of women and children 14 or older. Based on the figures that

49,420 of the 384,407 illegal aliens apprehended in Southern California were juveniles, 17 years old or under, it could be projected that of the 149,722 undocumented aliens apprehended by the U.S. Border Patrol headquartered in El Paso, 19,248 were juveniles. As large as these figures are, they are limited to material witnesses; they do not include those children apprehended purely for illegal entry, and they are only from two Border Patrol sectors. Certainly, the first step in assessing the responsibility of increasing the accountability of INS and the U.S. Marshals Service for the handling and detention of juveniles, would be the institution of a system whereby the numbers of these juveniles, the reasons for their apprehension, and the time and place of interim and final disposition was adequately recorded by the regional offices, and reported to the INS and USMS central offices. To further increase the accountability of regional officials, guidelines and criteria for juvenile care facilities contracted with should be instituted, and technical assistance provided for the development of alternatives.

As was constantly reiterated by the officers of the court, Border Patrol agents, and administrators of detention and alternative placement facilities, the problem of the custody of the alien juvenile must be viewed in a broad cultural and international context. The staff of the most secure and regimented detention centers reported that the alien children, though frightened, welcomed the guarantee of shelter and three meals a day. The children that venture over the border into California may be leaving a home consisting of a cardboard box by the river. The problem is much larger than the temporary custody of these youths, and must be addressed by the Mexican, American, and other involved governments.

CHAPTER 4

NATIVE AMERICAN YOUTHS

TRIBAL COURT JURISDICTION VERSUS FEDERAL JURISDICTION

> Jurisdiction is probably the most confusing area with which Indian courts have to deal. The conflicts of state, tribal, and federal jurisdictions prevent effective law enforcement on the reservation. Federal laws slice Indian reservations into jurisdictional jigsaw puzzles and create problems for Indian police and courts. (Indian Courts and the Future, The National American Indian Court Judges Association (1978), p. 45.)

Introduction

The basic sources of tribal powers of self-government--and thus the power to create a tribal court system and in many instances to establish standards for determining what conduct is criminal--are: (1) judicial authority which has held that powers of self-government are derived from the quasi-sovereign status of Indian tribes, and (2) federal statutes. Tribal powers are only subject to be qualified by treaties and by express legislation of Congress.

As to the jurisdiction of tribal courts, generally tribal courts have exclusive jurisdiction over most cases involving Indians who have allegedly committed crimes to the person or property of other Indians in Indian country. The major exception to this jurisdiction is the Major Crimes Act, pursuant to which federal courts have exclusive or concurrent jurisdiction over 14 major crimes committed by anyone on Indian land (including Indians). As to jurisdiction over offenses by Indians against non-Indians in Indian country, tribes are considered to share concurrent jurisdiction with the federal courts pursuant to the General Crimes Act. Both of these Acts are discussed subsequently.

Jurisdiction over Offenses Committed by Indians

Indian tribes possess significant, but not unqualified, authority to govern the conduct of members and nonmembers of the tribes residing on Indian reservations. With the exception of the 14 offenses enumerated in the Major Crimes

Act over which the federal government has asserted jurisdiction, tribes retain sole and exclusive jurisdiction over offenses committed by Indians against Indians in Indian country, which do not affect the person or property of non-Indians.* Tribal and federal governments share concurrent jurisdiction over offenses committed by Indians against the person or property of non-Indians.

The Major Crimes Act

In relevant part, the Major Crimes Act provides:

> All Indians committing any offense listed in the first paragraph of and punishable under 18 U.S.C. 1153 (relating to offenses committed within the Indian country) of this title shall be tried in the same courts and in the same manner as are all other persons committing such offense within the exclusive jurisdiction of the United States.
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> An Indian who commits against the person or property of another Indian or other person any of the following offenses, namely murder, manslaughter, kidnapping, rape, carnal knowledge of any female, not his wife, who has not attained his age of sixteen years, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and larceny within the Indian country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

As the law indicates, the federal government is vested with jurisdiction over the offenses listed committed by Indians against the person or property of other Indians or a non-Indian. Whether the Act excludes tribal courts from jurisdiction over these offenses has not been settled definitively. The legislative history of the Act indicates that the jurisdiction of the United States was intended to be concurrent with the jurisdiction of existing tribal tribunals, whereas the Bureau of Indian Affairs has taken the position that federal jurisdiction is exclusive in this area.

Many tribal codes penalize conduct which would also constitute an offense under the Major Crimes Act at present, and it is not uncommon for federal authorities to turn over to the tribal courts cases which lack aggravating

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*The most recent legislation limiting tribal jurisdiction is the Indian Civil Rights Act which restricts tribal governments in most of the same ways the federal and state governments are restricted by the due process standards of the U.S. Constitution.

circumstances, even though they could be prosecuted in federal court. As noted above, since the Bureau of Indian Affairs has taken the position that federal jurisdiction is exclusive in this area, tribes are often left without means to prosecute serious offenders except under lesser included offenses with, of course, the Indian Civil Rights Act limitations of six months imprisonment and $500.

Prosecution and investigation of crimes on reservations where states (Public Law 280 jurisdictions*) and the federal government (all reservations for major crimes) have a mandatory duty to provide such services is a disturbing factor to Indian tribes. Performance of these duties is almost universally considered inadequate. The confusing morass of overlapping tribal, state and federal jurisdictions causes inefficiency and competition among law enforcement agencies and prevents effective investigation, leading to lack of prosecution by responsible authorities.

General Crimes Act

> Except as otherwise provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.
>
> This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secure to the Indian tribes respectively. (18 U.S.C. 1152)

As the above provisions indicate, the Act vests the federal government with jurisdiction to punish offenses by non-Indians against the person or property of Indians, and offense by Indians against the person or property of non-Indians.

The first exception in the Act: "This section shall not extend to offenses committed by one Indian against the person or property of another Indian" confirms that tribes have exclusive jurisdiction over crimes by Indians against Indians in Indian country. This is true except for the 14 crimes over

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*Public Law 83-280 extended certain aspects of civil and criminal jurisdiction over five (later six) states and allowed others to assume such jurisdiction by state action.

which the federal government has asserted jurisdiction under the Major Crimes Act.

In addition, under the second exception in the General Crimes Act, which covers offenses which have already been punished by the local law of the tribe, tribes are considered to share concurrent jurisdiction with federal courts over offenses by Indians against non-Indians in Indian country.

The Assimilative Crimes Act

The Assimilative Crimes Act,18 U.S.C. 13, provides that a person guilty of any act or invasion which, although not made punishable by an act of Congress, would be punishable if committed in the jurisdiction of the state in which the federal enclave is located, is guilty of a like offense, and is subject to a like judgement. In 1946 the Supreme Court affirmatively held that this law gives federal courts jurisdiction to try persons who violate state law on Indian reservations.

While it is clear that offenses by Indians against Indians do not fall under federal jurisdiction under the General Crimes Act, whether state law may be used in federal court under the Assimilative Crimes Act to define and punish essentially victimless offenses by Indians in Indian country, i.e., offenses which do not involve harm to a person or damage to property, it has not been definitively settled.

TRIBAL COURT SYSTEMS AND FACILITIES

The Bureau of Indian Affairs, Policies and Practices

The Bureau of Indian Affairs has funding responsibilities for 122 tribes. The court systems can be classified as traditional, tribal, and courts of Indian offenses. There are 15 traditional courts concentrated in New Mexico and descended from the Spanish system. There are 28 courts of Indian offenses which operate under a set of rules and procedures created by the Bureau of Indian Affairs (25 CRF pt. II). Tribes which have adopted their own codes usually modeled closely after the BIA code are known as "tribal courts." Detention facilities for reservations are owned and operated by the BIA and various tribes. Some Bureau facilities are tribally controlled. The Bureau and the tribes use municipal and county facilities on a contract and subsistence basis where no Bureau or tribal facility is available.

According to the chief law enforcement officer at BIA, despite the Bureau's guardianship role, their authority to influence juvenile court placements is limited. There are no federal juvenile officers on reservations in the United

States. As an illustration of Bureau "helplessness," the law enforcement chief referred to an adult correctional facility at the Pine Ridge reservation in South Dakota funded by BIA at $1.5 million, and currently under construction. There is no contract monitor on the reservation, and no control can be exercised over the construction process short of recision of the contract by the Secretary of the Interior.

A Native American youth adjudicated delinquent for commission of a misdemeanor (including liquor violations which are responsible for 98 percent of the arrests on reservations) can be committed by a tribal judge to a secure detention facility for a maximum of six months under the 1968 Civil Rights Act. The Chief of Law Enforcement admitted the widespread failure to separate juveniles from adults in correctional faclities and attributed it to a lack of a sense of urgency on the part of the Bureau and tribes in addition to the outdated and dilapidated tribal facilities. A representative from the National American Indian Court Judges Association attributed the tribal lack of commitment to improved facilities on federal laws, such as the Indian Civil Rights Act or the Major Crimes Act, which limit and preempt tribal court jurisdiction, and which effectively render tribal judges impotent in the handling of all serious matters. From this perspective, the tribal judge's function is limited to the warehousing of prisoners until the arrival of the FBI, resulting in a sense of inneffectualness which translates into a lack of concern about improvement of or alternatives to existing facilities.

Most attempts by the Bureau of Indian Affairs or by LEAA to provide massive funding for the construction of new facilities have been ineffectual because the prepared designs were not responsive to tribal needs or because funding allocations did not including staffing and operational considerations after the facility was erected. Though LEAA funded 35 to 40 facilities over the past six years monies were abruptly terminated leaving many projects in varying states of incompletion. The Bureau has no authority to intervene in tribal sentencing, but it can report a violation under the Civil Rights Act of 1968. In 1977, the Bureau inspected the law enforcement facilities on 63 reservations, and reported that there was inadequate separation of juveniles and adults in 54 of them. The tribes surveyed reported an average daily juvenile population of two to four persons with some reporting daily juvenile populations up to 16. In a memorandum dated January 23, 1979 to the chief law enforcement officer, the acting chief inspector of the Bureau's Inspection/ Evaluation Unit described inadequate and inappropriate facilities, noting for example, "All interiors are not designed strongly enough to resist vandalism or damage to inmates when taken apart and utilized as weapons." Based on a description of Indian facilities as "old and ill-suited for jails," and described as appropriate to be "condemned," the BIA chief law enforcement officer warned his supervisor in a memorandum that the Bureau was potentially liable for violations of Title II of the Civil Rights Act.

The Indian Health Service at the Department of Health, Education and Welfare shares the responsibility for inspecting law enforcement facilities. Its findings and recommendations are forwarded to the Area Director. The tribes

are divided into nine areas. The Area Director, elected by tribal chairman has the authority to allocate BIA funds. An extensive survey of LEAA funded tribal correctional facilities was conducted in June, 1979 by the Indian Health Service, and forwarded to the BIA Office of Law Enforcement. The original and only copies of these surveys were dispatched to LEAA. Repeated contacts with LEAA, and search by LEAA Indian Desk officials, have failed to locate the surveys. The disappearance of these surveys means that the findings of the most recent and extensive evaluation of physical jail conditions on the reservations remain unknown.

It is possible that the Bureau's "lack of a sense of urgency" about youths is the principle obstacle to alignment of tribal detention practices with the objectives of the Juvenile Justice and Delinquency Prevention Act. There is no juvenile office in the Bureau of Indian Affairs; the BIA Law Enforcement Manual specifies only "whenever possible [emphasis added] juvenile prisoners shall be detained separately and apart from adults or promptly transferred to juvenile detention facilities if any are available" (68 BIAM 2.9). The Chief of the Judiciary Section at the Bureau of Indian Affairs indicated that the Bureau seldom promotes substantive policy initiatives to the tribes, and has never suggested incorporating the deinstitutionalization and separation objectives of the JJDP Act into tribal codes. Apparently, these issues have been raised at tribal judges' training conferences conducted by the National American Indian Court Judges Association. The majority of tribal codes do not distinguish between juveniles and adults. In 1977, the American Indian Law Center was commissioned by the Bureau to draft a model juvenile code, which would be applicable to 28 tribes operating under the Code of Federal Regulations, but which could potentially serve as a guide to all tribes seeking to improve the predicament of juveniles in the tribal justice system. This model juvenile code was reportedly scheduled last August for publication and review in the Federal Register by September, 1979. The Division of Social Services has lost track of the model code. Further, the Social Services Division has entirely allocated its authority to explore alternative placements for juveniles to the Area offices.

