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PUEBLO OF
LAGUNA NATION

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DRAFT

**JUSTICE IN INDIAN COUNTRY:
A Process Evaluation of the
U. S. Department of Justice
Indian Country Justice Initiative**

**Final Evaluation Report
Grant #96-IJ-CX-0097
April 1998**

**Submitted by
Carol Chiago Lujan, Ph.D.
Principal Investigator**

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Rebecca Tsosie, J.D.



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EXECUTIVE SUMMARY OF JUSTICE IN INDIAN COUNTRY: A PROCESS EVALUATION OF THE DEPARTMENT OF JUSTICE INDIAN COUNTRY JUSTICE INITIATIVE

**FINAL EVALUATION REPORT
U.S. Department of Justice
Grant #96-IJ-CX-0097**

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April 1998

Final Report submitted to the National Institute of Justice, Grant # 96-IJ-CX-0097. Points of view or opinions in this document are those of the authors and do not necessarily represent the official position of the U.S. Department of Justice (DOJ). The authors gratefully acknowledge the research, field and staff assistance of Lisa Poupart, Ph.D., Guy Archambeau, EdD, Frank Carrillo, Ann Hendricks, and Mary Fran Draisker; and thank Barbara Sharp and Jolan Hsieh for assisting in gathering the data, transcribing tapes and/or processing the data included in this report. The evaluation team is also grateful for the collegial support of M.A. Bortner, Ph.D., Duane Champagne, Ph.D., Ada Melton and Carey Vicenti, J.D. Furthermore, we are indebted to members and officials of the Pueblo of Laguna Nation and the Northern Cheyenne Nation for giving so generously of their time, experiences, knowledge and wisdom. We also appreciate the American Indian government officials and federal personnel who generously shared their time and knowledge during the evaluation process.

EXECUTIVE SUMMARY

Statistical data indicates that crimes of violence constitute a growing problem on some American Indian Nation (AIN) reservations. Acting on the authority of a 1995 U.S. Attorney General Janet Reno memorandum, Department of Justice (DOJ) personnel conceived the Indian Country Justice Initiative (ICJI) as a model for establishing a comprehensive and an innovative approach to enhance the working relationship in justice matters among the participating federal agencies and two selected AINs. The ICJI is now being implemented at the AINs of the Pueblo of Laguna Nation (PLN), New Mexico, and Northern Cheyenne Nation (NCN), Montana, under the auspices of these AINs and four federal agencies, the DOJ Criminal Division, the U.S. Attorney's Offices in New Mexico and Montana, the Administrative Office of the United States Courts (AOUSC) and the Bureau of Indian Affairs (BIA).

Intent of the ICJI

The ICJI is an innovative program that seeks to improve the safety and quality of life for AIN citizens of the Laguna and Northern Cheyenne reservations by strengthening the justice systems serving them and by enhancing the working relationship among participating government entities. It is intended to improve coordination among federal and AIN justice systems and relevant service providers; encourage and develop innovative approaches to justice; improve existing systems, including communications and procedures; strengthen offender supervision and treatment; expand prevention, intervention and training activities; and enforce laws against major crimes—especially those involving violence.

To effectively address critical funding issues in ways respectful of AIN sovereignty and the federal trust relationship, the planners sought to work cooperatively with the PLN and the NCN to apply for DOJ grants through the offices and bureaus under the Office of Justice Programs from such as the Executive Office of the Weed and Seed, Community Oriented Policing, Office for Victims of Crimes and Violence Against Women Grants Office programs. Of these sources, the Weed and Seed grant provided one of the primary source of federal assistance for the Initiative at both sites. Criminal Division planners requested and received waivers of contribution based on the participating AIN governments financial inability to satisfy the COPS matching contribution requirement.

Summary of Methodology

This report details the findings of a twelve-month process evaluation conducted at the two ICJI sites. It covers the development of the ICJI from its inception in 1995 through December 1997. Evaluation team members employed a qualitative research method, interviewing a wide cross section of the federal and AIN personnel involved with the Initiative. We also asked over 200 community members about their perceptions of the federal and AIN justice systems serving their reservations. Next, we also collected pertinent documents for analysis, including annual reports, crime-related statistics (when available), correspondence, grant proposals, newspaper clippings, community petitions and written comments. Finally, we gleaned cultural information from extant literature about the Laguna and Cheyenne traditional systems of justice and federal Indian law.

This report finds that, although substantial progress has been made to date, the ICJI needs more work and commitment before obtaining its goals and objectives. These findings may be

relevant to the more than 550 federally recognized AINs in the country in their quests to improve the delivery of justice services to their people. With this potential in mind, the evaluation team also produced a thirty-minute video to document the experiences of the PLN and NCN citizens with the justice systems serving their communities.

Summary of the Historical and Contemporary Status of Jurisdiction in Indian Country

Because the ICJI involves cooperation between sovereign nations and the federal trust relationship, it is important to understand jurisdictional issues involving the federal government and AINs. The report points out that the current status of criminal justice in Indian Country is the result of intense struggles for many years between AINs and the federal government for governmental power and cultural autonomy. The *Major Crimes Act of 1885* marked a significant departure from the policy of federal support for AINs' inherent sovereignty to punish criminal offenses of an intra-Nation nature. About the same time, the federal government, as part of its program to assimilate AINs, established Courts of Indian Offenses on reservations to handle civil and criminal matters in accordance with U.S. standards of law, crime and punishment. This usurpation of the traditional means of social control, dispute resolution and punishment has created tensions between AINs and the federal government, and, according to some, a racist, biased and unfair system of justice.

Nevertheless, many AINs, acting under authority of the *Indian Reorganization Act of 1934*, have replaced the Courts of Indian Offenses with their own courts. As this report shows, "many AIN courts synthesize substantive and structural components of Anglo-American justice with traditional notions of law and jurisprudence" (24). Other AINs, however, most notably some Pueblos of New Mexico, have retained their customary court systems and forms of justice.

Yet, Congress, with the *Indian Civil Rights Act of 1968*, has limited AIN criminal jurisdiction to misdemeanor crimes, limiting AIN courts to assess maximum criminal penalties of \$5,000 and one year in jail per offense. Additionally, in the *Oliphant* decision (1978), the U.S. Supreme Court, on the basis of the AINs' incorporation with the U.S. and their dependent status, divested AINs of their power to prosecute non-Indians criminally. As a result, certain types of crimes committed in Indian Country by non-Indians such as domestic violence may go unpunished. Moreover, since 1885, the number of major crimes has grown from seven to eighteen.

Summary of the Findings

Implementation of the ICJI has proceeded at a relatively smooth pace. DOJ and Administrative Office of U.S. Courts personnel selected the two ICJI sites based on geographic, demographic, cultural factors and crime factors, along with needs of AINs. After consenting to participate, the PLN and NCN entered into agreements with the DOJ. Placement of DOJ personnel occurred in November 1995 with the reassignment of one attorney to the USAOs in Billings and Albuquerque to serve as the DOJ "site managers." Planning at the AIN levels began with the formation of Weed and Seed Steering Committees, whose membership included the DOJ site managers, AIN officials, program directors and community members. Both participating AINs subsequently assigned an individual at their respective reservations as ICJI site managers. The ICJI brought additional federal funding to both AINs for the purpose of meeting Initiative objectives. Among other things, federal grants designated for the ICJI provide the AINs resources to hire additional law enforcement officers, to open economic opportunities, and to add personnel to the court systems (refer to Appendix A).

Several problems have hampered progress, however. Because the DOJ site manager assigned to PLN opted to prosecute federal cases, a gap existed in coordination with the AIN at the federal level. This problem was resolved by employing a temporary DOJ/ICJI coordinator. Weed and Seed grant funding was slow to reach the two AIN sites, delaying implementation of key goals and objectives. Problems of agreement at NCN with the local BIA's Criminal Investigators Office impeded attempts to hire three new police officers. The NCN Prosecutor's Office charged that the U.S. Attorney's Office (USAO) in Billings was unwilling to provide information about the status of cases. An NCN employee felt that the FBI had unfairly targeted a member of his or her office for investigation on trumped up charges.

Despite these shortcomings, AIN personnel and officials viewed the ICJI as a positive step towards addressing the crime and structural justice problems confronting their nations. Federal personnel also saw the ICJI in the same light. Conversely, many AIN community members expressed different concerns. Most of them had no or only a scant amount of knowledge about the ICJI, suggesting that little had been done to disseminate information about the Initiative to the public.

Additionally, although the ICJI has made significant accomplishments in a relatively short period of time, the evaluation team has uncovered disturbing comments about the federal and AIN justice systems. Time and time again, community members expressed a deep-seeded distrust of the federal government. Some interviewees asserted that the federal justice system was not only biased and unfair, but that in recent years FBI officers had violated search and seizure procedures. They felt that the law enforcement agencies on their reservations lacked

adequate funding, staff and training. They also charged that the NCN Prosecutor's Office was biased in its choice of cases to prosecute. NCN traditionalists felt that they had been excluded from the ICJI planning process. They asserted that federal and AIN justice system support is needed to revitalize the traditional means of social control. These traditional means of social control, such as dispute resolution and restitution rather than retribution, could help resolve the problems of drugs, theft and violence impacting their community.

A. Strengths and Accomplishments of the ICJI

The Research Team found that federal and AIN personnel involved with the ICJI have made significant conceptual and implemental accomplishments in keeping with their charge.

Accordingly, the ICJI:

- Acknowledges the government-to-government relationship between the federal government and the two participating AINs.
- Fosters greater awareness for the participating AINs of the DOJ's trust responsibilities in Indian Country.
- Promotes a multiagency, multidisciplinary approach to justice matters with federal, AINs and community representation at the two ICJI sites guiding the Weed and Seed Steering Committee.
- Increases an understanding at the federal level of unique law enforcement needs of AINs

- Increases understanding of the necessity to maintain consistency in personnel assigned to work with the AINs.
- Encourages coordination and communications between the cooperating federal agencies and the two participating AINs.
- Advocates innovative approaches to justice that provides for strengthening traditional mechanisms of social control.
- Improves AINs access to DOJ funds needed to strengthen the justice systems at both ICJI sites

B. Weaknesses and Concerns at the ICJI Sites

The research team found significant problems hampering the ICJI's potential. At the federal level, the report documents some major weaknesses and concerns at both ICJI sites. It indicates that serious gaps exist within the justice systems now operating at the NCN and PLN sites and that ICJI components were being implemented too slowly.

Federal Level

Interviewees at both sites saw the federal justice system as:

- Biased and unfair in that federal cases involving Indians at both sites are tried off the reservations in communities where the juries are most likely composed of non-Natives and noncommunity members. Additionally, family members incur hardships traveling to and from the court proceedings.

- Federal agent slow in responding to community safety concerns about illegal drug use, seldom prosecuting individuals for illegal drug activities and negligent in providing community members feedback about two major fires in recent years at NCN.
- Offering only minimal funding for AINs justice systems.
- Rigid in its grant application process.
- Paternalistic towards AIN governments.
- Usurping AIN jurisdictional capacities and sovereignty.

AIN governments, Bureau of Indian Affairs, and Local Level

Concerning the AIN governments, Bureau of Indian Affairs, and local level, interviewees indicated that the:

- NCN Court orders are not recognized by some state and county courts.
- NCN Prosecutor's Office and BIA law enforcement are seen as biased and arbitrary.
- NCN, PLN, and BIA justice systems lack adequate funding.
- PLN and NCN lack a comprehensive Juvenile Justice System.
- PLN and NCN lack Victim/Survivors of Violent Crime Support Groups.
- PLN and NCN experience a high turnover rate of justice personnel, including judges and law enforcement officers.

- PLN and NCN methods of traditional social control are not clearly defined in the existing justice systems.

C. Recommendations

We offer the following recommendations as steps to be taken at the federal, ICJI and AIN levels to address the shortcomings of the ICJI and the justice systems now operating at the two participating AIN reservations.

Federal Level

The federal government must:

- Support the sovereign status of AIN governments and their right to establish and administer their own systems of justice and coordinate efforts with them on a government-to-government basis.
- Implement the government-to-government relationship between the federal government and AINs at the local level.
- Establish a process for returning criminal jurisdiction to AIN courts to prosecute major crimes.
- Increase federal funding for all aspects of the AIN's justice system.
- Support the integration of traditional mechanisms of justice within the present AIN legal systems.
- Hold trials on the reservations where the major crimes occur to lessen perceptions about the biased and unfair nature of the federal justice system.

- Work with AINs to strengthen their courts and clarify and reform the fragmented jurisdiction in Indian Country in ways that promote AIN sovereignty.
- Support AINs efforts to integrate into both on- and off-reservation school curricula accurate information about the history and present status of AINs, sovereignty issues, and jurisdictional matters.
- Assist in developing education programs and activities that promote knowledge and institution building on reservations, especially for legal systems which are complex interrelated activities involving both an understanding of justice and law on reservations.
- Encourage further development of AIN legal systems compatible with their present socio-political organizations, while enabling them to manage relations with the U.S. legal system.
- Employ more American Indians within the various DOJ agencies, including the placement of Indian U.S. Attorneys in areas with sizable Indian populations.
- Provide internships for AIN students and faculty-in-residence programs for AIN scholars in DOJ agencies.
- Establish a centralized location for Indian Country crime-related statistics.
- Improve the timing of the DOJ grant-award process.
- Consolidate the DOJ grant-award process into one program for AINs.
- Disseminate this report and video to other AINs interested in the ICJI.

ICJI

The federal and AIN governments must:

- Formalize and clearly define the role of the DOJ/AIN site managers.
- Strengthen DOJ communications, coordination and public-relations efforts within the communities.
- Assist the NCN Court in its effort to obtain recognition of its decisions by the State of Montana.
- Increase the presence of the NAPOL (Native American Probation Officer Liaison) at the Pueblo of Laguna.
- Provide cultural and sensitivity training for all DOJ personnel in Indian Country.
- Support the integration of traditional mechanisms of justice within the present AIN legal system.
- Establish programs to bring law concepts and models to community college curriculums, AIN officials, U.S. government officials and community people.
- Establish dialogue sessions to work through unresolved and problematic issues facing the ICJI.

AIN Government Level

The PLN and NCN governments must:

- Establish and maintain comprehensive and consistent juvenile justice systems.

- Establish public information systems such as regularly published newspapers, newsletters and local radio stations.
- Continue efforts to integrate traditional mechanisms of justice into the current justice system.
- Establish civics classes that emphasize culture, language, AIN sovereignty and native citizenship and discuss jurisdictional issues related to justice and crime in Indian Country within the current education system.
- Establish a Victim/Survivor of Violence Support Group.
- Implement a public-relations initiative to establish community confidence in and support for the justice system, including law enforcement agencies, courts, prosecutor's office, intervention and probation.
- Seek additional funding and innovative strategies for addressing justice issues in the context of their respective cultures and structural needs.
- Enact and/or update juvenile justice codes.
- Establish and maintain comprehensive juvenile prevention and intervention programs.

In conclusion, the information included in this study reflects the responses of both youth and adult community members, federal government personnel, Northern Cheyenne government personnel and officials, and the Pueblo of Laguna government personnel and officials. The study provides insight into the overall justice experience on two AINs with the ICJI as a backdrop. The problems faced by AIN governments reflect both *external* and *internal* concerns. Externally, these concerns include racism, unemployment, lack of a working government-to-government relationship with the federal government, relations with state and local governments, funding shortages for law enforcement and the court system (including inadequate police protection, minimal resources for youth prevention and intervention programs, inadequately trained law enforcement personnel), lack of support for families affected by violence, as well as allegations of discriminatory practices and civil rights violation by federal officials. The *internal* concerns of AINs include a historical distrust of the imposed federal justice system, inadequate resources for the justice system, cultural erosion, the apparent breakdown of the extended family structure, political factionalism and a general hesitancy to report crimes.

Despite these major barriers the Initiative is perceived as a positive initial step to improve the safety and quality of life for AIN citizens as it invests in the justice system and encourages coordination and communication among the two governmental entities (federal and American Indian) responsible for justice in Indian Country.

