facility operations were meeting their missions; and,

five, provide a cost analysis based on the findings to
suggest whether present remedies and future needs for
the detention facilities to meet their mission.

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

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

CHAIRMAN WALTON: Thank you.

Mr. -- or Professor, I guess.

Professor Gover.

PROF. KEVIN GOVER: Thank you,

Mr. Chairman, members of the Commission.

Let me just -- it may seem odd to some
people that these communities of Indians have
authorities of their own, so let me just provide a
little bit of a background and then talk about some of the current problems. First of all, I want to say that Mr. Rivera, as we discussed before -- during the break in the hearing, is the first career prison official to be hired by the Bureau of Indian Affairs. Traditionally, these jails have been run by sheriffs or the equivalent of sheriffs, chiefs of police, on the various reservations. A very spotty training, quite frankly. And the reason for that is that over time, the way these programs emerged, the proper foundations were never laid for either the police, the tribal courts, or certainly for the detention facilities. And so as the -- as time lurched forward and as these programs tried to keep up with the growing problem of crime on the reservations, there was never a proper foundation of training facilities and resources to properly carry out these programs. So the program that Mr. Rivera has inherited has been struggling for a good long time.

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

As I indicate in my written testimony, I'm a former Assistant Secretary for Indian Affairs.
What that essentially means is, I had supervisory authority over the Bureau of Indian Affairs Office of Law Enforcement Services, in addition to the other functions that the Bureau of Indian Affairs carries out.

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

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

To make a long story short, Indian tribes have essentially misdemeanor jurisdiction over Indian crimes committed on the reservation. It
doesn't matter if that Indian happens to be a member
of the tribe on whose reservation the crime takes
place. If you are an Indian, you are subject to the
jurisdiction of a tribe.

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

Now, there are basically two groups of
Federal officers that carry out the laws. One is the
Federal Bureau of Investigation, the other is the BIA
police force. Now, the BIA police force was first
formed in the late 1880s and was designed as a -- an
instrument for the assimilation of reservation Indians
at that time, to introduce Western concepts of justice
on the reservations. And, basically, have the tribes
evulate nonIndian systems of police, courts, jails,
and the like. Of course, in the first instance, there
was no such thing as an Indian jail. These jails were
introduced by the Bureau in the late 19th century, and
literally have continued to this day.

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

Now, there are a couple of problems
that arise from that. First, BIA has never had enough
resources to carry out the program on its own and,
therefore, the transfer of resources to the tribes
usually leaves the tribes without adequate resources
to carry out the program. The tribes usually, in
fact, in every case I can think of, supplement the
money they get from the BIA with their own resources,
and yet we knew, as of 1997, that tribal police forces
were staffed at about one quarter of corresponding
county of police forces, in rural counties of roughly
the same kinds of population throughout the United States. And despite -- I guess I would have to call it a half-hearted initiative to improve law enforcement on the reservations in the late 1990s, the gains were marginal, I think it's fair to say.

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

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

Now, there are ways, there are means to address problems in the jails through the courts, but, really, they are more in the nature -- they are not the kind of comprehensive oversight that we saw from the Federal judges in the '70s and '80s that really began to improve conditions in a number of the jails. The courts simply don't have that kind of jurisdiction. What they can do is hear certain kinds of tort claims against the tribes -- or, really, not against the tribes, but against the United States
because of something the tribe has done. And they can
grant writs of habeas corpus. That's well short of
being able to really impose and enforce standards on
the Indian jails, as were done.

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

At the end of the day, the problems in
BIA detention facilities and in BIA police programs
are the same old problems. Facilities, a lack of
training, and ultimately, of resources to hire the
correction officers needed, properly train them, and put them into facilities that would meet the Constitutional standards that state and federal government -- or state and federal facilities have to meet.

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

CHAIRMAN WALTON: Thank you very much. Mr. Cowboy, you're--thank you for your presence. Can you take the oath, please.

(Witness sworn in.)

CHAIRMAN WALTON: Thank you, sir.

Welcome.

MR. SAMPSON COWBOY: Good afternoon. I apologize for being late. I blame it on the plane. It's an honor to be here, ladies and gentlemen. I--my name is Sampson Cowboy. I'm a Division Director for Navajo Division of Public Safety. And, again, I would like to thank Mr. Thomas for inviting me, calling me to be here. It is an honor and I will do as best as I can to provide the statistical information and other pertinent information that this Commission is requesting of me.

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