The Judiciary Section is equipped to perform a limited technical assistance function upon request by the chief judge or tribal chairman, however, only three staff are assigned to technical assistance nationwide, and the number of requests filled in a year is not likely to exceed 15 or 20. The Judiciary Section Chief acknowledged the possibility of the Bureau instituting a civil rights action against the tribes for the improper incarceration of children in tribal facilities, but apparently no such litigation is contemplated. It would be inaccurate to imply that the lack of priorities placed on juvenile detention facilities, and on the development of community youth programs, is a condition unique to administrative officials isolated from the daily realities of life on the reservation. As indicated by the Area Director in Aberdeen, South Dakota, the allocation of BIA funds is a function of tribal priorities. The reluctance of many of the tribes to commit substantial resources to improve the condition of youths on the reservation will be discussed in

further detail below in the descriptions of the programs and facilities on those reservations surveyed.

ON-SITE SURVEY METHODOLOGY: TRIBAL FACILITIES

The traditions, philosophies, governmental systems, and cultural characteristics of the 122 Indian tribes funded by the Bureau of Indian Affairs vary among geographical areas, tribes, and reservations. In accord, their forms of government, including the judicial systems, will be distinguished by the additional variables of the tribe's jurisdictional relationship with the state under laws such as PS 83-280 (cf. jurisdiction above). Therefore, it was acknowledged from the outset that the findings gathered from visits to a sample of tribal facilities and programs could not be interpreted as applicable to all Native Americans, or even to reservations belonging to the same tribe, or in the same geographical area. The selection of the nine reservations to be visited was governed by the principal emphasis of this study, to assess the conditions of confinement of children in federal custody, and to ascertain the form and degree of input by the five target agencies into the structuring of these placement alternatives. The reservations visited were all under the guardianship of the Bureau of Indian Affairs. Most had received, or were in the process of negotiations with LEAA for receipt of facility construction funds. The schedule of on-site visits was based on information gathering from officials at the Bureau, at LEAA, at the state planning agencies, and from representatives of the National Tribal Court Judges Association and the Native American Rights Fund. The selection criteria were designed to afford an overview of tribal juvenile justice systems and juvenile facilities. The reservations surveyed, though concentrated in three states (New Mexico, Arizona, and South Dakota), represented a broad range of judicial approaches, social services participation, legal representation, and placement alternatives for juveniles. The findings and figures reported and described here are not represented as applicable to all Indian tribes, but as a functional illustration of the scope of issues faced by tribal criminal justice systems. An attempt is made to distinguish problems and progress attributable to federal intervention from conditions indigenous to the tribe. An additional constraint on interpretation was the limited time period spent on each reservation; the great size of some reservations precluded interviewing all personnel who could provide relevant perspectives on the juvenile justice system.

Based on the above considerations the locations chosen for on-site visits were: Cheyenne River Sioux; Oglala Sioux, Pine Ridge; Rosebud Sioux; Sisseton-Wahpeton; Taos Pueblo; Santo Domingo Pueblo; Navajo; Pappago; and Salt River. Contact with the tribe was established initially through a letter to the tribal chairman, explaining the purpose of the project and requesting the opportunity to meet with him or other knowledgeable officials to discuss the out-of-home placements of juveniles and inspect the facilities on the reservation where juveniles would be held. A questionnaire was enclosed with

the letter, indicating the kind of information desired on the types of facilities on the reservation, and the number of juveniles who were held in various conditions over a 30-day period (Appendix). Interviews were arranged by telephone with the tribal chairman or tribal judge. An interview instrument was designed as a guide for on-site inspection of facilities (Appendix).

The most traditional tribes visited were the Taos Pueblo and Santo Domingo Pueblo in New Mexico, generally referred to as descendants of the Spanish system. The Pueblos rely firmly on a cultural base laid down centuries ago and are committed to preservation of this heritage. This philosophy of self-containment was manifested in a reluctance to engage in any more than a brief conversation with outsiders, and an unwillingness to provide details about the extent of juvenile problems on the reservation, or the alternatives available for youths. The tribal administrator and secretary at the Taos Pueblo frankly stated that though they had agreed to the interview, they did not like to talk to non-Indians about tribal affairs, and were displeased about the tribe being named specifically. Apparently, they were concerned about revealing the degree to which tribal youths were tempted by "materialistic, Anglo, middle class, American culture." These administrators feared that the trend was away from a family oriented culture, which could only be exacerbated by the intervention of outsiders, including those posing questions about tribal detention facilities and practices for youths. The officials interviewed were optimistic about the assumption of tribal control by a younger group of educated men dedicated to the resolution of these cultural conflicts. These new leaders endorse the Indian Child Welfare Act and advocate that children should remain on the reservation. The interview is set forth below.

Q: How many people are on the reservation?
A: No response.

Q: What types of facilities are on the reservation?
A: No facilities.

Q: Are children ever placed in a detention setting on the reservation?
A: Eight children in the past year.

Q: Have any children been referred through the juvenile justice system to a detention or foster home placement off the reservation?
A: One girl, placed temporarily by BIA social services, but she's returned.

Q: Are any facilities planned?
A: Negotiations are currently being conducted with some federal agencies.

Q: Which ones?
A: No response.

The Santo Domingo Pueblo was similarly unwilling to discuss the status of Native American youths on the reservation with non-Indians. The tribal secretary, though he had also agreed to the interview, stated that he would not respond to the questions in the mail survey or in the interview guide without benefit of a formal tribal resolution. These responses were never completed or returned. The tribal officials did state that there were no facilities on the reservation at that time, and if a child needed to be temporarily held, it would be in the tribal offices. In the event of a serious offense, he might be taken to the county jail. However, the sheriff and probation workers at Bernalillo County Jail stated that juveniles are not admitted under any circumstances. Under LEAA's now defunct construction program, the Santo Domingo Pueblo was allocated $129,000 for a new facility. However, the tribe differed with LEAA insofar as it wanted to house juveniles within the same building, and would not agree to the architectural design. Through an interagency transfer the funds are still earmarked for construction of a facility through the Bureau of Indian Affairs. Provision of the funds, however, is contingent on a tribal resolution that no children will be held there. While tribal officials have offered verbal assurances, the requisite formalization had not occurred, and the funds might have been jeopardized if the delay continued.

Despite the sparsity of conventional data gathered from Pueblo tribes visited, there are two cultural insights which emerge and play a role in all the tribal justice systems surveyed. First, from a policy standpoint, youths, and specifically the treatment of delinquent youths, generally was not a priority matter with the tribal council. Second, the development of facilities and alternative placements for youths in custody is likely to be a focal point of conflict between generations. As indicated, both of these Pueblo tribes receive or are in the process of negotiation for receipt of federal funds. The Santo Domingo experience indicated that with LEAA influence, BIA construction grants could be awarded contingent on the separation of juveniles from adults.

Of the seven remaining reservations visited, two had established juvenile detention centers. The others were utilizing jail or lockup facilities in combination with a broad range of group or foster care arrangements. These programs were involved with the Social Services Division of the Bureau in varying degrees, a subject which will be discussed in more detail below. The on-site visits did serve to verify the warnings of Bureau officials and Indian leaders that no sweeping generalizations could be derived from a limited number of interviews or facility inspections. However, increased access to facilities, records, and decisionmaking personnel did yield one finding critical to the coordination of juvenile delinquency efforts which was verified upon followup. This conclusion can be fairly stated as a failure to keep any type of adequate records or statistics on the volume or type of juvenile crime on the reservations, the age or background of the child most likely to have contact with the juvenile justice system, and the length or place of confinement.

Though the juvenile detention centers at Sisseton and Pappago were capable of tracking their own inmates, the court and jail statistics which are eventually the principal data sources, evidence no system of organized recordkeeping. Jail records, when they could be located, were limited to juvenile log books consisting of police entries noting the offense for which a child was booked into a facility, the time of admission, and sometimes the time of release. According to statements by law enforcement officials, most children were released to the custody of their parents. If, instead, they were released to a tribal social service group, a local sheriff or a U.S. Marshal, this was not always evident from the logs. This failure to ascertain the place of juvenile detention and the outcome of arrests was verified by a spokesman from the BIA Research and Statistical Unit in Brigham City, Utah. The Research and Statistical Unit produces an annual report scheduled for publication in mid-April, 1980. The reporting deadline from the tribes was February 29, 1980. As of March 2, reports have been received from only 50 percent of the tribes. An optimistic estimate of the total number of tribes which will eventually submit reports was 30 to 85 percent. However, these data are supplied by BIA police, therefore, from those reservations where no BIA police are present, such as Pine Ridge, there are no statistics at all. A more serious limitation, however, with respect to juveniles, and specifically the detention of juveniles, is that the data required for juveniles are simply a record of arrest, offense, and the daily average number of days in confinement. Computation of the average number of days in confinement is strictly for budgetary purposes. There is no statistical correlation between the offense for which a juvenile is arrested, the length of time, and the place in which he may remain incarcerated. An attorney for the Native American Rights Fund also noted the Bureau's failure to account for the processing of juveniles through the tribal justice systems. She stated that once the inadequacies of the Brigham City facility were apparent, she contacted the Bureau's Chief of Law Enforcement and volunteered to set up tribal court intake forms, which could be keyed into a central computerized system. This offer was politely acknowledged by the Bureau, but was not pursued. According to a source at LEAA, the Brigham City facility was just underway, and complete revision of the system was deemed impractical at the time the offer was made.

As indicated in the jurisdictional discussion above, a Native American by virtue of the Major Crimes Act or the General Crimes Act may be within the jurisdiction of the federal courts. U.S. probation officers compile statistics on the number of juveniles initially accepted for prosecution by the U.S. Attorney. These statistics are reported to the U.S. Parole Commission, however, they are not broken down by race, therefore a determination of the number of Native American youths prosecuted would require reexamination of each intake worksheet. There has been some effort by U.S. Parole Commission officials in California to break these figures down according to race. Their refusal to do so is particularly anachronistic in light of the fact that the Federal Bureau of Prisons does compile statistics on race.

The discussion of the remaining reservations visited will include descriptions of exemplary programs, of effective individuals wrestling funding and support

from a sluggish system, reports of inadequate placements, and of children incarcerated with adults in filthy and dangerous conditions. Prior to this discussion, however, it should be emphasized once again that the Bureau of Indian Affairs has no effective system for monitoring who these children are, where they are held, or for how long, and that monitoring is not considered a priority.

Sisseton-Wahpeton Youth Detention Center

The Youth Detention Center is a separate building capable of housing 12 boys and ten girls. It is described as a secure facility because the doors remain locked; however, after the first three days of commitment, the children attend their regular schools, and after accumulating a specified number of points on a behavior modification plan, they can leave the facility for home visits, or scheduled cultural or recreational events. The minimum commitment to the Youth Detention Center is for a 30-day evaluation period. A hearing is held after 30 days, at which time a recommendation is made whether a child should be released to his parents, or continued for up to 60 additional days. The staff consists of seven child care workers. They are borrowed from other programs or funded by a private foundation. The staff estimated that 48 percent of admissions were alcohol related, consisting of consumption of alcohol, CHINS, and truants. The Center social workers have established a close working relationship with the state social services department. A juvenile apprehended for a minor offense but petitioned as a CHINS can be handled by the tribe under the Indian Child Welfare Act. Cooperation with the state, therefore, and referrals back to the tribal court system, can result in prevention of Indian children, particularly CHINS or first time or minor offenders, from being committed to a state facility. Since the Bureau of Indian Affairs will not provide welfare support for adjudicated delinquents, but will for CHINS or abused/neglected children, the tribal judge, who is in sympathy with the Center's goals, is likely to alter the charge at the time of adjudication. According the the BIA Agency superintendent at Sisseton, the Bureau retains a low profile with respect to the developing juvenile justice programs at Sisseton, affecting a neutral position.

One of the most innovative features of the arrest and custody procedures at Sisseton occurs after a child has been picked up by the police. If he is not immediately returned to his parents, he is taken to the police lockup/jail facility, however, he is not placed in a cell. Instead, there are staff at the Youth Detention Center on 24-hour call who will come and transfer the youth to the Center, just across the street. If the child is deemed to be so intoxicated as to be uncontrollable, then he is placed in an isolated cell, and a Center staff member remains in the cell with him until he is calm enough to be removed. Inspection of the juvenile cell showed that it was clean and that it has suffered some structural damage from violent inmates. The superintendent was open to suggestions as to methods for further soundproofing the cell.