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FINAL EVALUATION REPORT U.S. Department of Justice Grant #96-IJ-CX-0097

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Glossary of Abbreviations

AIN(s)—American Indian Nation(s)

AOUSC—Administrative Office of the U.S. Courts

AUSA—Assistant U.S. Attorney

BIA—Bureau of Indian Affairs

BJA—Bureau of Justice Assistance

CASA—Court Appointed Special Advocates

CI—BIA Criminal Investigator

CD—Criminal Division

COPS—Community Oriented Policing Services

CPO—Corrections Program Office

DCO—Drugs Courts Office

DOJ—U.S. Department of Justice

EOWS—Executive Office for Weed and Seed

FBI—Federal Bureau of Investigation

HUD—Housing and Urban Development

ICJI—Indian Country Justice Initiative

ICRA—*Indian Civil Rights Act of 1968*

MOA—Memorandum of Agreement

MOU—Memorandum of Understanding

NAPOL—Native American Probation Officer Liaison

NCC—Northern Cheyenne Court

NCN—Northern Cheyenne Nation

NIJ—National Institute of Justice

OJJDP—Office for Juvenile Justice and Delinquency Prevention

OJP—Office of Justice Programs

OLES—Office of Law Enforcement Services

OVC—Office for Victims of Crime

PI—Principal Investigator

P.L. 280—Public Law 280

PLN—Pueblo of Laguna Nation

TPA—Tribal Priority Allocation

USAO—U.S. Attorney's Office

VAWGO—Violence Against Women Grants Office

**Justice in Indian Country: A Process Evaluation of the Indian Country
Justice Initiative sponsored by the U.S. Department of Justice in the Pueblo of
Laguna Nation, New Mexico and the Northern Cheyenne Nation, Montana.**

For the most part, our sovereignty is defined by relationships with outside sovereign entities such as state and federal agencies and governments. We have certain responsibilities in those relationships.... We understand our sovereignty is upheld or diminished by the manner in which our courts resolve disputes. For that reason, we must give priority to protect and support our legal system. [Albert Hale, President of the Navajo (Diné) Nation, 1997]

General Introduction

According to the 1997 U.S. Census, over 1.4 million American Indian people reside within federally recognized American Indian Nations (AINs) across the continental U.S. (U.S. DOJ Discussion Paper 1997, 1). AINs are one of the fastest growing minority groups in the U.S. with the populations of many reservation communities being relatively young. Many AIN communities are enjoying an unprecedented realization of self-governance and the first significant economic growth during this century. However, the challenges for AINs are also unprecedented. Statistics show that AINs continue to rank at the bottom of all ethnic groups in terms of life expectancy and the percentage of people living in poverty.

Violent crime is a primary concern for a number of reservation communities, and a 1991–1993 Indian Health Service Statistics reports a homicide rate for Indians that is 2.4 times higher than for Caucasians and 1.4 times higher than other ethnic groups in the U.S. (U.S. Department of Health and Human Services 1996, 68). The most at risk are Indian males between the ages of 15 and 44. Unfortunately, violent gangs—modeled after urban gangs—have become a presence on many reservations, and drug abuse among AIN members has added to the alcohol

abuse problems already faced by many communities. Indications are that incidence of other violent crimes in Indian Country (such as gang violence, domestic violence and child abuse) are increasing.

Despite these disturbing crime statistics, AINs face a dearth of law enforcement services when compared to non-Indian communities. The unique jurisdictional constraints within Indian Country—combined with the rural and culturally distinct character of most AINs—contribute to the challenges of law enforcement there. Funding for law enforcement services has actually declined and a persistent lack of uniformed officers or criminal investigators means that many violent crimes go unsolved and even uninvestigated.¹ Facilities are often inadequate to house those offenders who are located and detained. While AIN governments bear a significant measure of responsibility for crime control, as an aspect of their inherent and retained sovereignty, the federal government also possesses an essential duty to preserve public safety there. This duty derives from the unique trust relationship between federal and AIN governments, as well as from federal statutes that outline the boundaries of federal criminal jurisdiction within Indian Country.

In exercising that federal trust duty, Attorney General Reno issued a memorandum to the U.S. Department of Justice (DOJ) on September 20, 1995, that established the Indian Country Justice Initiative (ICJI)—a comprehensive and innovative program to improve criminal justice systems that serve AINs (Reno 1995, 117). For reasons that will be discussed later, the Pueblo of Laguna Nation (PLN) in New Mexico and the Northern Cheyenne Nation (NCN) in Montana were selected as initial sites for program implementation.

1 For example, one 1997 report documents that only 70 jails exist in Indian Country, and only 10 are suitable for juveniles (U.S. Department of Justice Discussion Paper, “Indian Country Law Enforcement Improvements.” Sept. 23, 1997).

I. Introduction to the Study

A. Indian Country Justice Initiative Background

The ICJI is an innovative program developed to enhance the working relationship among governmental entities to improve the safety and quality of life for AIN citizens. The ICJI was approved by the AINs in November 1995 and implementation began in February 1996 by the PLN in New Mexico and the NCN in Montana, with assistance from the DOJ Criminal Division (CD), the U.S. Attorney's Offices (USAOs) in New Mexico and Montana, the Administrative Office of the U.S. Courts (AOUSC), and the Bureau of Indian Affairs (BIA).

The project is intended to: improve coordination among federal and AIN justice systems as well as relevant service providers; encourage and develop innovative approaches to justice; improve existing systems including communications and procedures; strengthen offender supervision and treatment; expand prevention, intervention and training activities; and enforce laws against major crimes—especially those involving violence [U.S. DOJ/National Institute of Justice (NIJ) Correspondence 1996]. (See Appendix B for an overview of ICJI's goals and objectives.)

A major component of the Initiative encourages the PLN and the NCN to apply for grants from the Department of Justice, Office of Justice Programs (OJP) which is comprised of nine offices that have grant authority. These include four of the five bureaus, the Office for Victims of Crime (OVC), the Office for Juvenile Justice and Delinquency Prevention (OJJDP), Bureau of Justice Assistance (BJA), and the National Institute of Justice (NIJ). The four program offices include the Violence Against Women Grants Office (VAWG0), the Executive Office for Weed

and Seed (EOWS), the Drugs Courts Office (DCO), the Corrections Program Office (CPO) and a separate office, the Community Oriented Police Services (COPS). Financial support has been provided to both communities under the *OVC Children's Justice Act Grant* for a Victim/Witness Advocate program, the VAWGO Domestic Violence Arrest Policies Project, a joint OJJDP and OVC supported *Court Appointed Special Advocates (CASA)* Program, and from the COPS office funding to hire additional officers. The largest grant is from the EOWS, which is the primary funding mechanism used to spearhead the ICJI in these two communities. Support for this evaluation is from the NIJ.

In November of 1995, the DOJ/CD relocated one attorney to the USAO in Billings, Montana and one to the USAO in Albuquerque, New Mexico. Half their time is to be spent as the DOJ "site manager" for the ICJI project. The respective states' U.S. Attorneys direct the activities for the remainder of their time. There is an overall DOJ coordinator (located in the Criminal Division) in Washington, D.C. and the Administrative Offices of U.S. Courts has assigned a Regional Administrator at both AIN sites to help coordinate efforts.

The AINs involved in the Initiative have also designated individuals from their governments to serve locally as ICJI "site manager." The site manager for Laguna Pueblo is the coordinator for Youth Programs and the Executive Director for the Northern Cheyenne Boys and Girls Club performs these services for the Northern Cheyenne Nation. Both individuals are native and have years of experience working with and living in their respective communities (see Table 1).

Organizationally, the ICJI consists of four site managers (two from DOJ and one from each AIN governments), two Native American Probation Officer Liaison (NAPOL) at each site which are financially supported by various DOJ grants. The most funding is from a Weed and Seed grant that stresses a multidisciplinary approach to justice. Weed and Seed Steering Committees were established in PLN and NCN to enhance the development of comprehensive justice systems in each community. The ICJI at the PLN and the NCN are similarly organized but with two fundamental differences. The Pueblo of Laguna Nation formalized its participation in the Initiative with a Memorandum of Agreement (MOA) with the U.S. Department of Justice (see Appendix D). It outlines the ICJI activities between the two governmental entities. The NCN, however, did not issue an MOA. The second difference is that federal cases from Pueblo of Laguna Nation are prosecuted by the Assistant U.S. Attorney (AUSA)/DOJ site manager who has a prosecutorial background.

Table 1. ICJI Personnel/Positions

Entity	Number	Position	Time
Department of Justice	1	Program Coordinator-Criminal Division Washington, DC DOJ	N/A
	2	AUSA (site manager)	50%
	1	DOJ/ICJI Coordinator	100% (1 year position—Pueblo of Laguna Nation only)
Administrative Office of U.S. Courts	2	NAPOL	100%
Northern Cheyenne Nation	1	Site Manager (integrated into existing position of Executive Director for the Northern Cheyenne Boys and Girls Club)	Time integrated into job responsibilities.
Pueblo of Laguna Nation	1	Site Manager (integrated into existing position of Coordinator for Youth Programs)	Time integrated into job responsibilities.

Conversely, the AUSA/DOJ site manager in Northern Cheyenne does not prosecute federal cases from the Northern Cheyenne Nation. Because the additional responsibility of prosecuting cases leaves minimal time for the New Mexico AUSA to work on other ICJI activities, a temporary position has been created by the DOJ to assist the AUSA. This individual (hired as the DOJ/ICJI coordinator) will assist in the Initiative and be based in Laguna, New Mexico.

The PLN and the NCN also differ in the structural organization of their justice systems. The Pueblo of Laguna Nation operates its own Law Enforcement Department, but does not have a Prosecutor's Office. Part of the ICJI is to hire a Tribal Prosecutor to develop the office. In contrast, while the Northern Cheyenne Nation has a Prosecutor's Office, it has chosen to have the BIA operate all law enforcement activities, including the detention facility. The federal law enforcement presence is, therefore, more evident in the Northern Cheyenne Nation.

B. Site Selection

Several factors were considered in selecting the Pueblo of Laguna Nation in northwest New Mexico and the Northern Cheyenne Nation in southeastern Montana. While geographically and culturally distinct from one another, both communities met the selection criteria developed by the DOJ. The criteria required that the communities possess a medium-size population, serious crime problem, functioning justice system, stable government, are located within a judicial district with a cooperative U.S. Attorney and federal judge and Native governments willing to participate.

DOJ personnel from the CD and the Administrative Office of the U.S. courts were involved in selecting the sites. They conducted site visits and interviews at several potential sites before selecting NCN and PLN. In addition to the criteria already mentioned, each site presents a different set of challenges. For example, NCN had only one BIA Criminal Investigator (CI) to cover a vast land area and PLN had experienced five murders in five months (U.S. DOJ Correspondence, Undated).

C. Evaluation Background and Methodology

A process evaluation was appropriate due to the comprehensive nature of the Initiative, the slow start of Initiative efforts (both sites did not begin actively pursuing the Initiative goals until February 1996—a period of three months had elapsed between the appointment of DOJ site managers and the start of the ICJI) and the timing of the evaluation. As a result of these extenuating circumstances, a *process* evaluation was strongly recommended by the National Institute of Justice (NIJ). The evaluation team's primary task was to assess the ICJI pilot project using a feedback-oriented model so that essential information to fine-tune and modify programs would be available. Moreover, to accomplish project goals, the evaluation team encouraged innovative approaches grounded in traditional Indian justice practices. It was also important that the findings from the Initiative be relevant to the more than 550 federally recognized AINs in the country. Moreover, because of the developmental statuses of various projects, the team focused on activities different site managers were most actively pursuing during the evaluation period.

The evaluation team consisted of a Principal Investigator (PI) and four researchers, one researcher assigned to work with each of the participating AIN governments. The field

researcher participated in site-visit interviews along with the PI. The researchers collected background material, assisted in data analysis and made telephone contact with ICJI participants as needed. A specialist was also used on selected site visits to video tape interviews. Along with this written report, the team has produced a thirty-minute video summarizing interviews and findings. Evaluation team members are American Indians familiar with the cultural differences and the complex jurisdictional issues of the AINs. Two evaluators have lived on the reservations with which they were assigned. This familiarity provided additional insight to the evaluation process.

Verbal notification of the ICJI award was received in November 1996 and written notification arrived on December 16, 1996. Shortly thereafter, contact was made with the NIJ Project Officer and the DOJ Senior Policy Analyst, DOJ CD. Initial site visits were made to the Pueblo of Laguna Nation and Northern Cheyenne Nation. During these visits, evaluation team members were introduced to the AIN council at the PLN, the President of the NCN and other key individuals. Thus, the evaluation process began ten months after the ICJI project was instituted.

This report details the development of the Initiative from its inception in 1995 through December 1997. It seeks to accomplish four interrelated objectives. First and foremost, it offers a process evaluation of the ICJI based on data provided by oral interviews with Initiative participants and pertinent written materials. It focuses on the primary activities of the DOJ and reservation site managers who were responsible for establishing and maintaining cooperative relations between the various agencies of the participating AIN and federal governments. It also

examines the activities of federal participants in Billings, Montana, and Albuquerque, New Mexico, along with those officials and employees at the Northern Cheyenne Nation and Pueblo of Laguna Nation governments.

Second, this report presents the views of concerned community members, including those of leaders of the traditional government structures, about justice matters on their respective reservations. Third, it gives background information about the Laguna and Cheyenne traditional systems of justice. To understand the views of the traditionalists it is necessary to comprehend the traditional system of government. Finally, it recommends ways to improve the operations of the initiative, to strengthen the delivery of justice and to integrate the role of traditional modes of justice with the ICJI on both reservations.

II. Methodology

The process evaluation was based on field research that focused on in-depth interviews. Site visits to the AINs and interviews began in December 1996 and ended approximately one year later. The evaluation team made four on-site visits to the Northern Cheyenne Nation in Lame Deer. Each of these site visits included two days of extensive interviews in Billings and Lame Deer. At least ten site visits (one day each) were made to the Pueblo of Laguna Nation. Additionally, numerous telephone interviews were conducted with individuals from both sites.

A total of 94 people from both of the ICJI sites participated in in-depth interviews. Fifty-eight of the respondents were from the Northern Cheyenne site, thirty-three were from the Laguna site and three people from the DOJ Washington, DC office. Moreover, the team interviewed over 140 youths by holding focus groups (consisting of 10 to 12 youths) at one of

the Laguna Nation's Summer Youth Corps meetings and interviewed a youth group of seven youths at the Northern Cheyenne Boys and Girls Club.

The evaluation team focused on the current progress of the Initiative, the perceptions of the individuals assigned to implement the Initiative and the perceptions and experiences of community members that the Initiative is designed to serve. The interviews focused on the ICJI and inevitably led to general concerns about justice/injustice at the two demonstration sites.

The information included in this report reflects the responses of community members, federal government personnel, NCN government personnel and officials and PLN government personnel and officials. Justice personnel interviewed at both Initiative sites included court personnel, law enforcement personnel and probation officers. Respondents range in age from eight years to more than 80 years. Both men and women are represented in the sample. Throughout the interview process, members of the Indian communities expressed interest in learning about the ICJI. Furthermore, they appeared eager to voice their opinions and relate their experiences about the justice system.

Selection of respondents was based on the following criteria: their role within the Initiative, their position within the governmental structure (including traditional structure), experiences with the justice system and willingness to participate. The team relied on the snowball technique of sampling to contact and interview people from the community. Furthermore, the evaluation team made special efforts to include in this sample young people, traditional leaders, elders, and families of victims and perpetrators. Interviewees agreed to be interviewed and signed letters of consent. The comments of the respondents are kept confidential

and cannot be tied directly to the interviewee. An exception to the confidentiality rule exists for those individuals who signed consent forms agreeing to have the interview video taped with the understanding that their names and comments will be used within the video documentary. Feedback to site managers was provided through personal and telephone interviews and/or monthly reports that highlighted evaluation findings for the reporting period.

A. Validity, Reliability and Generalizability

A qualitative research approach was used because of its strengths in yielding accurate reflections of the concepts that it intends to measure; it provides a rich base of information of the subject under study; and it allows researchers to examine how people learn about and make sense of themselves and their surroundings (Berg, 1995).

A caveat about qualitative field research is that findings cannot be generalized as safely as those based on quantitative methods of data collection (Babbie 1983).