An interview with the Detention Administrator and the Chief of Planning for Wahpeton indicated that funding for the project came initially from LEAA, but was supplemented by BIA child welfare funds, CETA money and private grants. It was interesting that the designer of this humane, effective program was unaware that there was an Office of Juvenile Justice and Delinquency Prevention within LEAA, or that it was created to administer legislation mandating the deinstitutionalization of status offenders, or the separation of adults from children in adult jails. In light of the enthusiasm with which these members of the Sisseton tribe have sought to coordinate services for youths among the tribal and state courts and the tribal, Bureau, and state social service system, it would appear that the Bureau's nonintervention policy into tribal affairs represented a disservice in not providing this information. With respect to the objectives of the federal juvenile legislation and the facilities at Sisseton, the separation goal has been achieved as described above. A review of the records of the children housed in the facility on the day of the visit (November 11, 1979), showed there were five residents between the ages of 13 and 16. All had repeated contacts with the law enforcement system or histories of out-of-home placements, but three had currently been admitted for truancy and two for violations of probation, all technically classifiable as status offenses. The detention administrator, however, indicated that the program was moving in the direction of a less secure environment and that the principal vestige of security, the locked doors, were primarily for protection of the inmates and the facility.

In summary, there were many exemplary aspects to this program, the intense staffing, the professional therapeutic services provided, the varied educational, recreational, and cultural opportunities supplied. The program is also outstanding when viewed from the perspective of the spirit of the JJDP Act. Children are never admitted beyond the entrance hall of a jail unless they are so uncontrollable as to be literally dangerous to themselves or others. In that case, they are placed in a cell separate from adult inmates where they are accompanied constantly by a trained child care worker. Though the Youth Detention Center does hold status offenders in an environment which could be classified as secure under the Act, this was compensated in part by a great deal of program flexibility, including the daily attendance by the children at their regular schools. The exceptional aspect of this program is that it allows children who have a history of problems with family, school, or law enforcement to remain on the reservation, whereas previously the only alternatives were to be sent off the reservation to a BIA or privately contracted boarding school. This tribal objective, to retain control over resident youths, has been accomplished by a dedicated effort on the part of several concerned individuals to educate and coordinate the social services, law enforcement and tribal justice officials on the reservation, and to establish a working relationship with their counterparts in the state system to assure what is certainly a principal objective of the JJDP Act, to keep youths in their home communities. The credit for this project is attributable to tribal juvenile justice professionals, with the Bureau virtually playing no role in this effort.

Pappago Agency

The Pappago Agency in Sells, Arizona was the only other reservation visited which had a juvenile detention facility. Similar to the Youth Center at Sisseton, the facility was secure and was tribally controlled pursuant to a contract with the Bureau. The facility has a capacity of 20 males and females and receives additional funding through a Public Works Capital Adjustment. The juvenile justice staff consists of a juvenile judge, two case workers, three children's court counselors, two juvenile offenders, and eight detention officers. According to the juvenile judge, children picked up by police are brought directly to the detention center. The large majority of juvenile offenses are for drunkenness as Pappago is a dry reservation. At the time of admission, the child's parents are notified immediately. The child will be held from four to six hours until his intoxication has subsided. A child brought in for a liquor violation, however, will not be held longer than six hours unless a parent or relative cannot be located. This is a possibility due to isolated outposts on the reservation, however, a youth must be released within 24 hours unless a detention hearing is held. A petition must be filed within ten days on all detainees, however, the judge indicated that petitions normally will be filed on most youths detained because they fall into the category of "repeat offenders."

A diversion program distinguishes status or first offenders from repeat offenders. A first offender must attend four hours of lectures, at least two of which are geared towards explaining the laws they violated. The "repeat offender" participates in a six-month court-administered program which includes five components: physical fitness, hygiene, nutrition, peer counseling, and family counseling. The detention workers and social services personnel reinforced the theme that the conflict between Indian youths and the more traditional older generation is often the basis for juvenile misconduct. The philosophy of the Pappago Indian juvenile justice system officials, however, is to reverse the trends towards sending troubled children away from home, a practice prevalent on most reservations. The Bureau has contributed to endorsement of the development of community alternatives to BIA boarding schools by establishing criteria relating to family situation and income for those youths placed in the schools. Attendance at the school is also "voluntary" now as opposed to court ordered, although the reality of the voluntariness must be viewed in the context of the alternatives. At Pappago, the tribal court has exclusive jurisdiction over all placements including those by the BIA social services. A recent conflict between Bureau and tribal police authority was resolved by a change in the Bureau's chief criminal investigat . According to both the juvenile judge and the BIA criminal investigations officer, the Pappago have now established a cooperative relationship with the Bureau police, and with the social services division.

In addition to the detention center, there is a nonsecure children's home on the reservation, formerly operated by the Baptist Church, but taken over by the tribe under the Executive Health Budget. The home is so overcrowded that

juvenile court staff often take children to their own homes on an emergency basis. However, the Bureau reportedly is satisfied with present placements, and asserts that there is no money for further contracts or for the development of alternative placements. The Bureau's policies are not the sole obstacle to improved youth programs. At tribal council meetings youth programs are usually the last agenda item after such matters as land and water rights.

The effect of the first offender and repeaters program has been significant. In a year the number of children on probation was reduced from 97 to 10. On the day visited only two children were being held--a 16-year old with a current charge of disorderly conduct and drunkenness but with a long record, and one girl who was a runaway ward of the Salt River court, and was being held pending her return because her grandmother at Pappago would not assume custody. The judge estimated that five or six children who have committed serious offenses will be sent away from the reservation per year; approximately one per year will be committed by a federal court. With money received from the Save the Children Fund, young people from the reservation have received training at California State University, and reached out to schools, the families, and even to the nearby BIA boarding school, conducting seminars and arranging presentations on alcohol and drug abuse, and showing films such as "Scared Straight" in an attempt to impress on the Indian youths the consequences of involvement in criminal activity. Despite the progress at Pappago, and the institution of a wide range of effective and creative programs, the familiar obstacles remain, lack of Bureau involvement, and tribal resistance to placing a priority on aid to troubled youths and their families. The founder of the juvenile justice system at Pappago, drafter of the juvenile code, and organizer of the paralegal juvenile offender and defender program and staff training, met with such consistent opposition from the more traditional members of the tribal council that she resigned her position as Chief Judge and left the Pappago Reservation. Due to its own initiative, the Pappago Tribe would be evaluated as complying with the separation portions of the JJDP Act. Though status offenders are held in the secure facility for a period exceeding 24 hours, this appears to be an unusual occurrence, generally avoided by a first offender program designed to eliminate the nondelinquent offenders from confinement.

Cheyenne River

At the Cheyenne River Sioux Reservation in Eagle Butte, South Dakota, there is usually only one alternative to jail for the placement of juveniles by the juvenile court. Lakota O Tipi, a small group home for girls, is operated through a contract between the Bureau of Indian Affairs and the Intermountain Center for Human Development in Santa Fe, New Mexico, a nonprofit organization funded by private individuals and foundations, with no formal affiliation with any particular religious group or organization. A similar home for boys was in the process of organization. Both the chief judge and the juvenile judge

cited the desperate need for a secure juvenile facility as an alternative to jail. There have been no foster homes or youth programs established by the tribe.

Unlike Sisseton, the cooperation of the tribal court system with the state judicial and social services system was not based on the desire to retrieve Indian youths from the state system, but rather was motivated by an interest in utilizing state juvenile placement facilities, especially the state training school, for Indians committing tribal offenses. In accord, the BIA training schools were viewed in a much more positive light at Cheyenne River than at those reservations where there were alternatives on the reservation. The judges stated that court-ordered placements in the jail were usually only for a few days pending transfer by state or federal officials. The juvenile judge admitted that she recently committed a 16-year old to the jail for 30 days, but he was allowed a parent and a representative from the school as visitors. On the day visited there was one child confined in a cell. The door had a small window with bars allowing visual and verbal communication with other prisoners. The jailer stated that the average length of stay for an intoxicated child or a child awaiting transfer is two days. Review of the jail log showed that in the 30-day period preceding the date of the visit (November 12, 1979), 42 children had been admitted and held in the jail. There was no apparent provision made for recreation, exercise, or staff supervision.

The Lakota O Tipi deserves further discussion because it is one of several group homes and institutions operated by the Intermountain Youth Center and contracted for by the BIA. In addition to the group home at Cheyenne River, visits were made to Intermountain Homes at the Navajo Reservation, and to the Intermountain Youth Center in Tucson, Arizona. These facilities were spacious, pleasantly furnished, and equipped with sophisticated recreational appurtenances, including pool tables, color televisions, and videotape recorders. The homes are staffed by two sets of houseparents who alternate every four days. The program is based on a behavior modification model. Residents move through successive program levels in which they receive points for the development of appropriate social behavior, academic skills, leisure skills, and a positive attitude toward self. There is an apparent discrepancy between the Intermountain philosophy of Indian culture and psychology and that of Emerson House in Denver. At Emerson House, the perception is that Indians youths are not by nature competitive, and would be insulted by the institution of any point system or behavior modification scheme.

Pine Ridge

There are two jails on the Oglala Sioux Reservation in Pine Ridge, South Dakota, one in Pine Ridge and one newly constructed in Kyle, South Dakota. There is one group home in a remote area of the reservation, 24 miles from the nearest town. Since there are no schools in the area of the group home,

youths are rarely referred there. Juveniles apprehended by the police are routinely held in jail until their parents are contacted and assume custody. Most juveniles are charged with peddling or transporting liquor, which falls within the category of disorderly conduct, and is a crime for adults as well as juveniles at Pine Ridge. The chief judge stated that the tribal court handled only misdemeanants who were referred after adjudication to either the state, the BIA social services, or to the tribal contracted Crisis Center for placement. The Crisis Center has a current caseload of 296, including abused/neglected children, and is involved in setting up and licensing foster homes. A representative from the Crisis Center stated that children are referred by both the state and tribal courts, and delinquent youths are usually sent away from the reservation to an Intermountain facility or to a BIA boarding school.

The jail at Kyle was reported to have separate quarters for juveniles and women. The Pine Ridge facility has one isolated juvenile cell and one in which children could maintain auditory contact with adults. The jail is dirty, has a dungeon-like atmosphere, and is inappropriate for the confinement of children from a legislative or humanitarian standpoint. Seventy-five children were held in this jail during the month of October, 1979 for an average of 24 hours. Ninety percent of those incarcerated were either runaways or were charged with liquor violations or truancy. There are no Bureau law enforcement officers at Pine Ridge.

Rosebud

On the day of the site visit to Rosebud (November 15, 1979), the juvenile justice system was in a state of upheaval. Six weeks earlier, the juvenile judge who had written a juvenile code and was cited by Bureau Central Office officials as an innovator, had succumbed to a lack of funding, staff, and tribal cooperation and resigned. His replacement was loaned by the Legal Services Organization, but November 15, 1979 was her last day on the job. She stated that the situation was so desperate that there was not enough money for stamps or telephones. Upon request she managed to locate the only copy of the juvenile code on the reservation and was willing to relinquish it.

The Code was described as trying to be "too much like the state," as including an excessive number of procedural requirements, prescribing too many time limits between stages of the proceedings, and requiring a staff of 14 when funding was only available for five. A judge who was sharing the juvenile load said that there had been no prosecutions for liquor violations in the last six months due to the overload in the criminal justice system. He said, however, that in the past he had sentenced juvenile repeaters to spend five or six weekends in jail. The jail and the police force were being audited by the FBI for misuse of funds.

In October, 1979, 34 children were held in jail. The judge stated that it is not unusual for a child brought in for drunkenness to remain over the weekend

while waiting for his parents. The floors, walls and toilets in the jail were caked with filth. There were no mattresses on the beds and in some cells the metal plate was partially ripped from the bed frame, leaving sharp edges exposed. There was no effective sight or sound separation from adults. According to the judge, a federal court ordered that the confinement of children in the Rosebud Jail was a violation of their civil rights under Title II of the Indian Civil Rights Act, however, the order was unenforceable since there was no alternative.

There is one group home in Rosebud, Delta Reo, with a capacity of 12. It is struggling to reestablish itself after an unstable financial beginning. Delta Reo was not receiving any state funds because a judge would not approve placements there, stating, "I wouldn't place a dog in Delta Reo."

Salt River

At the Salt River Reservation in Scottsdale, Arizona, a juvenile is picked up by the police and is taken to the police department lockup. The tribal juvenile code specifies that a child can be held a maximum of 24 hours. According to the probation officer, it is rare for a child to be retained in custody prior to the court date, but it does happen occasionally. There is a separate juvenile cell in the lockup, but there is a small window facing the other cells, and it would be possible to shout back and forth. The jail logs indicated that nine children were held in jail during October, 1979, but the offenses were not listed in the records because the jailers filled out the form incorrectly.

Until January 1, 1980, Salt River had an arrangement with the Maricopa County Juvenile Detention Center, where children from the reservation could be held up to three weeks, however, the county terminated this agreement due to overcrowding, and no alternative has yet been developed. A youth home on the reservation served only dependent/neglected children. Postadjudicatory placements were in BIA contracted nonsecure facilities, Boys and Girls Ranches.

Navajo--Window Rock, Arizona

The juvenile programs at the Navajo reservation are a testimonial to the energy and dedication of a group of individuals who are in the process of confrontation and negotiation with both the disinterest of BIA and the traditionalism of the tribal elders. The Navajo have a juvenile code, written police procedures for the handling of juveniles, and a "fill in the blanks" petition which enables a juvenile charged with an offense during the week to appear immediately before a judge. Without a court order no child may be detained over 48 hours on weekends or 36 hours during working days. The jail log indicated that during the month of November, 1979, only four children were

detained in the jail on charges of disorderly conduct, theft, public intoxication, and criminal damage.

The real progress on the reservation is reflected in the Navajo Youth Services Program and the Navajo Children's Legal Services. The Youth Services Program provides for the establishment of five group homes throughout the reservation. The BIA social services coordinator on the area level discussed the obstacles to establishing such a system. She stated that prior to her arrival at Window Rock, funds allocated to youth programs had been returned to the Bureau unspent. Currently, there is a deficit in the youth program budget. The role of BIA social services is interpreted as delivering services where no one else is providing them. Through adoption of an advocacy position, the funding has been obtained for the institution of five group homes. Although she described the philosophy of the BIA Social Services Division central office as indifferent, she stated that now that the funding is available there is an added problem with staffing. There is a 50 percent turnover rate in staff. The tribe is not politically service oriented and a recent election resulted in the installation of a less sympathetic group of judges. It was stated that both the judges and the majority of social services personnel are oriented towards sending children away from the reservation, and that it would take five years before the group home program was completely operational and incorporated into the judicial and cultural philosophy of the tribe. The chief judge displayed sensitivity to the problem of juvenile placements. He stated that jail was inadequate and endorsed the new first offender program initiated by BIA Social Services and providing counseling services as an alternative to detention. The social services staff has attempted to influence both tribal and state court judges to award custody of Indian children to BIA Social Services, so that they can choose the most appropriate placement, rather than have the judge designate a placement which might be unavailable or inadequate.

Another important step forward at the Navajo Tribe is the establishment in Fort Defiance, Arizona of the Navajo Children's Legal Services Project. The project, which was initially designed to protect the rights of abused and neglected children, but has been extended to include "incorrigibles" or status offenders, has applied for additional funding from BIA to extend its services to delinquent children. The program objective is that children's legal counsels, working primarily as volunteers selected from the Navajo Nation Bar Association, will represent the children in all legal proceedings, to protect their rights and oversee the litigation of the child's interests.

BIA Social Services at the Navajo reservation is, therefore, synonymous with changes consistent with the expanded protection of children's rights, the retention of children on the reservation, the effort to preserve the family structure, and concrete progress towards achievement of the objectives of federal juvenile delinquency legislation in the form of the first offender program, and the Navajo Youth Services and Children's Legal Services Programs. These programs, combined with police training and revised court procedures, will ultimately result in the deinstitutionalization of status offenders, the removal of children from jails and the placement of children in group home

settings on the reservation. This significant progress is a reflection of the efforts and concerns of a group of individuals on the Navajo reservation, and occurred without assistance from the BIA Division of Social Services central office.

CHAPTER 5

RECOMMENDATIONS

The following suggestions and comments, based on findings generated by the "Children in Federal Custody" study address methods for achieving termination of the inappropriate confinement of juveniles in federal custody. While these recommendations are intended to ameliorate certain immediate, critical conditions, it should be understood that enduring solutions lie in the development of appropriate alternative placements and programs for youths in federal custody, and coordination of such efforts at the highest level.

POLICY

(1) To determine their progress in implementing the objectives of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended in 1977, the chief administrators of the Federal Bureau of Prisons, Immigration and Naturalization Service, U.S. Marshal Services, and the Office of Juvenile Justice and Delinquency Prevention should be required to meet on a monthly basis, and report to the Attorney General or his designate. The meetings should include testimony by regional agency officials and legal advocacy groups.

(2) At least one person should be designated as the policy coordinator and planner for youths in the custody of Department of Justice organizations INS, USMS and FBOP. An official of each agency would be preferable in terms of assessed manpower resources, with one person designated as liaison among the three agency programs. The Office of Juvenile Justice and Delinquency Prevention would perform a data gathering and advisory role.

COMMENT: None of these agencies currently have an officer assigned exclusively to youths.

(3) The written policy guidelines of INS, USMS, and the National Park Service, though generally complying with the spirit of the federal juvenile legislation, should be reviewed and brought more clearly into conformity with the current separation and deinstitutionalization provision of the JJDP Act and the removal initiative.

COMMENT: NPS juvenile procedures guidelines provide, "When possible, juveniles should be transferred in unmarked vehicles and not with adult offenders."

(4) The Office of Juvenile Justice and Delinquency Prevention should develop or designate a technical assistance provider to supply aid to federal agencies in the areas of youth policy development, increased monitoring capability, and the development of alternative community-based placements for youths (e.g., undocumented alien youths in the Southwest).

(5) The Bureau of Indian Affairs ought to create a Youth Programs Board which is required to meet regularly, and which would include the Chief of the Law Enforcement Section, the Director of Social Services Section and the Chief of the Judiciary Section. Presentations to the Board should be made by high level representatives of the Office of Juvenile Justice and Delinquency Prevention, by representatives from Native American advocacy organizations, and by representatives from Indian reservations which have successful youth programs.

COMMENT: The predominant attitude at BIA appeared to be that "youth is not a priority."

(6) The Bureau of Indian Affairs should actively promote the policies of the federal juvenile legislation through training sessions for tribal judges, court clerks and technical assistance providers. Whenever possible, funding for the construction and staffing of youth program facilities should be contingent on the fulfillment of the deinstitutionalization and separation objectives.

COMMENT: The objectives of the JJDP Act were absent from BIA policy statements and training manuals.

(7) The Bureau of Indian Affairs Law Enforcement Section should coordinate its inspection activities and policy objectives with the Indian Health Service, with copies of all such inspection reports forwarded to the Office of Juvenile Justice and Delinquency Prevention.

COMMENT: The most recent INS inspection reports were "lost."

(8) For purposes of determining the placement of juveniles, the Immigration and Naturalization Service should conform to the federal definition, and specify that attainment of age 18 constitutes adulthood.

COMMENT: Currently, INS placements are dictated by state law which results in 17-year olds being commingled with adults in INS operated service process centers in Texas.

(9) Each Border Patrol Sector Chief should be required to negotiate a written agreement with the U.S. Marshal for the District stating the procedures for handling and transfer between agencies of custody of alien youths. The agreement should also address and justify the allocation of financial responsibility.

COMMENT: Currently, procedures for transferring custody between agencies are informal, and vary among agencies.

(10) INS should issue a policy directive indicating a priority on the placement of youths in juvenile facilities within 24 hours.

COMMENT: Situations such as the one occurring in Los Angeles would thus be avoided where most juvenile material witnesses and dependents of material witnesses have already spent one night in an inappropriate setting.

DATA COLLECTION AND MONITORING

(11) Jails contracting with the USMS should break down the number of prisoner/days between juveniles and adults, or this should be performed by the central office.

(12) A tracking system should be instituted for juvenile material witnesses and dependents of materials witnesses in each U.S. Marshals Office. It should include information on age, home country, immigration status, date of INS proceedings, U.S. court case being held in connection with and trial date, relatives in custody, placement, and disposition. In districts where a pretrial services program exists, this responsibility should be assigned to this Bureau, which is already equipped to account statistically for these children.

(13) For INS statistical purposes "juveniles" should include all males and females under the age of 18.

(14) For the purpose of statistical computation, apprehensions and dispositions for illegal entry reported by the Border Patrol to the Central Office of INS, should be broken down according to juveniles (under age 18), adult men and adult women.

(15) If the U.S. Marshal Services or INS is utilizing placement facilities for juveniles that are not contractees with the FBOP or USMS, a written agreement should be formulated between the facility and each agency utilizing it, requiring the provision of standard of care for juveniles described in the Federal Juvenile Delinquency Act, and specifying the per diem rate. A copy of this agreement should be on file with the central office of either INS or USMS.

(16) The U.S. Parole Commission should provide racial breakdowns of federally prosecuted and adjudicated juveniles.

(17) The viability of the BIA Statistical Collection Center at Brigham City, Utah should be evaluated by a task force composed of experts outside the Bureau designated by the Secretary, and including at least one member of a

Native American Advocacy Group, and possibly officials from the statistical offices in related government agencies, i.e., National Bureau of Criminal Statistics, Office of Management and Budget, OJJDP contracted consultants. If the system is found to be workable, the intake form should be revised, so that the annual report will reflect the outcome of juvenile arrests, including length and place of preadjudicatory detention and disposition.

(18) All the reports referred to in Recommendations 10-17 above should be provided to the Office of Juvenile Justice and Delinquency Prevention pursuant to its Congressionally granted coordination of federal effort objectives.

PLACEMENTS

(19) Pending a policy decision on whether federal facilities will be developed for juveniles committed under the Federal Juvenile Delinquency Act, intensive and wide-ranging negotiations should be conducted with state facilities on a nationwide basis, possibly via regional meetings. The objective would be to expand the number of states willing to accept federally committed juveniles on contract with quality programs, and to speed FBOP compliance with the legislative mandate that commitments be in the home communities. OJJDP would in some cases act as liaison between FBOP officials and state planning and institutional personnel.

(20) If the FBOP continues to place juveniles in state facilities, the sentences and program objectives for each child should be consistent with that of the facility in which he is placed.

(21) The most critical problem in the short-term for INS and USMS regional personnel is the development of appropriate alternative placements for the noncriminal juvenile population of illegal entrants and material witnesses. A policy initiative on this topic should be issued by the top administrators designated in Recommendation 1. This directive should include specific guidelines on "how to" develop alternative placements based on successful programs such as in the Southern District of California. It should stress the participation of citizens in these efforts, e.g., citizen activity in the development of foster homes, and make available to regional officials a technical assistance provider in this area, possibly through OJJDP.