The in-depth interviews that guide this evaluation provide a rich source of knowledge about the Initiative; community perceptions about justice and injustices; and operations of the courts, police, and prevention and intervention activities in their communities. Moreover, the information gained from this evaluation detailing the ICJI provides important insights for other AINs with interest in negotiating special initiatives and other national priorities and national program models with the DOJ.

B. Data Collection Procedures

Our primary source of data was based on field research gathered primarily from face-to-face interviews. We conducted telephone interviews when face-to-face interviews could

not be scheduled. The telephone interviews comprised approximately 5 percent of the sample. Interviews followed a protocol of open-ended questions. These questions were revised based on the responses of the initial interviewees. This procedure was selected because it provides greater flexibility and is most conducive to process evaluation. Interviews averaged from approximately one hour to one-and-one-half hours.

Face-to-face interviews were recorded through note taking, audiotape and/or videotape. Written permission to video tape was obtained from each interviewee or responsible guardian. To insure data reliability, debriefing sessions among the researchers were held after the interviews were conducted. Researchers discussed and interpreted the highlights of the interview. Finally, the written notes and audio tapes were reviewed by research team members.

The evaluation team also analyzed various documents related to the Initiative. These materials were submitted by the AIN sites or collected by the team. They include U.S. DOJ correspondence, resource directories, Weed and Seed grant proposals, statutes, annual reports, criminal justice statistics (when available), brochures, newspaper clippings, community petitions, respondent documents and written comments, as well as other relevant information about the sites and the Initiative.

C. Accessibility to Data

Crime statistics were difficult to obtain and, when available, were inconsistent. The team requested data from the BIA law enforcement, AIN law enforcement, the U.S. Probation Office and the USAO. After numerous contacts and requests for data, a cursory overview of criminal justice data was conducted for the two demonstration sites. The unavailability and inconsistency

of data made it difficult to analyze the criminal justice system and crime at the two model sites. These data, though sketchy, are also included in this report.

D. Additional Research Comments

As indicated earlier, people were interested in the ICJI and willing to be interviewed. Only one person in the NCN did not want to be tape recorded or videotaped and would only allow one person at the face-to-face interview. In a few instances, the team experienced difficulty establishing contact with a key DOJ official involved in the Initiative who was heavily involved with other USAO business. When interviews could be scheduled with this individual, the discussions were informative and helpful. Furthermore, two DOJ personnel directly involved in developing the ICJI refuted portions of our monthly report that were critical of DOJ agencies or procedures. They contacted the ICJI Contract Officer at the NIJ to express their dissatisfaction with the report and indicated that they would submit a list of what they perceived as "misstatements" in the teams's reports.

As researchers, our major objective has been to evaluate the Initiative based on its goals and objectives. Our findings are grounded within the context, perspectives and experiences of the participating AIN. Two AINs agreed to participate because of deep concerns about violence and injustice and the Initiative's potential effects on the lives of their citizens. As evaluators, we provided regular feedback to the participating governmental entities. We accomplished this primary goal to stimulate the development of the Initiative.

An unexpected role emerged as a result of the evaluation process. We found ourselves in the role of information providers with the people interviewed. Some respondents—including

tribal officials, employees, citizens and youths—were unaware of or had minimal knowledge of the Initiative, or had not been updated about the Initiative. Most of the adults interviewed were interested in becoming involved and/or receiving updates. Equally important, several respondents asked about the possible connection between the ICJI evaluation and the DOJ's recent proposals to assume law enforcement responsibilities from the BIA. In the first instance, we provided them the requested information about the ICJI and the names of people and agencies to contact. In the latter, we were unfamiliar with any DOJ proposals to supplant the BIA's law enforcement responsibilities or these proposals relationship, if any, with the Initiative.

Documenting the opinions and experiences of NCN and PLN citizens and incorporating them into this report adds depth, dimension and perspective to our findings. Furthermore, the collective information provided by the respondents offers data for our developing an insightful and compelling overview of the criminal justice system. This information is crucial for any attempt to improve the justice system at the two AIN reservations.

As Part III of this report demonstrates, the numerous jurisdictions involved when violence occurs on AIN reservations complicate the justice process for native citizens. Since the *Major Crimes Act* (1885) was passed, the federal government has played a major role in processing serious crimes that occur on AIN lands. Many reservation citizens feel that Indians suffer discrimination at the hands of those who manage this justice system. These negative experiences have created a sense of distrust, resentment and skepticism among AINs about what they see as a biased and unfair justice system. These views cannot be ignored when a federal agency plans programs for AINs.

III. Criminal Justice in Indian Country

The current status of criminal justice in Indian Country is the product of a complex series of struggles for governmental power and cultural autonomy that have taken place between Native peoples and the U.S. government for well over 100 years. This section summarizes the historical context of imposition of federal laws over reservations, describes the current jurisdictional arrangements and offers a descriptive account of some of the unique cultural and social dimensions of criminal justice in Indian Country.

A. Historical Analysis of Criminal Justice Systems in Indian Country

In pre-contact times, AINs possessed their justice systems that functioned independent of foreign intervention. In the early years of this nation's history, the federal government generally supported AIN self-government and the AINs' ability to punish intra-Nation offenses. This policy was a prominent feature of several early treaties between the U.S. and various AINs (Clinton 1975, 953–58). For example, the Treaty of 1866 with the Cherokee Nation provides that the judicial tribunals of the Cherokee Nation "shall be allowed to retain exclusive jurisdiction in all civil and criminal cases arising within their country in which members of the nation, by nativity or adoption, shall be the only parties, or where the cause of action shall arise in the Cherokee Nation" (Clinton & Newton 1991, 275–76).

Even in the absence of such a specific treaty provision, the U.S. Supreme Court upheld the AINs' exclusive jurisdiction to punish crimes between Native citizens within Indian Country. In *Ex Parte Crow Dog* [109 U.S. 556 (1883)], the Supreme Court granted the habeas corpus petition of a Brule Sioux defendant, Crow Dog, who was convicted of murder in federal court.

Crow Dog's killing of the renowned Brule Sioux leader Spotted Tail was apparently politically motivated and took place within Indian Country. Following the killing, Crow Dog's relatives met with those of Spotted Tail and the two families agreed on the appropriate restitution for the killing. However, following a storm of protest by non-Indians—who failed to understand the customary laws and traditions of the Brule Sioux. Crow Dog was arrested, tried, convicted in federal court and ultimately sentenced to death under federal law. The lack of understanding and respect persisted to modern times. Not only was there lack of understanding, but also lack of respect for the indigenous sanctions used to handle the killing and make amends to the family and community.

The Supreme Court held the crime charged was “not an offense under the laws of the United States,” and the federal district court was therefore without jurisdiction to try Crow Dog. The Brule Sioux Nation retained exclusive jurisdiction over crimes between their citizens. While AIN people were subject to laws enacted specifically for them, they were not subject to the array of general federal laws that governed the rest of society. The Court perceived that such a result would negate the effect of native law and custom on internal AINs' affairs, which would be contrary to the spirit, if not the exact letter, of the treaties with the Sioux (which recognized that Nation's sovereignty within its territorial boundaries). The Court further held that such a result would be grossly unfair to AIN people, who had little knowledge of Anglo-American law, and were “a community separated by race [and] by tradition...from the authority and power which seeks to impose upon them the restraints of an external and unknown code.”

In response to the Court's holding in *Ex Parte Crow Dog*, Congress enacted the *Major Crimes Act* in 1885, which accorded federal jurisdiction over several enumerated crimes in Indian Country, and marked the first split of jurisdictional power between the AINs and the federal government with respect to AIN members. Professor Sidney Haring has commented that while the *Major Crimes Act* represents a significant departure from existing practices, it was consistent with the marked trend to move AIN policy from the earlier treaty-based version (which respected AIN sovereignty) to the dependency policy and forced assimilation which was systematically forced upon Native peoples in the ensuing historical period (Haring 1989, 230).

A later Supreme Court upheld the constitutionality of the *Major Crimes Act*. The Court in *United States v. Kagama* [118 U.S. 375 (1886)] held that, although Congress lacked textual authority for its action under the Indian Commerce Clause, its power stemmed from the AINs' status as "wards" and the federal government's status as "guardian," with a duty to protect them: "[f]rom their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power." Congress has since enacted further statutes defining a strong federal role in criminal justice within Indian Country, which in turn is reflected by the current jurisdictional structure. The following evaluation provides a comprehensive examination of the Initiative and the justice processes at the two ICJI sites. The procedures used and the lessons learned from this Initiative can be applied to assist other AIN governments interested in improving their existing justice systems.

B. The Jurisdictional Constraints of Criminal Justice in Indian Country

The term “Indian Country,” as defined by the federal criminal code, includes three distinct types of land. First, the term refers to “all land within the limits of any Indian reservation under the jurisdiction of the U.S. government,” including fee-patented allotments and rights-of-way within the reservation, 18 USCA 1151(a). Second, the term includes “all dependent Indian communities within the borders of the United States,” 18 USCA 1151(b). Thus, even where the original reservation was diminished or disestablished, a “dependent Indian community” that meets the relevant factual test may be considered “Indian Country” for jurisdictional purposes.² And finally, the term includes “all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same,” 18 USCA 1151(c). As the following discussion illustrates, these definitions are of essential importance in determining which governmental entity—state, federal or AIN—may exercise jurisdiction over a given crime.

Federal Jurisdiction over Crimes in Indian Country. Three types of statutes structure federal criminal jurisdiction in Indian Country (Clinton 1976:520–52). First, statutes creating federal crimes, which otherwise apply within the U.S., are also applicable in Indian Country. Second, some statutes prohibit certain conduct on AIN lands: thus, a material element in the crime’s definition is its occurrence within Indian Country. Third, several statutes structure the

² See, e.g., *United States v. South Dakota*, 665 F.2d 837 (8th Cir. 1981), *cert. denied* 459 U.S. 823 (1982); *United States v. Martine*, 442 F.2d 022 (10th Cir.197) (applying a multifactor test to determine existence of “dependent Indian community” that includes the degree of federal and AIN ownership of land in the area; the relationship of inhabitants to AINs and to the federal government; established practices of government agencies in providing services to those in the area; and the extent of social cohesiveness among the area’s inhabitants).

jurisdictional patterns for Indian Country criminal prosecution. A discussion of the latter category of statutes follows.

Section 1152: The Interracial Crime Provision. The predecessors of Section 1152 were the earliest federal jurisdictional statutes enacted for AIN lands. Section 1152, which applies to interracial crimes occurring on AIN lands, is completely consistent with early federal policy and treaty provisions respecting AIN self-government over internal matters. Section 1152 provides:

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 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 secured to the Indian tribes respectively.

Thus, Section 1152 applies the same body of criminal law to AIN lands that applies to other federal enclaves, such as national parks and military installations. The definitions and punishments for these crimes are the same in Indian Country as in other federal enclaves. However, it is essential that the crime involve parties who are racially different, and in which either the victim or the defendant is an Indian. Under the statute's express exclusions, Section 1152 does not extend to crimes involving only Indians. The courts have also excluded from Section 1152 crimes involving only non-Indians. The judicially created exception embodied within the *McBratney-Draper* line of cases holds that crimes between non-Indians are a matter for state jurisdiction, rather than federal jurisdiction.³ The combined effect of these holdings

³ See *United States v. McBratney*, 104 U.S. 621 (1881); *Draper v. United States*, 164 U.S. 240 (1896); *New York ex rel. Martin*, 326 U.S. 496 (1946).

creates some ambiguity where the crime involves multiple defendants or multiple victims, or where the crime is a so-called “victimless” crime, such as adultery.

The Assimilative Crimes Act: The Extension of State Legislative Authority in Indian Country. The *Assimilative Crimes Act* incorporates lesser state crimes (e.g., misdemeanors, including traffic offenses) into the federal criminal code and applies those state crimes to federal enclaves located within the states. The Supreme Court has held that the *Assimilative Crimes Act* applies to AIN lands, as well as other federal enclaves.⁴ Thus, it is incorporated into Section 1152 as part of 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.” The Act incorporates any state law “in force at the time of such act or omission,” to crimes not defined by federal statute. However, while the Act adopts the state crime definition (thus extending state legislative authority to AIN lands), the crimes are tried and punished under federal law in federal district court (thus upholding federal adjudicatory jurisdiction). Moreover, as with Section 1152, application of the *Assimilative Crimes Act* depends upon the crime’s interracial nature.

The Major Crimes Act: Federal Jurisdiction over Indian Defendants. As noted previously, the *Major Crimes Act* was the first significant intrusion into AIN self-government over internal matters. The *Major Crimes Act* provides for federal jurisdiction over intra-Indian offenses that fall into certain enumerated categories, 18 USCA 1153. Section 1153 now states:

- (a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country,

4 *Williams v. United States*, 327 U.S. 711 (1946).

shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

Thus, Section 1153 provides federal jurisdiction for these fourteen enumerated crimes when they are committed by an Indian defendant within Indian Country. The victim can be of any race, including another Indian. To the extent that the victim is non-Indian, of course, there may be some overlap between Sections 1152 and 1153. The federal courts have noted a preference for applicability of 1153 to the enumerated crimes, however, and this appears supported by the legislative history of the 1976 amendments to Section 1153. The significance of prosecution under Section 1152 rests on the fact that the statute incorporates a substantial body of state law defining lesser crimes. In comparison, under 1153, the only state-defined crimes which might be applicable to Indians in federal courts are burglary and incest. The federal courts have, however, upheld federal jurisdiction over lesser-included offenses within the enumerated crimes of Section 1153, although there is some debate over the definition and punishment of such offenses when they are not defined by federal statutes.

The *Major Crimes Act* has been upheld against an equal protection attack by an Indian defendant claiming that he was subjected to harsher punishment for a crime committed against a non-Indian than a comparably situated non-Indian defendant would have been under state law, *United States v. Antelope*, 430 U.S. 641 (1977). The Court first found that Section 1153 represented a permissible exercise of congressional power in fulfillment of the government's unique obligation to the AINs, as had the earlier Court in *Kagama*. The statute did not establish

an impermissible racial classification, but rather, was an aspect of the guardian/ward relationship between the federal government and the AINs. Moreover, the Court found that the Indian defendant was not treated in a disparate manner because the *Major Crimes Act* mandates that defendants be treated in the same manner as non-Indians prosecuted for federal crimes committed within federal enclaves (e.g. non-Indian defendants under Section 1152).

State Adjudicatory Jurisdiction over Crimes in Indian Country. As already discussed, states have jurisdiction over crimes between non-Indians which occur in Indian Country. Where “Indian Country” no longer exists (e.g. because a reservation has been disestablished) states will also have jurisdiction. The *Termination Acts* that ended the federal government’s trust relationship with specific AINs generally provided for the elimination of the federal criminal jurisdiction formerly exercised over the terminated AIN lands under Sections 1152 and 1153.

By far the most significant intrusion of state criminal law in Indian Country was accomplished under Public Law 280 (P.L. 280), which was enacted in 1953, 18 U.S.C. 1162(a). P.L. 280 withdrew federal criminal jurisdiction on reservations in six states—Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin—and authorized these states to assume criminal jurisdiction and to hear civil cases against Indians arising in Indian Country (Goldberg-Ambrose 1997: 1). Thus, in enacting P.L. 280, the federal government delegated its criminal jurisdiction over Indian Country to the states and effectively ended federal jurisdiction under 1152 and 1153 in these “mandatory” states.

P.L. 280, as first enacted, also allowed other states to assume jurisdiction over AIN lands upon appropriate state legislative action. The 1968 amendments to the *Indian Civil Rights Act*

added AIN consent as a prerequisite to assumption of state jurisdiction under P.L. 280, and also provided for retrocession of jurisdiction undertaken by either mandatory or discretionary states (Goldberg-Ambrose 1997:2). Due to the increased costs of assuming criminal jurisdiction over AIN lands, several states have retroceded all or part of the criminal jurisdiction they assumed under P.L. 280. Nonetheless, P.L. 280 has been responsible for a substantial shift of federal criminal jurisdiction over AIN lands to states that validly assumed such jurisdiction.