APPENDIX

LIST OF FEDERAL OFFICES AND OTHER AGENCIES INTERVIEWED

September 1979--April 1980

Federal Bureau of Prisons
Washington, DC:

Detention and Contracts Administrator
House Judiciary Committee
ACLU National Prison Project

Regional:

FBOP Community Programs Officers, Sacramento, California
U.S. Probation Officer, South Dakota
California Youth Authority
California Youth Authority, Fred Nelles School
California Youth Authority, Karl Holton School
Emerson House, Denver, Colorado

Bureau of Indian Affairs
Washington, DC:

Chief Law Enforcement, BIA
Chief Judiciary Section, BIA
Deputy Administrator, Division of Tribal Services, BIA
Law Enforcement Assistance Administration
National Tribal Court Judges Association

Regional:

BIA Research and Statistical Unit, Brigham City, Utah
Area Director, Aberdeen, South Dakota
Cheyenne River Sioux, South Dakota
Juvenile Judge, Cheyenne River Sioux, South Dakota
Inner Mountain Youth Home, Cheyenne River Sioux, South Dakota
Detention Center Administrator, Sisseton-Wahpeton, South Dakota
Program Planner, Sisseton-Wahpeton, South Dakota
BIA Agency Representative, Sisseton-Wahpeton, South Dakota
Tribal Secretary, Santo Domingo Pueblo, New Mexico
BIA Social Services, Window Rock, Arizona
Navajo Tribe, Window Rock, Arizona
DNA Legal Services, Window Rock, Arizona
Children's Legal Services, Window Rock, Arizona
Youth Programs, Window Rock, Arizona
Chief of Police, Navajo Tribe, Window Rock, Arizona
Juvenile Justice, Pappago Tribe, Sell, Arizona
Oglala Sioux Tribe, Pine Ridge, South Dakota
Rosebud Reservation, South Dakota
Crisis Intervention Center Director, Pine Ridge, South Dakota
Acting Juvenile Judge, Rosebud, South Dakota
Taos Pueblo, Taos, New Mexico
Inner Mountain Youth Center, Tucson, Arizona
Program Planner, Salt River, Arizona

Youth Probation Officer, Salt River, Arizona
DNA Legal Services, Albuquerque, New Mexico
Native American Rights Fund, Boulder, Colorado

Immigration and Naturalization Service
Washington, DC:

Detention and Deportation Section

Regional:

Detention and Deportation Supervisor, Port Isabel, Texas
Border Patrol, Brownsville, Texas
Texas Rural Legal Aid, Brownsville, Texas
Detention and Deportation Supervisor, El Paso, Texas
Deputy Chief Border Patrol, El Paso, Texas
Juvenile Judge, El Paso County, Texas
Administrator, INS Alternative Placement Facility, El Paso, Texas
Catholic Charities Legal Services, El Paso, Texas
INS District Office, Albuquerque, New Mexico
INS District Office, Phoenix, Arizona
Deputy Chief, Border Patrol, Tucson, Arizona
Detention and Deportation Supervisor, El Centro, California
Chief Agent Border Patrol, El Centro, California
Chief Border Patrol Agent, Chula Vista, California
INS Regional Director, San Diego, California
Legal Assistance Foundation of Chicago, Chicago, Illinois

US Marshals Service

Chief of Program Administrator

Regional:

U.S. Marshal, New Mexico
U.S. Marshal, Central District of California
U.S. Marshal, Southern District of California
Chief Deputy, U.S. Marshal, Central District of California
Deputy U.S. Marshal, Phoenix, Arizona
Director, Pretrial Services Bureau, Los Angeles, California
Southern District of California
Los Angeles County Juvenile Hall, Los Angeles, California
Administrator, Salvation Army Placement Facility

National Park Service
Washington, DC:

U.S. Park Police Criminal Investigations Branch
U.S. Rangers, Law Enforcement Section
National Park Service, Law Enforcement Section

Regional:

Fort Mason, San Francisco, California

PARTICIPATING AGENCIES IN
BRIEFING ON CHILDREN IN FEDERAL CUSTODY STUDY
November 7, 1980
Department of Justice

Budget Staff
Justice Management Division

Bureau of Indian Affairs

Bureau of Prisons

Community Research Center
University of Illinois

Federal Coordinating Council
Office of Juvenile Justice and
Delinquency Prevention

Formula Grants and Technical Assistance
Division
Office of Juvenile Justice and
Delinquency Prevention

Immigration and Naturalization Service

Office of the Deputy Attorney
General
Department of Justice

Office of General Counsel
Law Enforcement Assistance Administration

FEDERAL DETENTION FACILITY QUESTIONNAIRE

1. Name of Tribe _____

   Location _____
   Town County

   _____
   State Zip Code

2. Name of facility _____

3. Tribal Chairman _____

4. During the month of March, 1979, how many accused status offenders (includes liquor violations) were placed in:

   _____ a) foster care
   _____ b) a secure juvenile detention facility on the reservation
   _____ c) a reservation facility, separated from adults by sight and sound
   _____ d) a reservation facility not separated from adults by sight and sound
   _____ e) a county jail, separated from adults
   _____ f) a county jail, not separated from adults

5. During the month of March, 1979, how many adjudicated status offenders (includes liquor violations) were placed in:

   _____ a) foster care
   _____ b) a secure juvenile detention facility on the reservation
   _____ c) a reservation facility, separated from adults by sight and sound
   _____ d) a reservation facility not separated from adults by sight and sound
   _____ e) a county jail, separated from adults
   _____ f) a county jail, not separated from adults
   _____ g) a BIA boarding school

6. During the month of March, 1979, how many accused delinquents were placed in:

   _____ a) foster care
   _____ b) a secure juvenile detention facility on the reservation
   _____ c) a reservation facility, separated from adults by sight and sound
   _____ d) a reservation facility not separated from adults by sight and sound
   _____ e) a county jail, separated from adults
   _____ f) a county jail not separated from adults

7. During the month of March, 1979, how many adjudicated delinquents were placed in:

_____ a) foster care

_____ b) a secure juvenile detention facility on the reservation

_____ c) a reservation facility, separated from adults by sight and sound

_____ d) a reservation facility not separated from adults by sight and sound

_____ e) a county jail, separated from adults

_____ f) a county jail not separated from adults

_____ g) a BIA boarding school

8. During the month of March, 1979, how many juveniles were tried in federal court? _____

TRIBAL DETENTION FACILITY QUESTIONNAIRE

Name of Tribe _____

Location of Tribe _____

Tribal Chairman _____

1. Describe type of detention facility

   _____ juvenile detention center
   _____ detention facility, adults and juveniles (sight and sound separation)
   _____ detention facility, adults and juveniles (no sight and sound separation)
   _____ contract arrangement with local
      _____ sight and sound separation
      _____ no sight and sound separation

2. Capacity of facility _____

3. Number of juveniles on the day visited _____
   Number of adults on the day visited _____

   Number of juveniles placed in the past 30 days _____
   Number of person days _____

4. Crimes committed by juveniles held on the day visited

   _____ status offenses
   _____ misdemeanors
   _____ felonies

5. Source of funding for facility (check all that are applicable)

   _____ Bureau of Indian Affairs
   _____ Law Enforcement Assistance Administration
   _____ Tribe
   _____ State

6. Federal agencies with authority to inspect facilities

   _____ Bureau of Indian Affairs
   _____ Law Enforcement Assistance Administration
   _____ Indian Health Service (HEW)

7. How often do these inspections occur? _____

   Who does these inspections? _____

8. Does the tribe receive recommendations based on inspections?

   _____

9. Is there a tribal policy to keep status offenders (including drunkenness out of secure detention)?

_____ Yes
_____ No
Comments: _____

_____

10. Is there a tribal policy to keep juveniles separate from adults?

_____ Yes
_____ No
Comments: _____

_____

11. If the facility is a contract facility, does it separate juveniles from adults?

_____ Yes
_____ No
Comments: _____

_____

FEDERAL AGENCY RESPONSES TO PRELIMINARY REPORTS

An initial meeting with OJJDP officials underscored the critical importance of CRC adherence to formal protocol when surveying the monitoring policy and procedures of federal agencies. An important aspect of this protocol was to meet with officials from the federal agencies once a preliminary report had been completed. This would ensure an accurate and complete description of the policy and procedure now in place. While this process predictably involves diagreement in certain "grey" areas, it will serve to focus attention on the major issues concerning adherence to the deinstitutionalization mandates of the Juvenile Justice and Delinquency Prevention Act. Further, it will identify problem areas which can be dealt with immediately through a combined effort by the agencies and the Office of Juvenile Justice and Delinquency Prevention as well as those issues requiring continued study or commitment of funds.

A preliminary report was presented to the five federal agencies involved at a meeting at the Justice Department on November 7, 1980. Representatives from each of the federal agencies were present with the exception of the Bureau of Indian Affairs. Following this informal review, a copy of the preliminary report was submitted to the chief administrator of each agency for written comments if any changes in the report were deemed necessary. All five agencies requested clarification and revisions in the report. Where appropriate, revisions were made to the findings and recommendations of the federal report.

APPENDIX

UNITED STATES GOVERNMENT

memorandum

DATE: DEC - 9 1980

REPLY TO ATTN OF: MBJ

SUBJECT: Comments on Draft Report Entitled, "Children in Federal Custody"

TO: Ira M. Schwartz, Administrator
Office of Juvenile Justice and
Delinquency Prevention

I am pleased to have the opportunity to respond to the draft report concerning juveniles in Federal custody and to offer some general comments pertaining to the experience of the Service in the area of juvenile custody.

The report correctly summarizes that the Marshals Service's involvement with juveniles is predominantly centered on the dependents of undocumented aliens who are detained in custody as material witnesses. Our technical custody of both children and adults is established after the issuance of a remand order by a Federal magistrate or judge. In some past instances, remand orders did not specifically name alien juveniles thus presenting the dilemma of custodial responsibility between the arresting agency and the Marshal. We have assumed responsibility for alien children even in the absence of a court remand order in most cases.

The separation of alien children from their parents, however, presents a moral issue of such magnitude that the technical requirements of separation appear moot. The primary consideration of the Marshals Service in its dealings with undocumented witnesses with dependents is the maintenance of the family unit and the health of the children.

The temporary accommodation of uncharged alien children in the San Diego Metropolitan Correctional Center has been the focus of comments from several sources during the past year which suggested that such a practice is not in concert with the technical requirements of the Juvenile Justice Act. In the opinion of our program staff, district office staff and contractors, the temporary accommodation of family units and individual juveniles at the MCC is the only option currently available to ensure their proper processing, health care, and placement. The interruption of the use of the MCC would adversely impact on our alien juvenile programs in Southern California.

The almost total dependence of the Federal government on local governments for secure detention space to house adult and juvenile offenders, not released by the Federal court on bond or supervision, does not permit us the luxury of full compliance with the Juvenile Justice Act. Until such time as local governments are capable of expanding and/or upgrading their holding, detention and juvenile detention facilities, the Federal agencies using these facilities will by stipulation remain in violation of the Juvenile Justice Act.

The report suggested that the central offices of the Marshals Service, Bureau of Prisons and Immigration Service have not provided relief or support to field offices inferring a lack of concern for juveniles. I would submit that the central offices are aware of and most sensitive to the juvenile problems but remain limited in their capabilities to resolve these problems through the nemesis of insufficient resources and new program initiatives sought through the budget process.

A data reporting system for aliens held in Marshals Service custody has been established to provide more accurate and timely information to the Prisoner Support Division. During FY 1980, approximately 79,800 individuals were remanded to Marshals Service custody. Only 975 of these individuals were juveniles of which 469 or 48% were processed in the District of Southern California. Nine other districts received 375 juveniles or 39% of the annual national total of juveniles received.

The following comments are offered in response to the recommendations of the report applicable to the Marshals Service.

Item 1. The Deputy Attorney General has indicated his intentions to establish a Jail Program Board with membership composed of the agencies mentioned in your report. Juvenile detention problems will be included in the mission of this group.

Item 2. The Chief, Prisoner Support Division, is responsible for the overall planning, coordination and management of our prisoner programs including juveniles remanded to Marshals Service custody.

Item 3. The juvenile policies of the Service will be reviewed and updated as necessary for conformity with provisions of the JJDP Act. As previously stated, compliance with the removal initiative is predicated upon the availability of local juvenile facilities.

Item 11. The alien data being submitted by district offices to headquarters will provide sufficient information on juvenile caseloads.

Item 12. District offices normally maintain USM-129 data records on individuals held in custody including juvenile aliens. Districts will be reminded to maintain this information.

Item 15. The Service complies with Federal Procurement Regulations in its contracting activities. The standards, or conditions of confinement portion of our agreements, are based on recognized national guidelines for detention or holding facilities. The inability of a facility to meet specific standards, however, would not automatically preclude its utilization in the absence of an alternative facility. Our Cooperative Agreement Program (FY 1981) will enable the Service to provide financial assistance to contractors to upgrade facilities and services to minimum standards.

Item 21. Alternative housing contracts modeled after the San Diego plan are in place or being undertaken in districts where there are juvenile caseloads to sustain such a program.

In summary, I would suggest from the perspective of the Marshals Service that the two conclusions of the draft report have been resolved since the completion of the field reviews. The coordination of a Federal effort must begin at the executive or legislative level of government which establishes and funds Federal programs. I believe the "top level officials" of the agencies studied are sensitive to, and as in the case of the Marshals Service, have made serious efforts to fulfill the intent of the Juvenile Justice Act to the maximum extent permissible within the capabilities of agency programs and resources.