Although P.L. 280 is a limited grant of federal jurisdiction, the statute has significantly affected the ability of AINs in such states to engage in meaningful self-government. Importantly, states are precluded from applying state regulatory laws on the reservation and may not legislate in any way that would directly affect AIN trust lands or federally guaranteed treaty rights (Goldberg-Ambrose 1997: 245). In P.L. 280 states, AINs retain the ability to engage in self-government as to all matters within their inherent sovereign jurisdiction. Indeed, the overwhelming weight of existing authority indicates that AINs located in P.L. 280 states retain concurrent criminal jurisdiction with states over crimes involving Indians which take place on the reservation (Goldberg-Ambrose 1997: 158).

Although P.L. 280 was not intended to interfere with the federal government's trust responsibility over AINs, the practical problems caused by state jurisdiction on AIN trust lands have been significant. Professor Carole Goldberg-Ambrose details numerous examples of harmful conduct on California reservations in which state officials were unwilling or unable to prosecute the offender.⁵ She notes that the exercise of state jurisdiction has interfered with the ability of AINs to develop effective court systems and law enforcement bodies. Professor

5 See *Planting Tailfeathers: Tribal Survival and Public Law 280*, ch. 1 (1997).

Goldberg-Ambrose's findings indicate that federal support has not been adequate to assist AINs in P.L. 280 states to exercise meaningful law enforcement authority on the reservation. Her research further indicates the necessity of a DOJ study devoted to the unique problems of law enforcement on reservations subject to P.L. 280.⁶

AIN Criminal Jurisdiction on Indian Lands. The various AINs possessed systems of law enforcement prior to European contact, though they differed in their structure and operation (Clinton 1976, 553). After European contact, however, the legal structures of many AINs were altered to address new issues. In some cases, such as the Cherokee Nation courts of the nineteenth century, AIN legal structures were modified to incorporate traditional values with Anglo-American judicial procedure. In other cases, AINs have refused to adopt Anglo-American structures and have sought to retain traditional judicial systems. Finally, some AINs have found themselves in a position where virtually all traditional norms and structures have been supplanted by the alternative structures imposed by the U.S. government.

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6 Such a study is, of course, beyond the scope of this paper. Notably, neither the Northern Cheyenne Nation nor the Laguna Pueblo Nation is subject to P.L. 280.

themselves in a position where virtually all traditional norms and structures have been supplanted by the alternative structures imposed by the U.S. government.

AIN Court Systems. The federal government's imposition of Courts of Indian Offenses on the reservations in 1883 accomplished significant change among AIN justice systems. The Courts of Indian Offenses were part of the federal government's effort to force AINs to "abandon traditional 'heathenish' practices" (Clinton 1976, 553). Federal regulations that established the Courts of Indian Offenses created a criminal and civil code for the affected reservations and appointed AIN judges to staff the courts. Approximately two-thirds of all reservations were subjected to this legal structure, purposefully designed to break down traditional AIN legal structures and systems of governmental authority. Today, very few Courts of Indian Offenses exist, though they are still provided for in federal regulations (25 C.F.R. Sec. 11.1 *et seq.*).

On most reservations today, the Courts of Indian Offenses have been replaced by AIN courts, which have been established by the AINs themselves under their inherent powers of self-government. The enhanced presence of AIN courts was supported by *Indian Reorganization Act*, which was designed to rejuvenate AIN self-government but encouraged AINs to adopt Anglo-American governmental structures. Today, many AIN courts synthesize substantive and structural components of Anglo-American justice with traditional notions of law and jurisprudence. Moreover, some AINs, such as the Pueblos of New Mexico, still possess traditional AIN courts enforcing traditional (and often unwritten) normative codes of justice.

AIN Criminal Jurisdiction. Today, AINs retain jurisdiction over intra-Indian offenses within Indian Country. They possess exclusive jurisdiction over crimes that do not fall within 1153. (See 1152, exempting such crimes from federal jurisdiction.) They possess concurrent jurisdiction over crimes that do fall within 1153, *Wetsit v. Stafne*, 44 F. 3d 823 (9th C.R. 1995). The Supreme Court has held that, as separate sovereigns that preexisted the formation of the U.S., AINs do not face the bar of double jeopardy when they prosecute AIN members for crimes which have already been the subject of federal prosecution. Like states, AIN governments are immune from such claims under the dual sovereignty doctrine of *Bartkus v. Illinois* (359 U.S. 121) and *Abbate v. United States* (359 U.S. 187), see *United States v. Wheeler*, 435 U.S. 313 (1978).

As a practical matter, however, AIN criminal jurisdiction was limited to misdemeanor crimes by the *Indian Civil Rights Act*, which provides that the maximum assessable criminal penalty by an AIN is a fine of \$5000 and/or one year in jail, 25 U.S.C. 1302(7) (as amended in 1986). Moreover, the U.S. Supreme Court held that AINs were implicitly divested of their power to criminally prosecute non-Indians by their incorporation within the U.S. and their dependent status, *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978). Despite the constraints of the *Indian Civil Rights Act*, the *Oliphant* doctrine was concerned that AIN courts would not adequately protect the liberty interests of non-Indians and thus found that the overriding sovereignty of the federal government had diminished AIN power to prosecute non-Indians.

The legal effect of *Oliphant* was to convey exclusive federal authority over crimes committed by non-Indians against Indians within Indian Country, absent an appropriate

delegation of power to a state. The practical effect of *Oliphant* was to create a class of misdemeanor crimes likely to go unpunished because the federal government lacks the resources and commitment to take jurisdiction. In particular, domestic violence by non-Indians against Indian family members is likely to escape prosecution.

In 1990, the Supreme Court attempted to extend the *Oliphant* doctrine to nonmember Indians, *Duro v. Reina*, 110 S.Ct. 2053 (1990). In that case, the Court held that AINs had been implicitly divested of criminal jurisdiction over all nonmembers, including Indians. The Court was not troubled that its holding effectively created a legal vacuum because Section 1152 specifically excludes crimes committed by “Indians” against other “Indians,” on the reservation. However, this ludicrous holding was overturned by Congress in a later amendment to the *Indian Civil Rights Act* that defined AIN powers of “self-government” to include the “inherent power of Indian Tribes...to exercise criminal jurisdiction over all Indians,” 25 U.S.C. 1301(2).

The Indian Civil Rights Act. As separate sovereigns that preexisted the formation of the U.S., AINs are not bound by constitutional provisions (such as the Bill of Rights) intended to limit the power of the federal government or the states to abridge individual rights.⁷ However, Congress by statute accomplished this goal when it enacted the *Indian Civil Rights Act of 1968* (ICRA), 25 USC 1301–1303. The ICRA is not coterminous with the Bill of Rights; however, it does provide limitations on the power of AIN governments to interfere with certain fundamental individual rights, such as free speech, free exercise of religion, equal protection and due process, 25 USC 1302. Although most individuals must use the AIN courts to adjudicate claims that their rights under the

⁷ See *Talton v. Mayes*, 163 U.S. 376 (1896) (held that the Fifth Amendment of the Constitution did not apply as a limitation on the Cherokee Nation’s powers of self-government).

ICRA have been abridged,⁸ the ICRA specifically provides a remedy in federal court for claimants seeking a writ of habeas corpus to protest an allegedly illegal detention by an AIN, 25 USC 1303. Thus, significant federal oversight is available for defendants subject to AIN criminal jurisdiction.

Although the ICRA was specifically designed to recognize the relative informality of many AIN justice systems, the statute does impose several requirements to protect the rights of parties within the AIN justice system. In addition to the strict limitations placed on the AIN courts' sentencing authority, the ICRA also requires AIN courts to respect individuals' rights against unreasonable search and seizure, the privilege against self-incrimination, double jeopardy guarantees, rights to confront witnesses testifying against the defendant, proscriptions against cruel and unusual punishment, and rights to equal protection and due process.

Defendants in AIN courts possess a right to trial by a jury of not less than six persons for offenses punishable by imprisonment, and they possess a right to be represented by counsel, at the defendant's own expense (25 U.S.C. 1302).

The ICRA intentionally imposed certain Anglo-American legal norms upon AIN courts, though proponents continue to argue that, without the ICRA, Congress would be forced to further curtail the jurisdictional authority of AIN courts.

Law Enforcement on the Reservation. Law enforcement on the reservation is to a great extent dependent upon the policing authority that is available to undertake the investigation of crimes and assist in enforcement of criminal laws. State policing authority is generally unavailable where state courts lack jurisdiction to prosecute the offense. The Federal Bureau of

⁸ See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) (holding that there is no implied cause of action in federal court to enforce the provisions of the ICRA).

Investigation (FBI) and other federal law enforcement agencies play an important policing role on many reservations, given the pervasive influence of the federal criminal statutes. However, due to the fact that federal officers are generally not assigned to the reservations, the bulk of the responsibility for enforcing both federal and AIN laws will fall on the AIN police (Clinton 1976, 573).

There are two types of AIN police forces (Clinton 1976, 573–75). First, some AINs are governed by the BIAs' Indian police. The BIA police were first placed on reservations in the nineteenth century as part of the federal policy to break down traditional AIN governmental structures. Today, the BIA police operate under a series of federal regulatory provisions that delineate their various duties and responsibilities, and they are considered to be "federal officers" for many purposes while acting in the lawful discharge of these responsibilities.

Other AINs have set up police forces under AIN law-and-order codes. They possess a scope of authority to investigate, report and enforce offenses occurring on AIN lands which is similar to that of the BIA Indian police. Yet AINs' police operate as an adjunct to the AIN sovereign's residual inherent authority to govern reservation lands. They are not considered to be "federal officers."

Of course, law enforcement agencies of various jurisdictions are free to share information and evidence, and to turn the results of investigations over to the appropriate prosecutorial staff. In fact, as the ICJI demonstrates, the effectiveness of contemporary law enforcement on AIN lands depends to a large extent upon the cooperative efforts of the various agencies responsible for law enforcement on the reservation.

C. The Cultural and Social Dimensions of Criminal Justice in Indian Country

Historical accounts indicate the relatively low incidence of crime among the members of various Indian Nations, which was at least partially due to the pervasive influence of the indigenous justice systems that imposed strong social constraints against normatively objectionable behavior (e.g., Llewellyn & Hoebel 1941; Hoebel 1969). In many AINs, particularly those with matrilineal structures, there was an exceedingly low incidence of violence against women or children (e.g., Allen 1986, 192). In the historical period, the impacts of colonialism were still relatively remote. AINs possessed strong social and political institutions, cohesive kinship structures, and the minimal presence of non-Indians and alcohol within Indian Country fostered AIN cultural integrity.

The contemporary picture, of course, is markedly different. There is a high incidence of crime in Indian Country, particularly violent crime and violence against women and children. Nearly two centuries of forcible acculturation have promoted a loss of AIN cultural integrity and fostered competing social and governmental institutions that have weakened or destroyed traditional structures. The boarding school policy and other assimilation policies have fragmented families and promoted a high incidence of alcohol use and, in modern times, use of illegal drugs. The high incarceration rates for native people and the relative fluidity of contemporary native members from urban to reservation communities have increased the influence of outside cultures upon the traditional culture. Formerly unheard of within AINs, the existence of youth "gangs" is well documented on many reservations today.

Today, AINs face a variety of challenges as they work to refine and build their justice systems. Like all societies, AINs have developed a range of mechanisms to resolve disputes, some of which are informal and rooted in social institutions such as clan and kinship group and religious associations, and some of which are more formal and coercive. As scholars have noted, societies that are in transition from “small-scale kinship-based societies to large, complex, urban social systems” tend to move toward formal rather than informal dispute resolution mechanisms (Merry 1982, 18). Yet, part of the current movement in the U.S. toward community-based justice (e.g. mediation and alternative dispute resolution) is an effort to recapture a sense of community norms through the use of mediation, restitution, and negotiated resolution of conflict rather than the formal, legal structure of the adversarial system. Similarly, AINs are in an ideal position to rethink the nature and structure of their justice systems in an effort to heal the social problems that plague contemporary reservation communities.

The Context of Justice in AIN Communities. The critical issues surrounding criminal justice in Indian Country have prompted many AINs to reevaluate the context of justice within their communities. As Ada Pecos Melton observes, many contemporary AIN communities are faced with dual systems of justice (Melton 1995, 126). The Anglo-American paradigm establishes written rules, procedures and guidelines for correct behavior, and processes infractions through an adversarial, hierarchical and punitive system of justice.

In comparison, the indigenous paradigm of justice is guided by “unwritten customary laws, traditions, and practices that are learned primarily by example and through the oral teachings of tribal elders” (Melton 1995, 126). Infractions of AIN customary law may be

handled in a variety of ways, though the end goal is generally to facilitate discussion about the underlying problems, make amends for misbehavior, and restore harmony to the relationships among the individuals involved and the entire community.

In assessing the nature of justice in Indian Country, it is necessary to focus on the disparate goals served by each of these paradigms of justice. The pervasive role of federal law and federal agencies on AIN lands establishes the Anglo-American paradigm of justice within reservation communities. Justice under federal law mirrors the normative constraints of the larger society and inculcates the same goals of punishment (e.g. retribution) that are applied throughout the Anglo-American common law and statutory law dealing with criminal behavior. Under the *Major Crimes Act*, for example, a defendant is taken to a federal court off the reservation, tried in front of an Anglo judge (possibly an entirely Anglo jury as well) and is sentenced to federal prison using the federal sentencing guidelines. After serving the sentence, it is entirely likely that the defendant will return to the AIN community. The goals of the Anglo-American paradigm of justice will have been served, but what about those of the indigenous paradigm of justice?

Assuming the defendant's crime was against another AIN member, the victim and the victim's family comprise part of the same community the defendant is attempting to rejoin. The restorative principles of the indigenous paradigm of justice are in large part focused on the mending process for restoring damaged personal and community relationships. A primary goal is "to heal and renew the victim's physical, emotional, mental and spiritual well-being" (Melton 1995, 127).

A complementary goal is to teach the offender how to regain a healthy mental and spiritual state, thus reestablishing dignity and trust within the community. The offender may be asked to make amends through apology, restitution, or any variety of acts to assist the victim or the victim's family demonstrating sincerity to make things right. Importantly, under the indigenous paradigm of justice "offenders remain an integral part of the community," partly because of their important role in demonstrating appropriate and inappropriate behavior and the need to take responsibility for one's behavior and its consequences (Melton 1995, 127).

The Integration of Culture and Justice. A distinctive feature of the indigenous paradigm of justice is its close relationship to AIN religious and cultural traditions. In the Anglo-American justice system, religion is carefully separated from the secular law. In AIN justice systems, the law is often perceived as a "way of life" that is coterminous with the teachings of AIN religion. So, for example, within the indigenous paradigm of justice it may be essential to invoke the spiritual realm through prayer or ritual to restore the appropriate spiritual conditions necessary to overcome conflict and achieve harmony. As Tribal Judge Carey Vicenti notes, concepts such as the defendant's "mens rea" (mental state) are merely elements of proof for the state's case in Anglo-American courts. However, in AIN courts, the concept takes on a meaning beyond establishing guilt: "we must...return to our concern for the fate of the individual and the restoration of his spirit" (Vicenti 1995, 134-35). Judge Vicenti observes that he often works with AIN spiritual leaders to determine what course of action to take with a defendant, because each action of an individual has "meaning and implication...and guides how he or she interacts with AIN society or fulfills obligations imposed by society, law and religion" (Vicenti 1995, 135).

Some native people in fact are reluctant to accept the role of outside courts or law enforcement personnel because they feel that the underlying doctrines and paradigms conflict with essential cultural notions of justice. For example, some criminal actions have a complex series of evidentiary hearings to assess the appropriateness of the various indictment counts. If there is an underlying technical difficulty, some relevant evidence of culpability (e.g., a confession or physical evidence such as blood samples) can be suppressed. In some cases, the defendant may even escape prosecution due to such a problem. The Anglo-American justice system focuses on procedural compliance as a means of establishing fairness and the verdict's reliability.

In comparison, the indigenous justice system requires problems be handled holistically. Conflicts cannot be fragmented and the process of achieving justice is not seen as one that can be compartmentalized into stages (e.g. pretrial hearings, adjudication, sentencing). There is a "distributive" aspect to many indigenous justice systems that seeks to address all underlying issues to make sure that everyone affected can participate. In a sense, therefore, the entire community takes responsibility for correcting behavior and restoring relationships (Melton 1995, 128). As scholars note, under community-based systems of justice, the community itself becomes an important incentive to resolve the dispute because "recalcitrant disputants [often] become...objects of gossip and scandal" and lose credibility within the community (Merry 1982, 32).

In short, community-based justice systems advocate holistic and timely resolution of problems and disputes that cause disruption within the community. Unlike the adversarial

system of justice, in which time delays are extensive and unavoidable, the community-based justice system seeks to deal effectively with problems before the negative impacts of an individual's misbehavior cause collateral disruption within the community.

The Implications of "Justice" for Contemporary AIN Communities. According to Judge Vicenti, "Indian tribal culture is in crisis" (Vicenti 1995, 135). There clearly has been some loss of "collective memory" within AIN communities—of custom, tradition and values, which in turn form the building blocks of "justice." Yet, as Vicenti points out, many AIN courts have attained a level of maturity and are experimenting with reintroducing indigenous forms and systems of justice to overcome the serious social problems within reservation communities. Vicenti claims that the "modernization" of AIN courts—that has been heavily bolstered by federal law and regulations designed to bring AIN courts into conformity with Anglo-American norms—has had a downside: "America, in its attempts to correct what it perceives as a rampant injustice in Indian America, creates a greater injustice by forcing its culture upon Indian peoples" (Vicenti 1995, 135).

Thus, in designing justice systems to deal with the incidence and nature of crimes on the reservation, it will be necessary for AINs to evaluate the place of traditional paradigms of justice within their contemporary systems. This report's findings indicate that the Northern Cheyenne Nation and the Pueblo of Laguna Nation have strong foundations for indigenous forms of justice that might be incorporated successfully into their existing justice systems.

Other AINs have achieved success with this type of incorporation. For example, the Navajo Nation developed the Peacemaker Court system in the early 1980s to integrate traditional

notions and forms of justice within its court structure (Tso 1989). Representatives from several other AINs have visited the Navajo Peacemaker Court to assess its implications for their own communities. As one Choctaw leader observes, the underlying concepts and beliefs in many AIN communities are similar to those of the Navajo, though peacemaking does need to be tailored to each AIN's customs (Manolescu 1997).

Possibly the most productive forums for such an integration of indigenous forms of justice will be in the area of domestic violence and juvenile justice. In fact, some indigenous justice systems, such as the Hawaiian process of peacemaking, called "Ho'oponopono," are based on the "physical and spiritual need for members of a family to work together and aid in one another's well-being" (Meyer 1995, 30). In Hawaii, an indigenous peacemaking system that was once practiced only among immediate family members has now become a way to heal problems faced by a range of litigants in family court. Involving families and communities in reinvigorating traditional kinship roles and responsibilities may have immediate remedial consequences for the social problems that underlie incidents of domestic violence and offenses by juveniles. As this report indicates, the current state of justice for juveniles on reservations is grim and suggests that further deterioration of the AIN social fabric is likely unless problems are addressed expeditiously.

Collaboration with federal grant sources may assist AIN communities to enhance indigenous justice structures or develop and create innovative structures to achieve justice within domestic relations and juvenile crime. Many existing programs and offices within the Office of Justice Programs—for example, Bureau of Justice Assistance, the Tribal Strategies Against

Violence Program, and the Office of Juvenile Justice and Delinquency Prevention Safe Functions initiatives—are devoted to collaborative efforts and community-based approaches to these problems (Reno 1995, 116–17). And, as this report concludes, there is clear potential for the development of further collaborative programs. One of the most important collaborative efforts must be concentrated in accessing the funding available through the Office of Justice Program’s bureaus and offices because they in large part control who and what initiatives are funded. Indeed the success of these two communities in sustaining the programs started under the ICJI will be their ability to continue accessing funds on their own from the OJP bureaus and office and other federal resources such as the IHS, BIA and HUD. Another important part of accessing resources will be the communities ability to access technical assistance and training available through not only the OJP bureaus and offices, but from other DOJ divisions and other federal and state agencies. Particularly, it is important to use these resources to support tradition-based approaches and processes to handle crime, violence and victimization cases.

IV. A Structural Overview of Justice at the Initiative Sites

This section describes the structural state of justice at the Initiative sites drawing from available statistical data and interviews. Statistical information on crime at the Initiative sites is somewhat elusive because federal agencies have done a very poor job of collecting it. At present, a centralized area for storing data and accessing crime statistics specifically for Indian Country does not exist at the federal level.

The absence of a systematic and centralized data collection process makes it extremely difficult to collect accurate information about crime in Indian Country. In telephone

conversations with the BIA Indian Police Academy in Artesia, New Mexico, members of the team were informed that little to no reliable data were available from NCN and PLN. Although each BIA-funded police department has to submit annual reports to the Academy, they do not do so consistently. Nonetheless, Academy staff compile an annual report with results from all the reporting BIA and tribal law enforcement agencies and distribute them to various officials. Academy officials, however, could not explain what happened to these reports once they were distributed. Copies of previous years' reports are not kept at the Artesia office nor are they available to the BIA Police Academy for reference or distribution. Thus, we gathered arrest-rate data directly from the ICJI sites.

Statistics obtained from the BIA Area Office in Billings, Montana give us a sketchy picture of crime at NCN. From October 1996 to May 1997, 785 adults (617 males and 168 females) were detained at the NCN BIA detention facility (estimated population of American Indians in NCN: 4,714). During this same time period, 127 (89 males and 38 females) youths were detained at the same facility. The majority of these detainments, or 649, involved alcohol and/or drug-related arrests. These data could not provide descriptive statistics on offender age, gender or offense type.

DOJ correspondence presents a view of federal cases processed at NCN during the 1996 and 1997 calendar years. The USAO in Billings opened 31 cases from Northern Cheyenne. Of these cases, 17 resulted in convictions, 1 case was dismissed, 2 cases were declined and 11 cases are still pending prosecution (U.S. Department of Justice correspondence, March 6, 1998).

The U.S. Probation Office in Helena, Montana, (that serves the NCN) reported 25 cases from the NCN during the July 1997 reporting period. Of these cases, 18 were males and seven were females, 16 were adults and nine were juveniles. Seventeen of the cases were violent offenses and eight were nonviolent offenses. Furthermore, between October 1996 and July 1997, the NAPOL (the position created for the ICJI) made or performed a total of 811 contacts or other case-related activities in the Northern Cheyenne area.

Official arrest statistics for the PLN in 1996 indicate that 734 adult males were incarcerated, 178 adult females, 88 juvenile males, and 40 juvenile females (estimated population of American Indians in PLN is 3,892). Arrests for 1996 increased substantially from the previous year (485 adult incarcerations—302 males, 71 females—and 64 juvenile males and 18 juvenile females). These statistics indicate that domestic violence, public intoxication, driving under the influence and disorderly conduct were the types of crimes most reported and processed. An increased incidence of assaults on law enforcement officers was also reported (Pueblo of Laguna Nation 1997).

The NAPOL in New Mexico also provided a list of PLN members supervised from 1995 to 1997. It showed a total of six people under supervision during that period: two adult females, three adult males and one juvenile male. In addition to working with the PLN, the NAPOL also works with other Pueblos in New Mexico as well as non-Indian clients.

The USAO in New Mexico provided a chart showing the number and types of major crimes reported at the PLN from January 1994 to June 1997. Twenty-four felony cases were filed there during that period. Of the cases processed, 17 cases involved adult defendants and

seven involved juveniles. Nine cases were for assault, six for sex-abuse, five for murder, one for manslaughter, one accessory to murder, one of embezzlement and one for kidnaping. The large majority of cases (16) were resolved by plea agreement, four went to trial, one was dismissed, one went to pretrial diversion and two are still pending. While a list of felony cases was readily available, other information was not. The reason given for this unavailability was that the computer and docketing office at the New Mexico USAO was undergoing a 15-year changeover in case management system, making it difficult to obtain data at the time of the evaluation.

The U.S. Bureau of Prisons could not provide information regarding inmates from neither the PLN nor the NCN who have served or are now serving sentences in the federal prison system. A Bureau of Prisons staff member involved with data collection and recording stated that information about the AIN inmates reservation is not gathered. Thus, it is impossible to track the location of inmates from PLN and NCN through the Bureau of Prisons data.

Despite the statistical problems, residents at both ICJI sites had strong views about the most prevalent types of crimes and their causes. NCN residents believe that the most serious crime problems on the reservation are trafficking and using illegal drugs (such as crack), increased burglaries, breaking and entry, armed robberies, child sexual abuse, and the rise of violent crime among juveniles and young adults. PLN citizens attributed increasing violence among young adults, increasing juvenile crime (both delinquent and status offenses), domestic violence, attacks upon police officers to substance abuse.

A. Northern Cheyenne Nation, Lame Deer, Montana

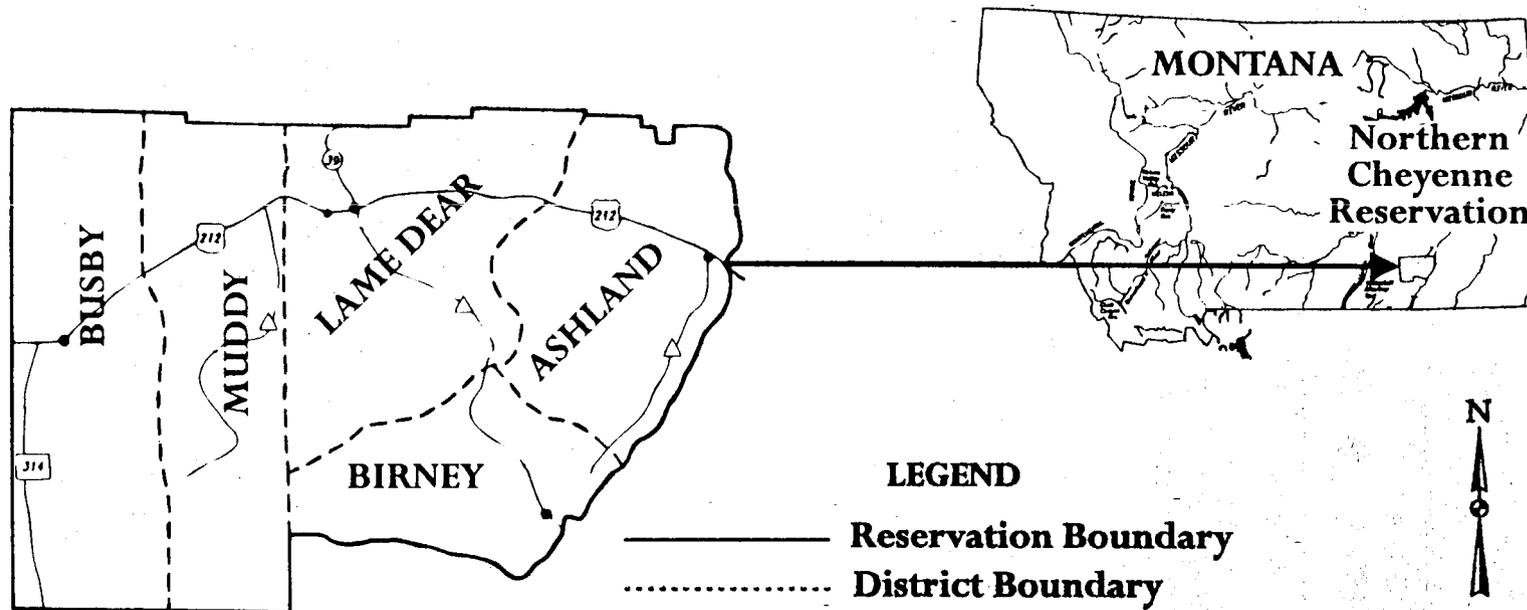
The Traditional Chiefs have a responsibility to the tribe. Our traditions and our road of life is established by our parents and grandparents...Chiefs do not go and say this is not right, they [the people] have to come to us [for advise]. (Northern Cheyenne Nation Traditional Chief, 1997)

Background Information. The Northern Cheyenne reservation, a federal AIN reservation located in southeastern Montana, is approximately 80 miles east of Billings and 75 miles north of Sheridan, Wyoming. In 1995, the reservation—about 445,000 acres of terrain in a semiarid climate with harsh winters and warm summers—had an estimated population of 5,025 people, the majority (4,714) being American Indian (Bureau of Reclamation 1995).



Northern Cheyenne Nation, Lame Deer, Montana

NORTHERN CHEYENNE RESERVATION



42

LEGEND

- Reservation Boundary
- District Boundary
- [Shield Symbol] — State Highway
- [Circle Symbol] — Primary County Highway
- [Square Symbol]
- [Triangle Symbol]





NCN Boys and Girls Club

Additionally, the Bureau of Reclamation's report projects a 1.5 percent annual population growth on the reservation.

Secular Leadership. The Northern Cheyenne Nation operates a constitutional-type government created under the *Indian Reorganization Act of 1934*. NCN is a federally chartered organization with both government and corporate responsibilities. The NCN Council is the primary legislative body and governing body and is composed of a president and 24 council members representing each of the five reservation districts (Busby, Lame Deer, Ashland, Birney and Muddy).

Council members are elected by NCN citizens for two-year terms, while the president serves for four years. The Council appoints fellow council members to the other offices of vice president, secretary and treasurer (Bureau of Reclamation 1995). The NCN government is headquartered at Lame Deer.⁹

Traditional Leadership. The traditional culture and leadership continues to function as an important and integral part of NCN life. Traditional leadership authority is derived from the Prophet, Sweet Medicine, who handed down the Creator's laws. Included within the laws was the organization of chiefs from the ten bands formed as a Council of 44 Chiefs, whose primary purpose was to organize annual ceremonies and buffalo hunts (Champagne 1987, 20). Additionally the four warrior societies acted to serve and protect the people.

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9 An organization chart was not available.

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Additionally the four warrior societies acted to serve and protect the people.

Scholarship reveals that the customary Cheyenne justice system was highly formalized with centralized authority invested in four warrior societies and the Council of 44 Chiefs, with delegated Chiefs functioning as peacemakers. The primary mechanism of social control was unity within the NCN and with non-Cheyenne neighbors, both native and nonnative. The customary Cheyenne justice system sought to promote and maintain harmonious relations among its members. Historically, when a serious crime occurred among the NCN, the perpetrator could be banished for at least seven years and was not allowed to have any contact with the NCN. It is described by Hoebel (1978) as having the "ability to define relations between persons, to allocate authority, and to clear up conflicts of interest [trouble cases] in ways that effectively reduce internal social tensions and promote individual well-being and the maintenance of the group" (Hoebel 1978, 54-55).

After formation of the IRA government, the Chiefs' power and influence declined. Recently, however, some of the traditional chiefs have "stepped back" from their roles because of a controversial decision made by a former Northern Cheyenne President. Three years ago, the NCN Council passed a "Peace Resolution." According to a traditional leader, the decision authorized certain Cheyennes (referred to as "new agers") to perform ceremonies, although the traditional chiefs had not reached consensus on the matter.

Some traditional chiefs attributed the contemporary social problems facing their people—such as the increasing death and crime rates—to a lack of respect for the culture and the traditional chiefs. As a traditional chief stated, “There are too many deaths occurring. Something needs to be done. The chiefs have a solution but with the resolution no one will listen to us. They will use the resolution against the chiefs. The council needs to rescind the resolution and turn back to the culture recognizing the traditional chiefs.... It can’t go on as it is!” Reflecting a common view about the perceived ineffective justice system, a traditional chief stated, “I can’t believe what is allowed to happen now.... I can’t understand why we still have drug dealers here. Some are known. Recently, a young girl 18 years of age died of an overdose. Our Criminal Investigator and our prosecutors do nothing” (Interview October 1997).

Traditional leaders are not excluded from the electoral process and individuals can be elected into office and serve on the NCN council. Although traditional leaders as an entity currently have minimal formal input into the justice system, they remain active in matters facing their people, but on an informal basis. Furthermore, those who are respectful of the traditional chiefs continue to rely on them for assistance and guidance.