I am optimistic that with the Office of Juvenile Justice and Delinquency Prevention taking an active role in Federal juvenile problems that we may collectively address and resolve the many juvenile detention and housing issues which remain before us.

William E. Hall

WILLIAM E. HALL
Director

cc: Jane E. Genster
Special Assistant to the
Deputy Attorney General

Linda Abrams, Research Associate
University of Illinois at Urbana-Champaign

U.S. Department of Justice

Immigration and Naturalization Service

Office of the Commissioner

Washington 20536

15 DEC 1980

CO 242.4-C&P

Linda Abram, Research Associate
Community Research Center
505 East Green Street, Suite 210
Champaign, Illinois 61820

Dear Ms. Abram:

This is in response to your letter of November 13, 1980, requesting our comments on the draft of the report prepared by your group for the Office of Juvenile Justice and Delinquency Prevention. We have reviewed the draft report and differ with respect to some of the conclusions. However we do agree with many of the observations, conclusions, and recommendations.

I will address those exceptions by page and section, with our views as to what we believe to be a true and accurate description of that item.

Page 2, second paragraph: We do not consider detention of juveniles as a low priority item. While the number of juveniles detained by INS is small, the amount of resources and effort in this area is proportionally much greater due to the special handling each juvenile case must and does receive.

Page 20, paragraph A: An undocumented alien is detained by INS under the authority of section 242 of the Immigration and Nationality Act, (INA), (Title 8 USC 1252), and may be presented only for prosecution under 8 USC 1325. In such cases, custody would lie with the United States Marshals Service during the prosecution. Only rarely is a juvenile presented for such prosecution and even rarer is the case accepted by the United States Attorney and prosecuted. Your observation that incorrect data is given as to the names or true ages of such aliens is quite often true.

Page 22, paragraph C: Form I-213 is not an Order to Show Cause, but rather is a Record of Deportable Alien Located. An alien may be offered the opportunity to depart from the United States without the institution of formal deportation proceedings, and large numbers of aliens are removed in that manner. If formal proceedings are required, an Order to Show Cause is the legal document by which this is accomplished. The next statement, that an alien is not advised of his rights to counsel and to a hearing before an Immigration Judge, is not true. In fact, the Order to Show Cause itself contains such explanation of right to counsel, right to seven days notice before deportation hearing, and right to enlargement on bond. This document is personally served on the detained alien in his native language if he does not understand English. There are no exceptions to this requirement.

Page 23, second paragraph: The statement, "juveniles are intenmingled with adults during transport," does not indicate that the juveniles are escorted and under the supervision of INS officers. In many cases, the juveniles are accompanied by the adults and relatives with whom they entered the United States.

Page 25, second paragraph: The INS policy regarding detention of undocumented youths is determined by the jurisdictional authority of the particular state in which the alien will be detained. This prevents the detention of juveniles in adult facilities.

Page 26, second paragraph: A Clinical Nurse is on duty during normal working hours to provide for routine medical care, including medical examinations upon entry. At the time of your visit to El Paso, this position was in the process of being filled.

Pages 27,28,29 & 30: During the last several years INS has increased the number of facilities at which juveniles may be housed in other than traditional detention settings. These facilities include: Salvation Army, House of Good Shepard; Door of Good Hope; and Saint Vincent de Paul. Presently, INS is negotiating a contract with the United States Marshals Service to obtain additional detention space in Los Angeles, California for juveniles and females. However, additional facilities are needed.

Page 34, second paragraph: Presently INS does not statistically count the number of undocumented alien juveniles apprehended. INS agrees that this data should be collected and will take the necessary steps to begin gathering this information.

Page 64, recommendations: INS has an officer assigned to monitor and coordinate the Service's effort to explore new remedies and improve its juvenile detention capabilities.

Page 66, (second "page 66" of two marked 66), comment: "The most recent INS inspection reports were lost". This statement deals with item # 7 of the preceeding page marked 66, which deals with the "Indian Health Service" and not INS.

Page 66, (second), Item #8: INS policy in this matter is explained above, (see item page 25, second page).

Page 66, (second), Item #9: INS policy is established at the Central Office level to preclude multiple local policies.

Page 66, (second), Item #10: A Service policy directive regarding this matter is not necessary since present INS policy clearly states that juveniles are not to be placed in adult facilities.

Page 67, Item #13: For statistical purposes, a juvenile will be classified as outlined above in item "page 25, second paragraph.

Page 67, Item #14: As stated above in item "page 34, second paragraph", INS agrees that this data should be collected. However, a juvenile will be classified under INS' definition.

Page 67, Item #15: INS utilizes the United States Marshals Service as the contracting agency for non-Service detention facilities used by INS. However, there are some facilities which refuse to enter into a contract with the Marshals Service. These facilities are used because of INS'operational requirements. However, INS will not execute a letter of agreement with any of these facilities which do not meet INS detention standards.

Page 68, Item #21: As stated above in item "Pages 27,28,29 & 30", INS agrees that additional juvenile facilities are required.

Thank you for the opportunity to respond in this matter. Please do not hesitate to contact me if I can be of further assistance to you in this or any other matter.

Sincerely,

Glenn A. Bertness
Acting Associate Commissioner,
Enforcement

Glenn A. Bertness

UNITED STATES GOVERNMENT

memorandum

DATE: December 1, 1980

REPLY TO ATTN OF: Norman A. Carlson, Director
Bureau of Prisons

SUBJECT: Draft Report on "Children in Federal Custody."

TO: Linda Abram, Research Associate
Community Research Center
University of Illinois at Urbana-Champaign

In response to your letter of November 13, 1980, attached are our comments on your draft report, "Children in Federal Custody, which was prepared under a grant from the Office of Juvenile Justice and Delinquency Prevention.

Attachment (1)

OPTIONAL FORM NO. 1
(REV. 7-76)
GSA FPMR (41 CFR) 101-
5010-112
* GPO : 1978 O - 261-647 (35

APPENDIX December 1980

FEDERAL PRISON SYSTEM RESPONSE ON DRAFT REPORT: CHILDREN IN FEDERAL CUSTODY

INTRODUCTION

The general tone of the draft report on Children in Federal Custody makes implications that the Federal Prison System (FPS) is doing little to aid those juveniles in its custody. The draft focuses on the inability of the FPS to fully comply with the Juvenile Justice and Delinquency Prevention Act in the areas of geographic separation from the juvenile's home, and physical separation from adult offenders, during confinement.

The FPS is acutely aware of the provisions of the Act. We have taken and will continue to take many positive steps in an effort to solve the complex issues of juvenile custody.

Beginning in the early 1970's, the FPS took an active role in urging the diversion of juveniles from Federal proceedings. The success of our efforts is shown by the decrease in numbers of juveniles serving federal sentence, from 626 in 1970 to 122 in 1980. When the Juvenile Justice and Delinquency Prevention Act was enacted in 1974, the FPS' General Counsel concluded that juveniles should not be placed in adult institutions, but could be placed in youth facilities designated under the Federal Youth Corrections Act. This policy was adopted and exceptions were made only on the basis of extreme threat of escape or assaultiveness. In February 1977, the issue of separation of juveniles was again reviewed by the FPS' Executive Staff. At that time, several factors were considered, which included statements of intent by sponsors of the original legislation, and conferences between our staff and staff at the Law Enforcement Assistance Administration (LEAA) and the Office of Juvenile Justice Delinquency Prevention (OJJDP) concerning their standards for the states as to separation. As a result of these factors and legal and administrative concerns, we decided to remove all juveniles from Federal institutions. This was accomplished by September 1977.

We believe more effort should be made in the report to describe the problems encountered by the Federal Prison System in working toward full compliance. The major problems in placing juveniles with particularly sophisticated backgrounds and special needs continues to be addressed. It should be noted that while the number of juveniles in the Federal Prison System is less than 1% of our total inmate population (approx. 120 juveniles vs. 23,000 total population), there is a large number of FPS staff continually working in the community to locate new facilities and programs for the juvenile offender. These include approximately 53 Community Programs Officers, and 5 Regional Community Programs Administrators.

The report does not address the lack of effort made on the part of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to provide information or assistance to other agencies dealing with the issue of juvenile placement.

The remainder of our response addresses specific statements made in the report with which we take exception.

SEPARATION OF JUVENILES AND ADULTS

Issue: (Pg. 11.) ...Section 5035 of the Juvenile Justice Act evidences the legislature's clear intent to support the pretrial detention and commitment of children to foster homes or community based facilities whenever possible and to prohibit 'regular contact' between children and incarcerated adults on either the pre-trial or post-adjudicatory level."

FPS Response: When the Juvenile Justice and Delinquency Prevention Act was enacted in 1974, the Federal Prison System's General Counsel concluded that juveniles should not be placed in adult institutions, but could be placed in youth facilities designated under the Federal Youth Corrections Act. This policy was adopted and exceptions were made by Regional Offices only on the basis of extreme threat of escape or serious assaultiveness.

In February 1977, the issue of separation of juveniles was again reviewed by the Bureau of Prisons' Executive Staff. At that time, several factors were considered, which included statements of intent by sponsors of the original legislation, and conferences between our staff and staff at LEAA and OJJDP concerning their standards for states as to separation. As a result of these factors, and legal and administrative concerns, the decision was made to remove all juveniles from Federal institutions. This was accomplished by September 1977.

PLACEMENT IN COMMUNITY-BASED FACILITIES NEAR HOME COMMUNITIES (Pp. 11-

Issue: (Page 12.) "...Commitment of children to foster homes or to community based facilities, whenever possible...according to Powers, only California, Kentucky and Colorado will hold juveniles after the age of 18. A review of state juvenile codes indicates that at least 37 states have continuing juvenile court jurisdiction to the

age of 21. Therefore, state facility administrators are not precluded by law from housing Federal prisoners, but have apparently adopted a policy of not accepting out-of-state Federal placements over the age of 18."

FPS Response: As pointed out in the report, there is also a critical difference between the Federal Juvenile Law and the law or practice of most states. A Federal juvenile can be held until age twenty-one, but the large majority of states consider a person a juvenile only until age eighteen. Thus, both state correctional facilities and many private community-based facilities do not accept Federal juveniles who are eighteen years of age and older.

The ACA "Directory on Juvenile and Adult Departments, Institutions, Agencies and Paroling Authorities," published each year, indicates the minimum and maximum age range of each juvenile facility. A survey of the age range of commitments showed that only 15 states accept juveniles over 18 years of age. While there undoubtedly are some additional states that have continuing juvenile court jurisdiction to the age of 21, (e.g., South Dakota) the long time practice of those state courts is not to commit state juveniles past their 18th birthday.

On a number of occasions FPS staff have contacted OJJDP asking for help with juvenile placement problems and received none. Issues not raised in the report involve: how state practice can be modified so that it conforms with the statutes; OJJDP's position in regard to placing twenty year-old criminally sophisticated juveniles in state facilities that have designed their programs to meet the needs of young teenage children under age eighteen; and OJJDP's role in the entire area of juvenile custody.

The FPS has, and continues to expend, more manpower and other resources far in excess of the proportion of juveniles in its total prisoner population. One of the responsibilities of the Community Programs Officers is to continually seek appropriate new facilities for juveniles, in order for the Federal Prison System to place them as near their homes as possible. The CPO's continual contact with state and county juvenile authorities, as well as private agencies, illustrates the difficulty in obtaining facilities for juveniles. In addition to the efforts of the Community Programs Officers, the Federal Prison System Regional Directors and Community Programs

Regional Administrators have contacted their state counterparts in efforts to locate and develop previously unavailable resources. Our most recent survey within the past month again indicates very limited bed-space, at best.

This continuing effort demonstrates the lack of facilities available for juveniles. In addition, such factors as age, offense and criminal sophistication become major considerations in placement once a facility has been located. A current survey of the Federal Prison System juvenile population indicates that 61% are 18 years of age or over (generally 18 is the age limit for state facilities) and 57% have committed serious and/or violent crimes.

Overcrowding in most state juvenile facilities is a serious problem. While we continue to put forth vigorous efforts to find suitable facilities for juveniles needing control and close supervision, those facilities with space available, and willing to accept federal referrals, are at a minimum. We currently have two contracts that house the large majority of our older, seriously delinquent juvenile offenders and continue to explore additional resources. It should be noted that the Federal Prison System cannot force any non-Federal facility to accept a Federal juvenile.