Contemporary Justice System. The contemporary NCN justice system includes a court, prosecutor’s office, police department, jail facilities and a criminal investigator. Corrections include a colocated jail facility for adults and juvenile offenders. Responsibilities for each system are shared by the NCN and the federal government. The NCN government operates the court system and the prosecutor’s office. During the evaluation period, the majority of personnel within the justice system were members of the NCN. The federal government, through

the BIA, assumes all law enforcement responsibilities on the reservation including the police department, detention facility and criminal investigation. Supervision and budgetary responsibilities for the BIA criminal investigator are divided between the BIA Area Office located in Billings, and the BIA Agency in Lame Deer. When major crimes occur, the FBI and the USAO (both located in Billings) have jurisdiction.

During this evaluation, NCN lacked a separate juvenile justice system. Consequently, juveniles were processed through the same courts, housed in the same detention facility as the adults and served by the same probation officer as their adult counterparts. (Currently, the Weed and Seed Steering Committee is developing a feasibility study for a juvenile detention facility.) Juveniles under arrest may be held for a maximum of six hours at the BIA adult detention facility, although this usually occurs only if they are under the influence of alcohol or other illegal substances (Northern Cheyenne Nation 1997). According to the NCN Weed and Seed proposal submitted this past fall, the lack of a structured juvenile justice system encourages some youths to commit offenses.

Status of the Indian Country Justice Initiative. ICJI efforts to enhance coordination among the NCN and federal justice system and seek DOJ funding have progressed at an uneven pace. The ICJI is unique because it relies heavily on existing personnel and services rather than establishing a separate office. Only two DOJ personnel have been hired for the Initiative at NCN. A half-time AUSA and full-time NAPOL) were placed within existing DOJ programs. The AUSA in Billings—referred to as the site manager—was reassigned from the Washington, DC, Criminal Division in the fall of 1995 and has responsibility for working directly with the

NCN to implement the Initiative. This person participated in the earliest development of the overall Initiative and, therefore, had familiarity with the project's goals and objectives. The Montana U.S. Attorney determines the remainder of the site manager's work load.

The NAPOL was placed in the U.S. Probation Office at Billings. This individual works primarily with the Crow Nation, located adjacent to the NCN. The NAPOL is an American Indian from the area. His knowledge of the Cheyenne Crow culture and families enables him to work closely with individuals on probation and provide consistency to the justice system. He also participates in a four-year funded Sexual Abuse Treatment Program, a mandatory program for Cheyennes and Crows convicted of sexual abuse. He holds weekly meetings for them at the Crow Reservation. At the time of the interview, several individuals from the NCN were or had participated in this program, funded by the USPO and coordinated with the Indian Health Services. The NAPOL worried that the large case load from both Nations would hamper his efforts.

In addition to the DOJ personnel, the NCN government appointed its own ICJI site manager. The Executive Director for the Northern Cheyenne Boys and Girls Club (appointed by the President of NCN) received the appointment. The site manager, an NCN member, has familiarity with the people, values and culture of his people.

There was no clear distinction about the amount of time the NCN site manager devotes to the Initiative and to his regular position. However, he appears to have combined the responsibilities of both positions in a skillful and productive manner. The time spent on one effort could easily compliment the other and vice versa.

While the ICJI has found effective and dedicated personnel for implementation and managerial purposes, its grant-related activities at the NCN have progressed at a slower pace than expected. This is due primarily to factors such as a change in NCN leadership, the inordinate amount of time needed to inform key personnel about the Initiative and the time required to establish coordination activities. During our initial site visit to Lame Deer in the winter of 1996, the ICJI was in its early stages of implementation. The newly elected NCN President had just assumed office and was familiarizing himself with the various programs. Fortunately, prior to his election, the President had participated in ICJI planning discussions with the DOJ and was familiar with and supportive of its mission.

Additionally, the Weed and Seed Steering Committee, which had been formed several months earlier, was actively involved in developing a grant proposal. The Weed and Seed Steering Committee, a primary component of the ICJI at the NCN, consists of individuals from the NCN government, various federal agencies such as the BIA and DOJ-USAO, the Boys and Girls Club, the Dull Knife Community College and a community-based organization. The two site managers (NCN and DOJ) are part of the Steering Committee. The Weed and Seed Steering Committee has played a major role in initiating the ICJI program and strengthening the coordination and communication efforts among key program personnel involved in a broad spectrum of the justice system (including prevention, intervention, law enforcement, and post release).

The site managers have played a central role in the coordination of the ICJI. The DOJ site manager does not prosecute cases from NCN, but interfaces regularly with the NCN. In

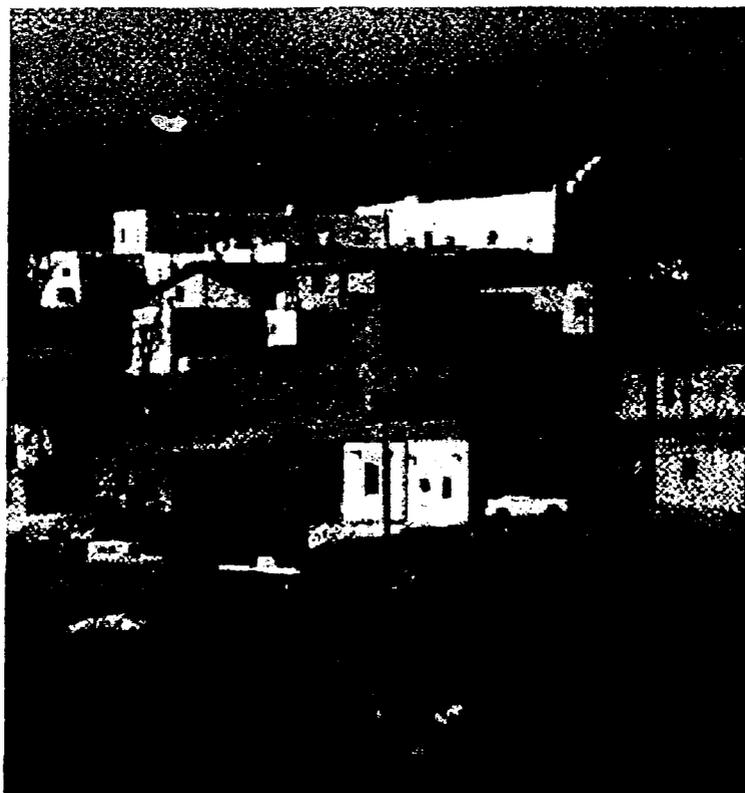
conjunction with the NCN site manager, he helped establish the Weed and Seed Steering Committee. This individual has been actively involved in the Weed and Seed Steering Committee and its grant development and submission. He endeavors not to dominate program development, he feels that the problem solutions must come from the community and be community-directed. His role as DOJ site manager at NCN can best be characterized as that of an active participant, advisor and observer.

The Weed and Seed Steering Committee functions as the primary mechanism for coordinating ICJI activities. It applied for a Weed and Seed grant, and coordinated the implementation of other DOJ grants, including: COPS, Office for Victims of Crimes, Violence Against Women, Domestic Violence Arrest Policies Project, *Children's Justice Act* grant, the Youth Court Advocate, and the Court Appointed Special Advocates (CASA). The two ICJI sites (Northern Cheyenne Nation and Pueblo of Laguna Nation) are the first AINs in the country to apply for and to receive Weed and Seed grants.

B. Pueblo of Laguna Nation, Old Laguna Village

"I truly believe we can police ourselves. And the way to prevent violence is through our traditions and our culture." (Laguna Respondent 1997)

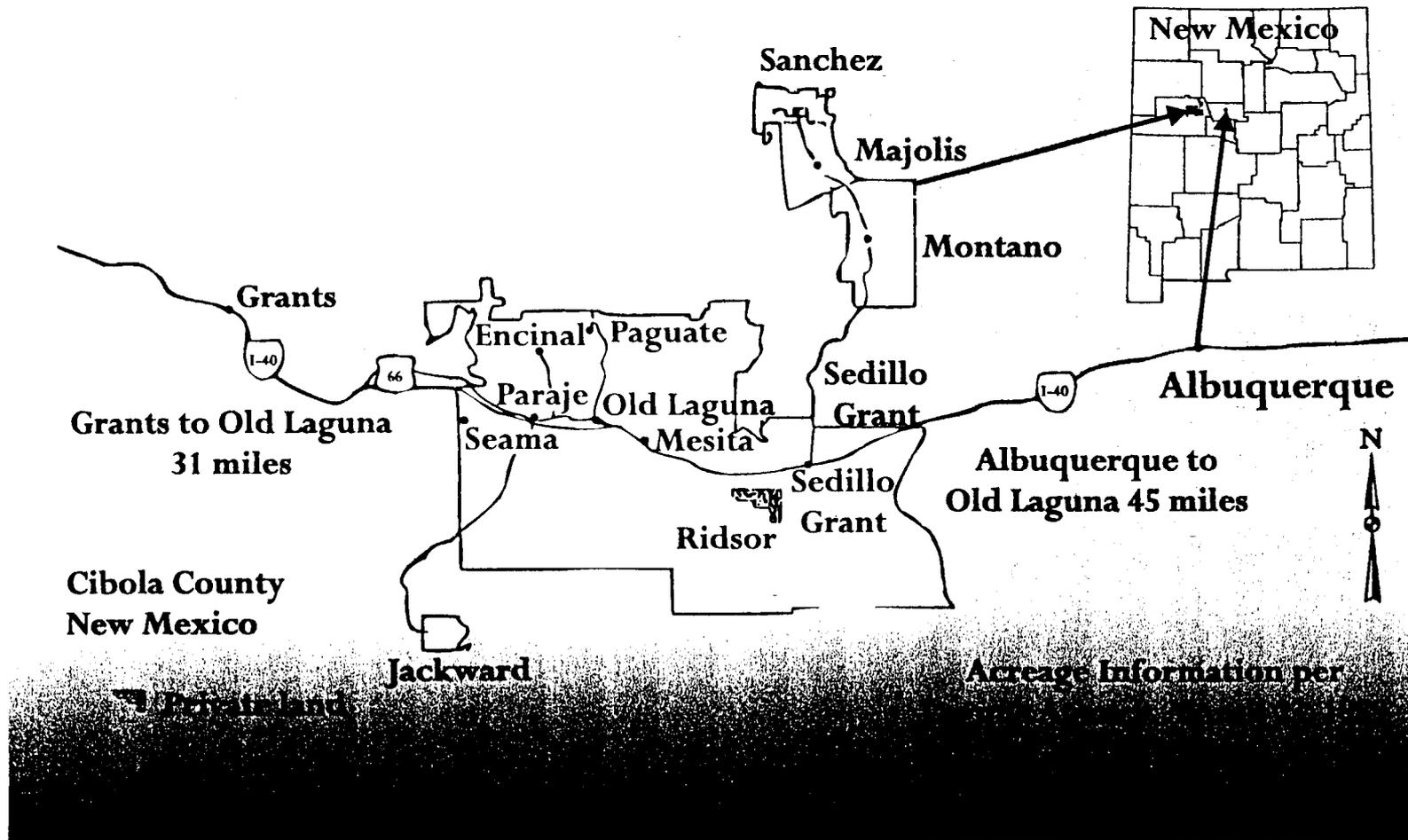
Background Information. The Pueblo of Laguna Nation, a federally recognized AIN reservation, is located approximately 45 miles from Albuquerque and 30 miles east of Grants, along the Rio San Jose in northwest New Mexico. It is separated into three different land segments and is comprised of six villages including Laguna (Old Laguna), Mesita, Paguete, Paraje (Casa Blanca), Seama, and Encinal which are within 12 miles of each other. The Pueblo includes

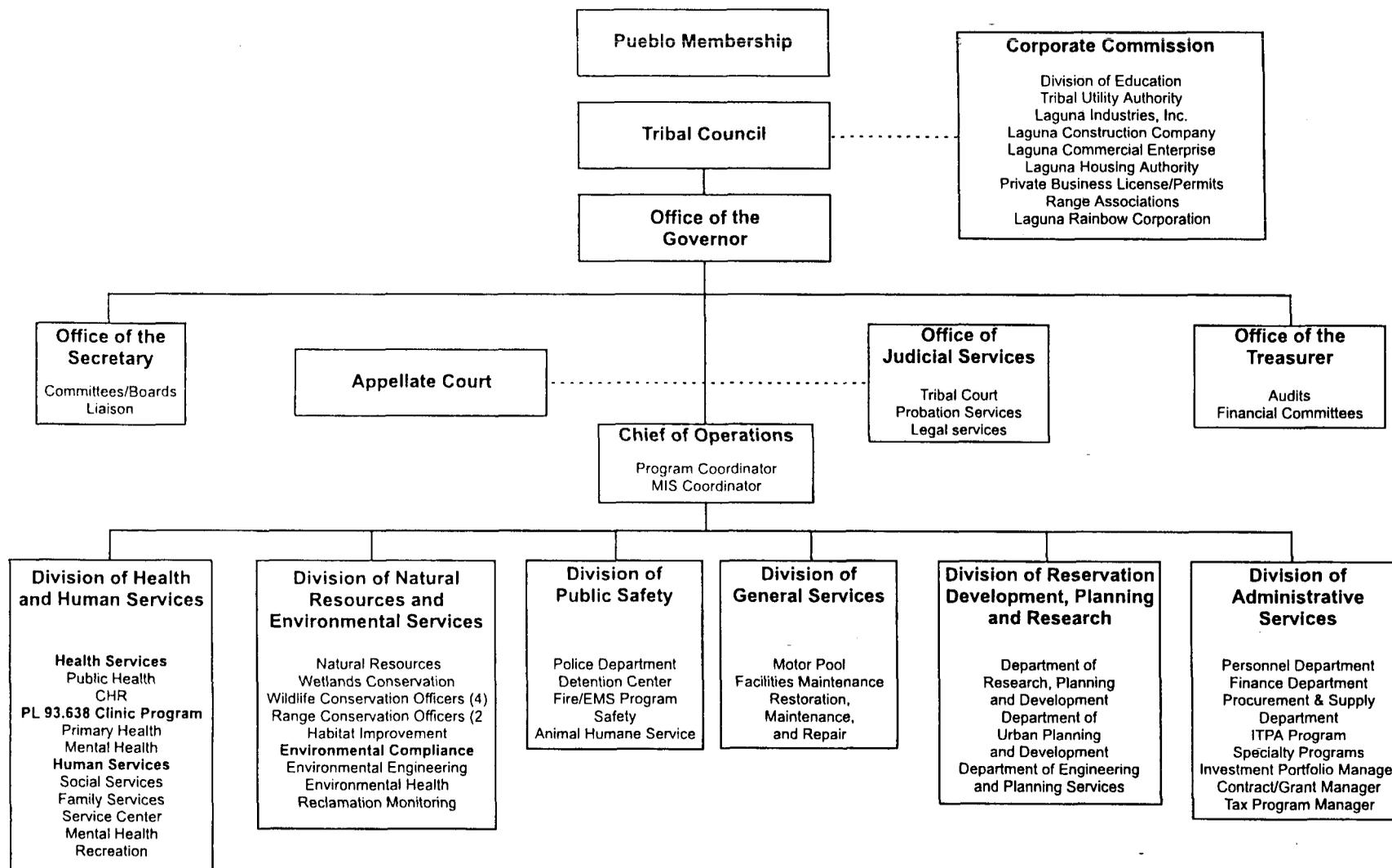


Pueblo of Laguna Nation, Old Laguna Village

approximately 580,000 acres of land (Pueblo of Laguna Nation 1997) and has a membership of over 7,421 individuals (Pueblo of Laguna Nation 1995). Approximately 3,892 members currently live on the Reservation. In addition, there are approximately 528 nonmembers living on the Reservation (in-laws, adopted children and other household members). The PLN is one of the fastest growing Pueblos in New Mexico. Based on the 1990 U.S. Census figures, it had the second highest birth rate of all New Mexico Pueblos with approximately 50 percent of the population under the age of 21 (Pueblo of Laguna Nation 1997).

Pueblo of Laguna Nation Government. In 1949, the PLN government reorganized around the *Indian Reorganization Act*. This system, as Sando (1992) notes, operates in conjunction with traditional aspects of government and has not replaced those older forms. In 1958, the Nation





Pueblo of Laguna Organization Chart

Approved by Tribal Council: March 27, 1996
 Revised: August 26, 1996

accepted a modified form of the standard AIN constitution and bylaws, revising it further in 1982 (Tiller 1996).

The Pueblo's government presently consists of a 21-member Council— two members elected from each of the six major villages and nine staff members elected at large. All terms of office are staggered. The staff members include a governor, first lieutenant governor, second lieutenant governor, head fiscale, first fiscale, second fiscale, treasurer, secretary, and interpreter. In addition to the AIN Council, each village elects Mayordomos (Mayordomo comes from the Spanish word for mayor) to care for village ditches, fences, roads, and land assignments. The War Chiefs are chosen by the Pueblo and serve as its spiritual advisors. Also elected from the villages are town criers who notify the community about meetings and village events. The village governing system is intended to “handle village business locally unless the situation warrants further steps and consideration” (Lockert 1979, 12).

Traditional Justice System. Traditionally, the PLN legal system centered around religious and group sanctions. Although no records are available on the Pueblo's legal organization prior to the Spanish incursion, Parsons contends that the pre-Spanish pattern of civil organization consisted of a primary leader (cacique) and a War Chief (Parsons 1920). In 1620 the Spanish forced the Pueblos to adopt the “Laws of Indies” (Aberle 1948, 23–25; Ellis 1983).

In discussing the origin of the cacique office, both Florence Hawley Ellis (1959)—in work regarding the Pueblo of Laguna Nation—and Edward P. Dozier (1969)—in his work on Rio Grande Pueblos—contend that a 1620 Spanish decree mandated that each Pueblo adopt a western governing structure creating secular, political offices, including the cacique. Individuals

appointed to these secular offices “were expected to cooperate with Spanish civil and church officials” (PG???). However, despite the assimilative attempts of the Spanish in creating these secular offices, Dozier (1969) asserts that the individuals who became the caciques were “chosen by the native priests and were individuals who owed primary allegiance to native ceremonial life” (95). Dozier contends that these western systems acted to preserve the more traditional Pueblo structures from further erosion.

According to Sando (1992), social order among the Pueblos was traditionally governed by spiritual beliefs. In addition to providing spiritual leadership, the cacique and appointed leaders performed a legal function in that they “policed the communities; they set the rules and regulations agreeable to all, with penalties for offenses well understood by all” (Sando 1992, 25).

Sando (1992) writes:

The cacique was to guide [the people] spiritually. In him was vested the power of authority to legislate laws. The Spirit cautioned that this was the only way for them to live together in peace and be protected. The Pueblo people had confidence that the cacique and the other leaders had power and wisdom because they were guided by the One above. Under this government the people made religion a part of their daily lives. (24)

The author further contends that the traditional laws and guidelines for well-ordered living and traditional governing structure given to the Pueblo people by the Great Spirit are still in operation today (Sando 1992, 25).

Contemporary Justice System. The PLN’s contemporary justice system is composed of two major departments: the Office of Judicial Services and the Division of Public Safety. Within the Office of Judicial Services are the Tribal Court, Probation Services and Legal Services. The Division of Public Safety is comprised of the Police Department, Detention

Center, Fire/EMS Program Safety and Animal Humane Services. The Pueblo assumes responsibility for a major portion of the justice system and oversees the courts, police department and detention facilities. The only area that the BIA continues to operate is the Criminal Investigator's Office.

The Pueblo of Laguna Nation Court consists of a staff of seven employees including a judge, court administrator, court secretary, probation officer, court clerks, bailiff and process server. Recently, the Pueblo created a Prosecutor's Office (this position is in the process of being implemented) and hired a Chief Prosecutor. The PLN Court is developing programs that emphasize collaboration between the traditional justice practices and the current judicial system. The court is working with village officials to establish a forum for dispute resolution within the six villages. The 1984 Pueblo of Laguna Nation Constitution recognized the traditional role of the village officials in resolving disagreements. The Pueblo is in the process of formalizing its roles within the existing court system through a Dispute Resolution Mediation project (Pueblo of Laguna Nation 1995). The Mayordomo Project also emphasizes the traditional approach to justice and is another program designed to integrate the traditional with the contemporary system.

The Mayordomo Project is an alternative to incarceration that takes nonviolent offenders and places them with village Mayordomos who assign them to work on various projects in their respective villages. This diversion program helps to reintegrate offenders back into the community, alleviates the court case load and enhances the important role of the village officers in maintaining social control within the villages (Pueblo of Laguna Nation 1996).

In addition to its council, courts, and police system, the PLN maintains traditional mechanisms of social control through the village offices. Each village has two council members, two to three town criers and three or four Mayordomos. The Mayordomos play a major role in maintaining law and order in the villages (Lujan, 1987). Today, the Mayordomos have their own Association and continue to play an active role in justice issues within the six villages.

In the Keresan language, the Mayordomos are referred to as Water Officers. Initially their role was to oversee the care of the village ditches. Throughout the years their responsibilities evolved into the role of village law officer and judge. Mayordomos are elected by their villages for a one-year period. Their responsibilities include overseeing civil disputes—such as land disputes, home disputes and curfew violations. The Mayordomos Association is an active member of the Weed and Seed Steering Committee and became involved in the ICJI project during late 1996. Currently, the PLN has a cooperative working relationship with surrounding local jurisdictions. The City of Grants and the Bernalillo County court give full-faith and credit to judgments in civil cases and restraining orders originating from the Laguna Nation Court.

The PLN Court and the Police Department are housed in the same building. The Laguna Police Department and detention facility (accommodating approximately 14 prisoners) consists of a police chief, 10 patrol officers including the sergeant position, five dispatchers, five jailers, one secretary, and one full-time and one part-time cook. The police department's primary duties are to enforce laws, investigate crimes and protect life and property for Pueblo residents. The Laguna Police Department statistics indicate that domestic violence, public intoxication, driving

under the influence, and disorderly conduct were the crimes most commonly reported.

Furthermore, assaults on police officers was a major concern among governmental leaders.

When major crimes occur, the Laguna Police Department works closely with a number of federal agencies on investigative work, including the BIA CI, the FBI and the U.S. Attorney's Office. They also participate in joint training efforts held by the DOJ or BIA. For the reasons detailed in Section III of this report, the federal justice system becomes involved in investigating and prosecuting cases when a major crime occurs on AIN reservations. The BIA Criminal Investigator (CI) and the FBI are the primary agents during the initial investigative work, and the USAO becomes involved in the prosecution of these cases. The CI and the FBI work cooperatively with the Laguna Police Department when a violent crime occurs in Pueblo.

The CI works with other federal agencies including the federal probation officer, agents from the Drug Enforcement Agency; Alcohol, Tobacco and Firearms; and the U.S. Attorney's Office. The CI also has responsibility for the Canoncito Navajo Nation community which is near the boundaries of the PLN's lands. The estimated service population is 12,000 (Interview July 1997). The CI has no clerical help nor additional investigative personnel and has minimal equipment. The FBI agent (part of the investigative team) assigned to work with the PLN and the assistant U.S. attorney are located in Albuquerque. Moreover, the USAO—the prosecutorial branch of the federal government—prosecutes federal crimes.

During this evaluation, there was no separate juvenile justice system—juveniles were processed through the same courts and detention facilities as the adults. In addition, they used the same probation officer as their adult counterparts. Although a juvenile justice code was

developed in 1994, it has yet to be approved and adopted by the Pueblo of Laguna Nation Council.

Status of the Indian Country Justice Initiative. Although the ICJI at both the PLN and NCN are organized similarly, they differ in two fundamental respects. First, the PLN formalized the Initiative with a Memorandum of Agreement (MOA) with the DOJ, signed in July 1996 (Appendix D). Second, an additional position was created within the DOJ for an ICJI coordinator. It summarizes ICJI responsibilities, serves as a reference and informs the public about the Initiative. Furthermore, the MOA—which was signed by the PLN Governor, the New Mexico U.S. Attorney, the Deputy Assistant Attorney for the Criminal Division and the PLN Secretary—enhances coordination and communications.

As mentioned earlier, an AUSA was assigned to the New Mexico U.S. Attorney's Office, spending half of the time as ICJI site manager, while the remainder of the AUSA's time is determined by the New Mexico U.S. Attorney. Because this individual has a prosecutorial background, the choice was made to prosecute the federal cases from PLN. This decision left a major void in the ICJI workload. To remedy the problem, an additional position (the ICJI coordinator) was created. The ICJI coordinator, a law-trained individual from the Pueblo, was hired by the DOJ (in collaboration with the PLN) in September 1997 and placed at PLN. The coordinator, a one-year contract position funded through the DOJ Criminal Division, assists both site managers (DOJ and PLN) in coordination efforts.

The Native American Probation Officer Liaison (the only full-time, permanent position created by the DOJ ICJI) is funded by the Administrative Office of the U.S. Courts and is

located in the U.S. District Courts Probation Service in Albuquerque. The NAPOL, a non-Indian assigned to the PLN, also works with the Santa Domingo, San Felipe and Isleta Pueblos as well as the Alamo Navajo community in New Mexico and supervises several non-Indian clients. At the interview, the NAPOL had a caseload of approximately 40 clients (the average caseload is approximately 57 clients). To make the position manageable, the New Mexico NAPOL caseload was kept low to allow time for pretrial work and participation in meetings with Pueblo officials.

The NAPOL works cooperatively with the village officers to coordinate community-service activities for both adult and juvenile offenders. Furthermore, the NAPOL notifies the Governor's Office when an individual is to be released back into the community and also conducts personal interviews with his/her victims and their families. In addition to these general activities, the NAPOL provides different types of informational training workshops for the Pueblo including sentencing guideline training, safety tactics and crisis intervention workshops. According to the NAPOL, the Initiative has assisted efforts to enhance coordination, develop greater visibility and create more consistency in processing cases from pretrial to conviction.

The PLN Governor assigned the Coordinator for the Youth and Wellness Office to oversee the ICJI, act as the PLN site manager and coordinate activities of the Weed and Seed Steering Committee. The site manager, a member of an adjacent pueblo, is familiar with the people, values and culture. The site manager has been very effective in combining responsibilities as the Youth and Wellness Coordinator with those of the ICJI site manager. She was instrumental in forming the Weed and Seed Steering Committee. An essential part of the

Initiative, this Committee developed the Weed and Seed proposal and serves as the ICJI project coordination committee.

The MOA selection of a site manager and formation of the Weed and Seed Steering Committee have been important steps in developing the ICJI. These efforts had strengthened coordination between the federal government and the PLN. Additional agencies and entities (Pueblo and non-Pueblo) involved in the Initiative through their membership in the Weed and Seed Steering Committee include the Youth Initiative Program, Social Services, Tribal Court, Service Center, local schools and economic development foundations. Moreover, the traditional leaders are an integral part of the Weed and Seed Steering Committee and the head of the Mayordomo's Association attends these meetings on a regular basis. The primary federal entities involved in the Initiative through the Weed and Seed Steering Committee include the FBI, the USAO and the NAPOL. The state and county police have also attended these meetings.

Grant activities constitute a major component of the Initiative. A section of the MOA specifically addresses the DOJ grants and services and how they will be used to complement the Initiative's goals. According to the MOA, "DOJ has agreed to provide grants and services to the Pueblo of Laguna as a function of the Initiative and waive any monetary contribution by the Pueblo of Laguna for these grants and services." These grants include the Weed and Seed, COPS, Office for Victims of Crimes, Violence Against Women Grants Office and the Office for Juvenile Justice and Delinquency Prevention. The Criminal Division is requesting a waiver of contribution based on the Nation's financial inability to meet the COPS "matching contribution requirement."

In addition to the Weed and Seed grant, the PLN ICJI applied for and received the following DOJ: (1) Office of Justice Programs, *Children's Justice Act*, Discretionary Programs for Native Americans—to hire a Prosecutor; (2) Office of Victims of Crime for a Victim Witness Advocate—to assist children and their families in overseeing the prosecution of offenders and takes a lead in developing the children's code; (3) Court Appointed Special Advocate grant—to work with children enmeshed in the legal system; (4) Community Oriented Policing Services—to hire four individuals to be supervised by the Pueblo's Law Enforcement Department (one COPS employee to work specifically with the schools and the community; the remaining officers primarily patrol officers); and (5) the STOP Violence Against Women grant—to hire a detective/investigator to assist in reducing the violence against women, provide services to victims and abusers and develop a domestic violence code.

The Pueblo also received a grant from the Housing and Urban Development (HUD) Drug Elimination Program. This grant funds several positions including a Coordinator, Community Development Specialist, Family Intervention Specialist and Clerk. Furthermore, the Pueblo has received an Ounce of Prevention grant to develop youth leadership.

In addition to grant activities, cooperative training programs were on-going activities among law enforcement personnel. The Pueblo of Laguna Police Department appears to have a good working relationship with law enforcement services from the federal government, the state, the city of Albuquerque and surrounding counties.

V. A Substantive Analysis of the Indian Country Justice Initiative

A. Findings and Analysis: Northern Cheyenne Nation

To further illuminate ICJI processes, we present the findings of our evaluation in three sections. First is a description and analysis of the ICJI implementation process, second an overview of the citizens' perceptions of the ICJI and the present justice system and third an exploration of the perceptions of the overall justice system. A brief summary of the ICJI provides a detailed analysis of justice and injustice in the NCN's complex, multidimensional judicial system drawn from the team's observations and the opinions and experiences of community members (both young and old), practitioners, community activists, AIN government leaders, and federal and AIN program administrators.

Description and Analysis of ICJI implementation and Programs—*ICJI Organization.*

The first step in implementing the Initiative was for the DOJ to work directly with the NCN to establish a solid understanding of the project's intent. This was accomplished through meetings and correspondence with NCN officials and DOJ officials. A project team composed of DOJ personnel from the Criminal Division and the U.S. Probation Office assisted in selecting the sites. Next, site managers were selected from both AIN governments and the DOJ to coordinate the Initiative. After their selection, the site managers began to organize the Weed and Seed Steering Committee.

Because the ICJI was integrated into existing programs, the site managers did not have specific job descriptions but worked with the overall goals of the Initiative in mind. Their major function with the Initiative consisted of assisting the NCN with the DOJ in the grant-application

process. Other aspects of the Initiative (such as youth prevention activities, coordination of information and agency activities, economic development and staff enhancement through various training activities) have been integrated into the grant activities.

Despite these accomplishments, problems of clarity of intent created a degree of conflict between the DOJ and PLN site managers. A federal government respondent involved in the earliest planning of the Initiative indicated that its overall direction was vague. Consequently, it is important that the responsibilities of a DOJ site manager be elaborated in writing to guide the Initiative's direction. AIN governments that might be interested in developing a similar Initiative are advised to have a more focused direction and know what results they want to achieve (Interview June 1997). Refer to Appendix A.

Weed and Seed Steering Committee. A major task of the ICJI was to apply for DOJ grants. The Weed and Seed grant was one of the initial and largest funded grants sought by NCN for the Initiative. Weed and Seed Steering Committee members provided input into the grant proposal, focusing their concerns about safety for children, prevention programs, community justice system, juvenile justice issues and economic development. The submitted grant proposal emphasized interdepartmental coordination and systemic efforts to address the Nation's concerns about safety and justice. The NCN applied for \$300,000 based on the Weed and Seed model of community rejuvenation and law enforcement. Once input was received from the Steering Committee, the DOJ and NCN site managers were given the task of compiling, writing and submitting the grant proposal. Since neither site manager had the time to take on the additional responsibility, a grant writer was hired to complete the process.

The NCN Weed and Seed grant proposal is divided into four target areas: (1) Prevention, (2) Community Justice Systems, (3) Intervention and Treatment, and (4) Economic Development (Northern Cheyenne Nation 1997). The proposal incorporates the ICJI with other grants' activities (i.e., Victim Witness coordinator, new police officers under the COPS and a CASA program, AIN youth court advocate and federal probation officer liaison). The grant's narrative portion was submitted in March 1997, while the budget was submitted the following September. Notification of the Weed and Seed grant award was received late that fall.