CONTRACT WITH CALIFORNIA YOUTH AUTHORITY

Issue: (Page 13.) The failure of the California Youth Authority to adjust the system to prevent the intermingling of juveniles with adults has resulted in the State of California's non-compliance with the JJDP Act and the termination of their receipt of OJJDP formula grant funds.

FPS Response: Over the past three years, the Federal Prison System has placed juveniles in California Youth Authority facilities. We have been aware of the negotiations between the California Youth Authority and the Office of Juvenile Justice regarding compliance with the requirements of the Act. The Federal Prison System made the decision to continue placements in California Youth Authority facilities pending the outcome of these negotiations. This decision was reached because of our dire need of facilities which would accept the older, aggressive delinquents rejected by other facilities. Negotiations have since been finalized between OJJDP and the California Youth

Authority. Contrary to the statement in the report that formula grant funding has been terminated, it was continued.

Issue: (Page 13.) The majority of Federal placements (in CYA facilities) were either Native Americans or illegal aliens. Sanchez stated that the Federal ward was not likely to be as criminally sophisticated as the state ward. Juveniles committed by the State of California to the Youth Authority are not first offenders, but generally have a history of serious misconduct....The probation officer verified that the Federal wards were "different," that state inmates were more likely to have committed more aggressive offenses..."

FPS Response: The report is in error in stating that Federal juvenile offenders placed in California were generally unsophisticated and had minimal delinquent histories. The California Youth Authority liaison with the Federal Prison System advised us that Federal juveniles were generally compatible with the types of offenders in their youth facilities. It was also corroborated by the California Youth Authority liaison and Federal Prison System staff that almost all of the juveniles committed to the California Youth Authority institutions were previously placed in other, lesser secure, contract facilities and failed. Failures were due to persistent escapes, assaultive behavior, and the like. While some of the juveniles, particularly our Indians from rural reservations, are not as "street wise" as their CYA counterparts, they are as criminally oriented in terms of aggressive, assaultive behavior, escape potential and seriousness of offense. In addition, many have committed more than one offense. On occasion, California has requested that we remove a juvenile because of the problems the juvenile created.

AMERICAN INDIANS (Pages 14-16.)

Issue: (Page 14.) "...The Federal ward is usually a Native American at a long distance from his home, and in an environment totally alien to his customs and, possibly, language."

FPS Response: Approximately 59% of our current delinquents are American Indians. Attempts have been made by Central Office and Western Regional Office staffs and local Community Programs Officers to work with Indian tribal leaders to develop

resources on or near Indian reservations. Our staff initiated meetings with the Bureau of Indian Affairs (BIA) officials in Washington, D.C. in May 1977 to discuss possibilities of Bureau of Indian Affairs and/or the tribes developing resources for Indian offenders. BIA suggested that we contact tribal leaders. Subsequently, our CPO in Bismarck, North Dakota, held meetings with Indian leaders and U.S. Probation Officers from the Dakota's and Montana (the states that commit a large majority of our Indians). Unfortunately nothing concrete has developed from these attempts.

In 1978, a formal study was undertaken by Bismarck, North Dakota, staff to identify special problems presented by the Indian juveniles in that area, to assess programs available and make recommendations for expansion of services. Intensive follow-up was made by CPOs and with regional staff on the suggestions, but to date nothing has materialized.

Legal Considerations - Equal Rights for American Natives (Pp. 14-16).

Issue: (Page 14.) "...This profile of the Native American or alien youth placed miles from his home state, in a culture that is foreign to him, raises constitutional issues as well as pointing to illegal policies by Federal agencies under the JJDP Act. Only two out of 23 juveniles in California are confined by the FBOP in their home states and the Act even more strongly mandates home communities. The Bureau's activities on that level are clearly in violation of Section 5039 of the Juvenile Justice Act. In addition, the Bureau's placement strategies may be subject to allegations of violations of the Equal Protection guarantees of the due process clause of the Fifth Amendment....(Page 15.) It is worth noting two of the landmark cases in the area. U.S. v. Antelope held that equal protection requirements implicit in the due process clause... are not violated by the convictions of certain enrolled tribal Indians,....which provides that any Indian who commits any of certain specified offenses within Indian country shall be subject to the same laws and penalities as other persons committing any such offense within the exclusive jurisdiction of the U.S. (Page 16.) ...the case of U.S. v. Big Crow which held that the defendant, an Indian, who was charged under the Major Crimes Act, with assaults

resulting in serious bodily injury on the Rosebud Indian Reservation in South Dakota, was denied equal protection of the laws in violation of the due process clause of the Fifth Amendment, since a non-Indian on the Reservation would be subject under the statutory scheme to only six months imprisonment whereas an Indian committing the identical crime is subject to up to five years imprisonment."

FPS Response: We are not aware of any constitutional issues inherent in placing Native Americans youth in institutions which are miles from home. Native Americans' movement from the home area is also unavoidable and we do not know of any established constitutional law, as stated in the report, which applies to these delinquents. The report is clearly in error in concluding that the FPS is in violation of 18 USC 5039, because it mandates home community placement. The statute has no such mandate. It recommends placement near home, whenever possible. The language is a clear recognition of the impossibility of finding home community placement for many juveniles. The reference to Equal Protection violations is also ill-advised, and loosely made. Some persons who are committed are always closer to home than others; this does not create automatic Equal Protection violations. The statute recognizes a desirability for achieving placement as near to home as is possible, and the Bureau follows that policy. No constitutional issue is implicated in this policy and practice.

The Antelope and Big Crow cases referred to, while relevant to American Indians, are entirely inappropriate to this discussion: They relate to prosecutive policies on reservations, and not in any way to the placement of Indians whether juveniles or adults, far from home or in places which may create cultural shock.

MONITORING OF FACILITIES

Issue: (Pg. 16.) "...The Bureau Community Programs Officer had responsibility for monitoring the facilities twice a year, however, he admitted that he had not been to several of the facilities in over a year."

FPS Response: The CYA facilities include 10 institutions and 5 camps. At the time of the investigator's visit to CYA (Jan. 1980), the CPO had visited all 10 institutions at least once within the past 11

confined in them, because of the cancellation of the CYA/FPS contract. Most of the camps had not been visited within the year prior to the report, but in the past 3 years there have not been more than 5 commitments to all the camps combined.

In addition to personal visits, the CPO is in constant telephone contact with the staff of the facilities where we still house juveniles. He talks to staff in most facilities on a weekly basis regarding programs, parole hearings, release plans, discipline problems, for specific juveniles, etc. The U.S. Parole Commission also reports to him after their visits for parole hearing.

EMERSON HOUSE (Pages 17-18.)

Issue: (Page 17.) "...According to members of the Native American Rights Fund, there continues to be some questionable physical tactics employed."

FPS Response: We contacted the writer of the report who stated that this statement was made to her but she was not able to verify or document the charge through staff and resident interviews. Our CPO in Denver contacted the Director of the Fund, who replied that he was not aware of any problems that exist at Emerson House. As the reporter could not verify the statements made to her by a third party, nor could we, the statement should be deleted.

RESPONSIBILITY FOR JUVENILE PROGRAMS

Issue: (Page 18.) "...The frustration of the Community Programs Officers which has been repeatedly expressed to the FBOP Central Office and ignored. There is no official assigned to juvenile offenders in the Federal Bureau of Prisons. The FBOP persists in the pursuit of the objective in "getting out of the juvenile business," and in so doing, ignoring the legislative mandate to place juveniles in their home communities, the urging of Congressional subcommittees, the investigations of the ACLU National Prison Project, the objective advocacy organizations, the findings of a task force which it commissioned, and the expressions of frustration of its own regional employees.

FPS Response: The Federal Prison System has designated Constance Springmann, Assistant Administrator for Community

Programs and Correctional Standards Branch to be the contact point in the Washington, D.C. office to coordinate juvenile issues. Federal juveniles are not the sole responsibility of that position, but considerable time is spent with juvenile issues.

The Executive Assistant to the Western Regional Director was assigned as the Regional Office Coordinator to expand programs and services to the juvenile offender in August 1978. She traveled extensively in the areas from which we received Federal juveniles in attempts to coordinate and develop alternative placements. In January 1980, a CPO in Denver was assigned as "Coordinator for Juvenile Programs" for the WRO. The states in the Western Region commit approximately 66% of the current juvenile population.

The report draws the conclusion that because the FPS believes it should "get out of the juvenile business," it is ignoring legal "mandates" and the welfare of persons committed to its custody. This is an assumption that is not substantiated in fact. In 1977, when juveniles were removed from Federal institutions, explicit instructions were sent to field staff to locate every available, suitable juvenile facility. Since that time we have reiterated these instructions on many occasions. Semi-annual bed space surveys were conducted in 1977, 1978, and 1979.

The Bureau's 5-year goals, established in June 1978 and disseminated to the field, included specific goals for juveniles. The already mentioned meetings held with Indian leaders, and the assignment of special staff in the WRO are evidence of continued high priority efforts to develop alternative resources.

MATERIAL WITNESS

Issue: "...The U.S. Marshal has contracted with the Salvation Army, who operates a home within San Diego capable of holding up to 40 material witnesses and their children or unaccompanied juvenile material witnesses ...the Salvation Army will not accept any resident who has not undergone a complete medical examination at the Federal Bureau of Prisons' operated Metropolitan Correctional Center.

FPS Response: The current practice is that the USM books the witnesses and their children at the San Diego MCC

first, a medical exam is given (at the request of the Salvation Army) and then they are transported to the Salvation Army facility. The FPS does not want material witnesses nor any other juveniles in the MCC, at any time, and have asked the U.S. Attorney, U.S. Marshal and Immigration and Naturalization authorities to come up with alternative plans by December of this year to cease utilization of the MCC for this purpose.

RECOMMENDATIONS

Policy (Page 64.)

1. To determine their progress in implementing the objectives of the JJDP Act of 1974 as amended in 1977, the chief administrators of the Federal Bureau of Prisons, Immigration & Naturalization Service, USMS and the OJJDP should be required to meet on a monthly basis, and report to the Attorney General or his designate. The meetings should include testimony by regional agency officials and legal advocacy groups.

FPS Response: The Federal Prison System has no problem with this recommendation. However, monthly meetings are too frequent to consistently have meaningful "new" material for discussion. We suggest quarterly meetings.

2. Designation of one person as policy coordinator and planner for youth in the custody of DOJ organizations of I&NS, USMS, and FPS.

FPS Response: We agree with this recommendation.

Placements (Page 68.)

20. Pending a policy decision on whether Federal facilities will be developed for juveniles committed under the FJDA, intensive and wide-ranging negotiation should be conducted with state facilities on a nationwide basis, possibly via regional meetings. The objective to expand the number of states willing to accept federally committed juveniles on contract with quality programs, and speed FPS compliance with commitment in home communities.

FPS Response: The FPS continues to negotiate with states and private facilities for more suitable confinement facilities. With only 120 juveniles from the entire U.S. in FPS custody, any plan to run a FPS juvenile facility would tend to exacerbate the current problems of separation from home.

21. "If the FBOP continues to place juveniles in state facilities, the sentences and program objectives for each child should be consistent with that of the facility in which he is placed."

FPS Response: We agree with this recommendation. Our current policy is to place juvenile offenders in facilities that are appropriate regarding the location of their home, their criminal history and individual program needs. The FPS plans to continue this policy.

CONCLUSION

The Federal Prison System supports the position that the entire criminal justice system can do more to aid in the juvenile justice problem. There have been and will continue to be strong efforts by Federal Prison System staff to locate more appropriate facilities and programs to meet the needs of juvenile offenders.

In addition to the efforts put forth by the Federal Prison System, U.S. Marshals Service, Immigration & Naturalization Service, etc., there continues to be a need for an agency such as OJJDP to be more active and serve as a coordination and liaison point for immediate and long range juvenile justice efforts. There exists a need for funding of existing local community resources as well as development of additional new juvenile facilities and programs. The Federal Prison System feels that OJJDP is in an excellent position to make an effort in these areas and to work with, assist and be assisted by all agencies confronted with the handling of juvenile offenders.

# # # #

RESPONSE

BY

FEDERAL BUREAU OF PRISONS

DRAFT REPORT ON CHILDREN

IN

FEDERAL CUSTODY

November 7, 1980

The draft of the report on "Children in Federal Custody," as conducted by the Community Research Forum for the Office of Juvenile Justice and Delinquency Prevention, indicates several areas of concern regarding the Bureau of Prisons' juvenile programs. There are several factual errors and omissions in this draft report, and some conclusions reached are not supported by the facts.

BACKGROUND

As noted in the chart below, over the past decade there has been a steady decline in the number of committed Federal juveniles. Beginning in the early 1970's, the Bureau of Prisons took an active role in urging the diversion of juveniles from Federal proceedings. The U.S. Attorney's Manual reflects this strong diversionary approach and these statistics clearly outline the success of our efforts.

JUVENILES SERVING FEDERAL SENTENCE

Year	In Federal Facilities	In Non-Federal Facilities	Total
1970	596	30	626
1971	492	30	522
1972	449	30	479
1973	438	30	468
1974	433	30	463
1975	328	30	358
1976	275	30	305
1977**	3	200	203
1978	2	159	161
1979	2	138	140
1980	0	122	122

These figures are approximate and are for end of fiscal year or are average daily population for last month of fiscal year.

**Juveniles were transferred to Non-Federal facilities during 1977.

SEPARATION OF JUVENILES AND ADULTS

When the Juvenile Justice and Delinquency Prevention Act was enacted in 1974, the Bureau of Prisons' General Counsel concluded that juveniles should not be placed in adult institutions, but could be placed in youth facilities designated under the Federal Youth Corrections Act. This policy was adopted and exceptions were made only on the basis of extreme threat of escape or assaultiveness.

In February 1977, the issue of separation of juveniles was again reviewed by the Bureau of Prisons' Executive Staff. At that time, several factors were considered, which included statements of intent by sponsors of the original legislation, and conferences between our staff and staff at LEAA and OJJDP concerning their standards for the states as to separation. As a result of these factors and legal and administrative concerns, we decided to remove all juveniles from Federal institutions. This was accomplished by September 1977.

PLACEMENT IN COMMUNITY-BASED FACILITIES NEAR PLACE OF RESIDENCE

While the Bureau of Prisons makes every effort to place juveniles near their homes, the availability of appropriate facilities to meet the individual needs of the offender are often not available. Factors such as age, offense, and sophistication are major considerations in determining acceptance. A current survey of our juvenile population indicates that 61 percent are 18 years of age and over, and 80 percent are 17 years of age and older. Fifty-seven percent have committed serious and/or violent offenses.

There is also a critical difference between the Federal Juvenile Law and that of most states. A Federal juvenile can be held until age twenty-one, but most all states consider a person a juvenile only until age eighteen. Thus, both state correctional facilities and most private community-based facilities do not accept Federal juveniles who are eighteen years of age and older.

Finally, overcrowding in most state juvenile facilities is a serious problem. While we continue to put forth vigorous effort to find suitable facilities for juveniles needing control and close supervision, those facilities with space available are at a minimum. We currently have two contracts for housing the seriously delinquent juvenile offenders eighteen years of age and older and continue explore additional resources.

STATUS OFFENDERS

There are no Federally committed status offenders.

CONTRACT WITH CALIFORNIA YOUTH AUTHORITY

Over the past three years, the Bureau of Prisons has placed juveniles in California Youth Authority facilities. We have been aware of the negotiations between the California Youth Authority and the Office of Juvenile Justice regarding compliance with the requirements of the Act. The Bureau of Prisons made the decision to continue placements in California Youth Authority facilities pending the outcome of these negotiations. This decision was reached because of our dire need of facilities which would accept the older, aggressive delinquents rejected by other facilities. Negotiations have since been finalized between OJJDP and the California Youth Authority. Contrary to the statement in the report that formula grant funding has been terminated, it was actually continued.

The report is also in error in stating that Federal juvenile offenders placed in California were generally unsophisticated and had minimal delinquent histories. When the California Youth Authority reviewed our cases for acceptance, we were advised that they were compatible with the types of offenders already existing in their youth facilities. It was also corroborated that almost all of the juveniles committed to these institutions were tried in other kinds of facilities and failed.

EFFORTS TO DEVELOP ADDITIONAL RESOURCES

The Bureau of Prisons has 55 Community Programs Officers stationed in major metropolitan areas throughout the country. One of their primary responsibilities is to locate and develop new resources for boarding juvenile offenders. We are aware of most existing juvenile facilities around the country and we are using them whenever possible. In addition, we are constantly attempting to get individuals interested in setting up new facilities. At our last Executive Staff meeting, each of the Regional Directors was asked to contact their state counterparts as a continuing effort to seek additional bed space.

SUMMARY

The Bureau of Prisons is acutely aware of the provisions of the Juvenile Justice and Delinquency Prevention Act and has taken positive steps to assure compliance. The major problem in placing those with particularly sophisticated backgrounds and special needs continues to be addressed. We will continue in our efforts to find appropriate resources to meet their needs.

COMMITTED JUVENILE DELINQUENTS

FACT SHEET

OCTOBER 1980

COMMITTED FEDERAL JUVENILE DELINQUENTS: 122

RACE: Indian
White = 71 or 59%
Black = 39 or 32%
Oriental = 11 or 9%

SEX: Male = 116 or 95%
Female = 6 or 5%

AGE: 18 and over = 74 or 61%
17 and over = 97 or 80%

OFFENSES: Violent or Potentially Dangerous = 70 or 57%
Property type = 52 or 43%

NUMBER OF SEPARATE CONTRACT FACILITIES: 80

NUMBER OF FACILITIES WHERE WE HAVE JUVENILES BOARDED NOW: 34

NUMBER OF COMMUNITY-BASED FACILITIES: (approximately) 24

NUMBER OF JUVENILES CONFINED IN STATE OF RESIDENCE: 32 or 31%

AVERAGE COST PER CLIENT (FY1980): $41.43

University of Illinois at Urbana-Champaign

COMMUNITY RESEARCH CENTER · 505 EAST GREEN STREET, SUITE 210 · CHAMPAIGN, ILLINOIS 61820 · (217) 333-0443

MEMORANDUM TO OJJDP

RE: The FPS response to "Children in Federal Custody"

The response of the Federal Prison system to the "Children in Federal Custody" report addresses three major areas; the good faith efforts of the FPS to comply with the federal juvenile legislation and provide for the appropriate placement of juveniles; the failure of OJJDP to provide technical assistance to the Federal Prison system; an interpretation of facts which is inconsistent with the one advanced in the report. Some of these comments have been incorporated into the report. Specific comments on the FPS response are set forth below.

Separation of Juveniles and Adults

Page 11 - FPS disputes the conclusion that the legislative intent was to separate juveniles from adults and to promote placement of juveniles in their home communities. The documentation for this is merely a catalogue of FPS general counsel interpretations and practices.

Placement in Community-Based Facilities Near Home Communities

Page 12 - FPS essentially concurs with the statement in the report that despite the fact that many states have continuing jurisdiction over juveniles till the age of 21, their practice is not to accept contracts for commitments of children over the age of 18. FPS stresses their continuing attempts to locate alternative placements and refers to the lack of assistance by OJJDP.

Contact with California Youth Authority

The report has been altered to reflect the reinstatement of formula grant funding to California by OJJDP.

The statement that the federal offender is less criminally experienced than the typical California Youth Authority ward was advanced and documented by the Youth Authority liaison, the probation officer at the Fred Nelles School,

the program administrator at the Karl Holton School, and two team training supervisors at the Karl Holton School.

American Indians

FPS contends that though there have been no concrete accomplishments in the development of suitable placements for Indian youth, considerable efforts have been made.

Legal Consideration - Equal Rights for American Natives

The discussion of a possible equal protection issue is not directed to the placement of Indian youth in an alien cultural setting, but to the fact that native American youth are confined in the same institution with California state offenders, but are serving longer sentences for committing the same or lesser crimes. In this context, the cases are appropriately referenced.

Monitoring of Facilities

The Community Programs Officer in Sacramento stated during an interview that several of the California facilities had not been monitored in a year.

Emerson House

In January, 1980 a staff member of the Native American Rights from Boulder, Colorado, stated that "questionable physical tactics" such as the handcuffing of residents to their beds, were utilized at Emerson House. This staff member was contacted in November, 1980 and reaffirmed this statement. At this time a telephone interview was conducted with a current resident of Emerson House who was also a part time employee of NARF. The resident also alleged the use of such tactics. This verification was immediately related to FBOP.

United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

NOV 2 8 1980

Ms. Linda Abram
Research Associate
University of Illinois at
Urbana-Champaign
505 East Green Street
Suite 210
Champaign, Illinois 61820

Dear Ms. Abram:

We are pleased to respond to your recent correspondence concerning a report to the Office of Juvenile Justice and Delinquency Prevention entitled, "Children in Federal Custody."

The report has been reviewed by the Division of Ranger Activities and Protection. We have made the necessary pen changes on the enclosed draft. We hope this information will be of value to your report. We regret that we did not receive notification of your November 7 meeting. If there are any other meetings or questions in the future or if we can be of further assistance please feel free to contact the Division of Ranger Activities and Protection at (telephone (202) 343-5607).

Sincerely yours,

Anthony L. Andersen
Acting Chief, Ranger Activities
and Protection Division

Enclosure

Year of the Visitor

Responsibility for Juvenile Programs

The FBOP contends that significant staff resources are devoted to the juvenile issue though conceding that no one deals with it exclusively.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

WASHINGTON, D.C. 20245

IN REPLY REFER TO:
Law Enforcement Services

Linda Abram, Research Associate
Community Research Center
505 East Green Steet, Suite 210
Champaign, Illinois 61820

Dear Ms. Abram:

In your November 13, 1980 letter, you have asked us to comment on the findings and recommendations included in the meeting drafts of the full report on "Children in Federal Custody."

We get the uneasy feeling from reading the report that much of the report is based on a false premise, i.e., all children held in detention on Indian reservations are in federal custody. This is not true, most children in custody are there by order of a tribal court and not a federal court. The U.S. Supreme Court in U.S. v Wheeler, held that tribal and federal courts are not arms of the same sovereign and that jeopardy did not attach when Wheeler was tried a second time in federal court after being tried in tribal court for the same offense. The report is skewed by lumping all children in detention on Indian reservations as being in federal custody.

Inasmuch as we start from a false premise, any conclusions drawn would also be false. Tribal governments are not units of federal governments and, therefore, not bound by 18 U.S.C. 5031, as is the Department of Justice.

However, as I have scanned through the report, I have noticed some errors in interpretation of materials, e.g.:

Page 37, line 4: Tribal governments share no concurrent criminal jurisdiction over non-Indians. (See Oliphant v Suquamish Tribe.)

It should also be noted that the Bureau of Indian Affairs has not arbitrarily taken the position that federal jurisdiction is exclusive in cases involving the Major Crimes Act committed by Indians against other Indians or non-Indians. Legal opinions regarding Indians and their federal relationship are generally made by the Department of the Interior Solicitor.

Page 42, second paragraph, 4th sentence: The Area Director is a federal employee and is not elected by the tribal chairman. The Area Director is an officer of the Bureau of Indian Affairs who is responsible for administration of Indian programs in a geographical region of the United States which may encompass many tribes and reservations. In the chain of command; the Commissioner is first, the Deputy Commissioner is second and the Area Director is third.

With regard to the statement that BIA Social Services is providing services where no one else is providing them, this we try to do within the limits of available staff and funds. The BIA Social Services is a secondary provider to all other public and private social services. Furthermore, many tribes are now receiving social services under P.L. 95-608, Title II grants and the Indian Child Welfare Act of 1978.

It should also be noted that there is a backlog of construction funding for facilities on the Indian reservations. Appropriated funds are inadequate to build facilities to house adult prisoners, let alone to construct separate juvenile facilities. Adult jails, as a general rule, are inadequate.

Finally, the BIA has statutory authority only to control alcohol/drug consumption, possession, sale and transportation on Indian reservations. Where law enforcement or criminal justice are concerned, the majority of these programs rest with tribes with BIA oversight. Indian tribes are not political subdivisions of the federal government and their juveniles, when detained by tribal courts, are not under federal jurisdiction and are not technically under Federal custody or subject to OJJDP mandates.

Very few tribes see the value of following OJJDP suggestions for handling juveniles. Most tribes do not have sufficient funds to establish such programs and, now that LEAA is being closed out, have very little chance of obtaining funding for juvenile related programs.

Sincerely,

William Hallett

Commissioner of Indian Affairs