DOJ Grants. The Community Oriented Policing Services (COPS) Universal Hiring grant is another important component of the ICJI effort to strengthen the NCN justice system. Submitted in May 1996, the NCN grant application to COPS requested funding for three additional law enforcement personnel to strengthen the understaffed BIA police force. The proposal emphasized improving police-citizen cooperation and communications and increasing police and citizens' abilities to provide innovative solutions to community problems.

A year after submitting the application, the Northern Cheyenne Council passed Resolution No. 136(97)—supporting the COPS application, specifying the need and indicating the NCN President will supervise the COPS officers. In addition to the Council resolution, a proposed Memorandum of Understanding (MOU) between the NCN and the BIA was drafted. The May 29 draft further defined the day-to-day management of the law enforcement personnel hired with the COPS grant. According to the MOU, the BIA CI would serve as the Law Enforcement Executive while the President of the Northern Cheyenne Nation would serve as the Government Executive. Under the grant, the NCN government expected to hire three

experienced law enforcement officers to work in three specific areas: domestic violence, youth violence and sexual abuse.

Other DOJ grants the NCN government applied for include the Mandatory Arrest Policy grant and the Domestic Violence program. In addition to funding from the COPS grant, the NCN will receive an additional \$50,000 from the Access to Forfeiture Program. This money is allocated from property forfeitures in major drug convictions. Under the COPS grant, obtained with FBI cooperation, the AIN government became eligible for these funds (see Appendix C).

The NCN government also received two VAWGO grants to address domestic violence crimes and intervention. The first grant provides general support to victims of domestic violence through Healing Hearts, a domestic violence project in Lame Deer. The second grant supports a mandatory arrest policy by creating three NCN positions and a contract position. One position will oversee the law enforcement arrest policy to effectuate mandatory arrest policy with sanctions for acts of domestic violence to ensure that arrests are made when these crimes occur. Another position is for a victims' counselor advocate, while the third is an administrative assistant. The contractor position will provide training in domestic violence matters. At the time of the evaluation, the NCN was acting to fill the second VAWGO grant positions.

The Victim Witness Advocate is another DOJ grant received by the NCN as part of the ICJI. The Victim Witness Advocate grant is a two-year grant. An individual hired under the grant will work out of the NCN Prosecutor's Office. According to the DOJ site manager, a delay in implementing this grant has occurred because of negotiations over supervisory responsibility for this position. Concerns have been expressed regarding the position's need for autonomy

confidentiality. Because of the sensitive nature of this position and the fact that the NCN is a close-knit community, confidentiality was a concern. Therefore, both the AIN and federal governments agreed to share the responsibility of the advocate position. The AIN government will have supervisory responsibility for the day-to-day management of the advocate and the federal government (through the USAO in Billings) will manage the position's salary and personnel action. Eventually, the individual will become an AIN employee.

Additional ICJI grant-implementation activities occurred during the fall of 1997. Both the Juvenile Advocacy and Mediation Program Advocate and the Resource Development Coordinator were hired and became actively involved in the Weed and Seed Steering Committee. The Resource Development Coordinator offered economic development information and alternative activities for youth, and began working with a local bank to promote economic opportunities. The Juvenile Advocate (a former NCN judge) works with the juvenile justice system and follows up on juveniles on probation. Moreover, the juvenile advocate works closely with the juveniles and their parents. According to the Juvenile Advocate, parents often cannot afford their own legal counsel and they rely on the Juvenile Advocate for advice. Some parents are faced with multiple problems such as unemployment, poverty, alcoholism and drug abuse. Although concerned about their children, they have few resources to help them.

Concerning another juvenile matter, NCN lacks intervention programs such as a youth group home. Consequently, children experiencing problems must be placed in facilities outside of the Northern Cheyenne Nation. This arrangement tends to further fragment families in distress. The Weed and Seed Steering Committee is currently studying the feasibility of

establishing a youth group home as part of the NCN's efforts to establish a structured juvenile justice system.

Grant Management Process. A major advantage of the cooperative efforts established as a result of the Initiative is the flexibility provided on how the various grants can be administered. The AIN government has the discretion to decide which programs will administer the grants. In some instances, such as the COPS and Victim Witness Advocate grants, the supervision and management responsibilities of the position are shared between the AIN government and the BIA or USAO. The DOJ grants give the AIN government flexibility to select from various methods of administration including taking complete responsibility for the management of the grant, share responsibility with another entity such as the federal government and/or a nonprofit organization and/or give these entities complete management authority over the grant(s). The action taken depends on the type and intention of each grant.

At the request of the AIN government, the Northern Cheyenne Boys and Girls Club, a nonprofit organization, will administer the first Weed and Seed grant. According to the Executive Director, who is also the NCN ICJI site manager, this placement allows more funding to go directly to the programs because a nonprofit organization has the flexibility to leverage the additional dollars and can multiply them by working with other services and programs.

Coordination efforts with nonprofit organizations have to be well planned. The NCN site manager stresses the importance of comprehensive planning in working through these arrangements with the AIN government. As outlined above, the COPS grant and the Victim Witness Advocate grants are examples of coordinated management plans between the federal

government and the AIN government. The shared supervisory responsibilities require careful planning and coordination, a time-consuming process.

Program implementation is often delayed when grants involve co-supervisory management responsibilities. For example, lengthy delays were experienced with the COPS and Victim Witness grants. Implementing the COPS grant was prolonged because of indecision over who would supervise the three new law enforcement personnel. A compromise was made to share the supervisory responsibility of the COPS employees with the BIA's CI and the NCN government. Eventually a MOU was drafted which gave the BIA CI "day-to-day" supervisory responsibility and the NCN President "executive" supervisory responsibility. Despite careful planning, several Northern Cheyenne officials expressed dissatisfaction with the BIA's involvement in a grant awarded to the NCN. They also expressed dissatisfaction about the lengthy delay in hiring these police officers which was caused by making these co-supervisory arrangements. At the close of this evaluation, the position remained unfilled.

Coordination & Cooperative Efforts. In addition to the grant activities, evidence shows an increase in coordination and cooperation has occurred among law enforcement agencies specifically the FBI, BIA Criminal Investigator and BIA. For example, the new FBI agent, who assumed his position in late spring 1997, has become more visible at the NCN than the previous agent and endeavored to create a cohesive working relationship with the local law enforcement personnel. Further, FBI-related training is now available to the BIA law enforcement personnel. Despite the development of these joint training programs, a severe shortage of patrol officers at NCN makes it difficult for BIA law enforcement personnel to participate. Interagency

coordination and cooperation efforts have also enhanced among prevention, intervention and law enforcement personnel through Weed and Seed Steering Committee activities.

These efforts mark an important change in customary operational procedures, but declining energy levels and other factors have hampered efforts. During the early stages of the planning meetings, attendance was good and people were motivated and excited about the infusion of various grants. According to several members of the Weed and Seed Steering Committee, the momentum has peaked, making it difficult to get the members together.

Another ICJI coordination activity at the NCN site was the establishment of a neighborhood watch program within each of HUD housing projects. Each housing project has developed a committee that acts as the community policing component. This project involves the community and the coordination of various AIN and government programs and is intended to prevent crimes from occurring.

The Initiative, as it relates to grant activities, has successfully in established coordination and communications among a broad range of programs. However, efforts still need to be made to improve coordination and cooperation between the Northern Cheyenne Prosecutor's Office and pertinent federal offices such as the USAO and the BIA Criminal Investigator. According to AIN officials, the USAO stated that it would attempt to provide more timely feedback to the AIN Prosecutor's Office regarding cases. For the first three months, the USAO did provide information on cases on a more timely basis, but it then returned to the old method of operation. At the time of the interview in October 1997, the Prosecutor's Office had not received declination notices on a number of cases.

Currently, the feedback on the status of delays in processing cases by the USAO and slow and inconsistent investigations by the BIA Criminal Investigator's Office intensifies wariness of the federal system of justice. AIN officials allege that the federal government has held cases for more than three years before deciding whether to prosecute. In other instances, investigations of crimes go unresolved. When the federal grand jury declines a major crime case, the AIN government can prosecute. However, the AIN Prosecutor's Office relies on information collected by the federal law agencies to prosecute cases and this information is seldom turned over to the AIN government in a prompt fashion. This delay hinders the justice process for Northern Cheyenne citizens.

Visibility. The ICJI has enjoyed a degree of community and federal visibility and support. According to DOJ personnel, a significant benefit of the ICJI has been the awareness it has brought to justice issues in Indian Country. Consequently, DOJ personnel involved with the Initiative appear to have become more educated about the importance of the government-to-government relationship that AINs have with the federal government (Interview 1997). Virtually all individuals at the NCN directly involved with the ICJI possessed in-depth knowledge about the Initiative.

Yet many NCN citizens and key BIA area office officials not directly involved with the ICJI had not been informed about the project. They first learned about it through the evaluation process. Once informed about the Initiative, they asked questions about it and its relationship to DOJ efforts to reform BIA law enforcement. Specifically, they were concerned about discussions occurring at the national level to transfer all BIA law enforcement services to the

DOJ and about the DOJ's unwillingness to share information about the proposal and its hesitation to solicit AIN input.

Networking. A further outcome of the ICJI has been the networking and information sharing between the two participating AINs. At the February 1997 PLN Weed and Seed Steering Committee at Laguna, the NCN site manager presented information about the Northern Cheyenne Boys and Girls Club. The experiences of the Northern Cheyenne Boys and Girls Club provides helpful information for the Pueblo. As a result, the Pueblo of Laguna wants to develop activities for youth within their villages in the form of a Boys and Girls Club.

The preceding discussion illustrates that the ICJI has improved coordination and cooperation among justice-related DOJ entities, segments of the BIA and the NCN government. These accomplishments are particularly evident within the framework of cooperative NCN and DOJ grant efforts. This relationship demonstrates that innovative projects can be integrated within existing programs of U.S. and AIN government agencies, although such efforts clearly require careful planning, time, resources, cooperation and commitment from all parties involved. Furthermore, the ICJI reduces federal paternalism by acknowledging the government-to-government relationship that exists between the federal government and the AINs.

Despite these efforts, internal and external coordination and communication problems still exist. Internally, the need exists to further enhance the working relationship between the AIN courts, prosecutors, and law enforcement entities. Externally, the NCN, BIA and DOJ should also seek ways to overcome coordination and communication difficulties. Additionally, NCN

citizens desire to be informed about new projects and given the opportunity to participate in any discussions about proposed changes in their justice system.

Perceptions of the Justice System at the NCN ICJI Site. NCN citizens have strong views about the two justice systems serving their reservations. The Northern Cheyenne Nation is a vital and energetic Nation that is undergoing significant change. Currently, the government is transitioning to a separation of powers format that the voters approved in a 1995 referendum vote. This important change impacts the justice system in three important ways. First, the AIN judges will be elected rather than appointed. Second, the judicial branch will be separate from the executive branch, with the exception of the Prosecutor's Office. The Head Prosecutor, however, will remain a politically appointed position. Despite the referendum, the NCN had not completed the separation of powers process at the time of this writing. Third, the referendum provides for the integration of traditional means of justice in the justice system.

The role of the traditional culture within the polity of the secular government is also experiencing change. According to an elected official, a transformation in the formal role of traditional leaders within the secular government has been occurring over the past 25 years stemming from internal conflict over proposals to develop coal resources on the reservation (Interview June 1997). Since then, other events have created controversy between the secular government and the traditional leadership (Interview August 1997).

Although a traditional approach is included in the separation of powers document, people are unfamiliar with this procedure because traditional laws are not codified and conflicting interpretations of traditional justice exist. The more acculturated individuals viewed traditional

law with skepticism. At this time, it is unclear what form(s) or role the traditional culture and leaders will have in the formal justice system. These transformations will have long range impact on the NCN polity and NCN citizens. Furthermore, they will most likely affect the justice system, including those programs expected to improve the justice system such as the ICJI. Moreover, they influence the present system and how the citizens receive and perceive the practices of the justice system.

Overall Justice System. The following concerns about the justice system were expressed by a majority (at least 51% or more) of respondents that were interviewed: lack of a government-to-government relationship, fragmented jurisdiction, inadequate funding and high turnover of key justice personnel.

Lack of a Government-to-Government Relationship. An overriding concern expressed by respondents is the federal justice system's failure to acknowledge the government-to-government relationship that exists between them and the NCN. Citizens felt that their rights were given low priority by the federal justice system (refer to the section on Additional Concerns of the Justice System, pp. 81–84). NCN officials reiterated this view. Several NCN government officials expressed frustration about the USAO's policy to withhold information about cases under investigation. This practice tends to hinder the justice process in NCN.

Currently, coordination efforts appear to be hampered by a case involving a high level federal government employee. The case involves child sexual abuse and has ignited controversy within the community and the justice system. At least half of the respondents felt that the federal

government was giving preferential treatment to the alleged offender, a high-level IHS employee. The case has intensified a sense of distrust towards the federal system, including the USAO, the FBI and the BIA. As one respondent stated, "Just from this case alone, I don't trust the USAO any more. I don't trust the FBI. They scare me.... I feel like there is no trust between those agencies any more with our tribe" (Interview October 1997).

The AIN government was planning to prosecute this case on the information gathered without the benefit of the evidence collected by the federal agency. An NCN representative maintains that the federal government should not refuse to share its information about investigations with the AIN government. Furthermore, the respondent states "All we want is to be treated on a government-to-government basis. We are not asking for special treatment" (Interview October 1997).

Fragmented Jurisdiction. Another related concern was the fragmented justice system. The multiple federal entities involved when a major crime occurs on an AIN reservation has created a perception that crimes usually go unpunished, causing violence to escalate. The following written comment from an NCN member and a spokesperson for a local citizen's organization in Lame Deer summarizes the concerns of many NCN citizens:

The tribal police, BIA police, FBI, BIA criminal investigator, US attorneys, tribal prosecutors, state police, state courts, state prosecutors, etc. all have some role in ensuring that justice prevails on Reservations. What role they each have often depends on the race of the people involved in the crime and where the incident occurs. However, this hodgepodge of jurisdictions rarely work together in a professional manner to see that their goal of justice in Indian Country is attained. It's common knowledge that these jurisdictions are very territorial over their sovereignty and they exercise tremendous internal institutional discretion. What are they accountable to? Clearly not the group they are expected to protect—the residents of the Reservations. The Indian people and other residents of the Reservations find themselves in a situation where everyone and anyone

claims to have jurisdiction over the reservation, but in reality, crime appears to go unchecked and violence is escalating.

The federal agencies' recognition of NCNs' sovereignty, its role within the criminal justice process and its ultimate impact on the NCN and its citizenship are of major importance to a majority of respondents interviewed.

Inadequate Funding. The criminal justice system that serves Northern Cheyenne is severely underfunded. The lack of resources impacts the services provided by all criminal justice related programs. In addition to high turnover among the BIA police department, a need exists for training of law enforcement personnel.

The inadequate budget for the BIA police has seriously hindered the staffing, training, morale and recruitment of law enforcement personnel. Additionally, it prevents the BIA police from adequately patrolling and maintaining a visible presence on the reservation. There is only one BIA CI to cover all major crimes within a Nation of approximately 5,025 people. In addition to inadequate funding, the BIA criminal justice system is structured in a manner that does not facilitate combining resources among the CI and the BIA law enforcement department. Currently, the CI and the BIA law enforcement offices are set up as separate entities and housed in separate facilities. This arrangement deters the sharing of office personnel and other resources.

The NCN possesses a young and fast-growing population and is reportedly experiencing an increase in the rates of child abuse and juvenile crime. However, the BIA Police Department was recently forced to operate with four patrol officers to cover a land base of more than 445,000 acres and five communities (Interview October 1997). In some instances, people have waited over 1 1/2 hours for police to respond to emergency calls (Interview NCN 1997).

At least 80 percent of respondents view the police as poorly trained and generally ill equipped to handle problems that arise in the community. According to one youth, the police did nothing to stop a fight between two juveniles. A large group of young people had gathered to watch the fight, and during that time a police car appeared, but did not stop there. The police, in this instance, failed to investigate the matter and to disperse the crowd (Interview NCN 1997). According to a large number of respondents, law enforcement personnel need training in how to handle youth violence, gang violence, school violence and domestic violence. Additionally, law enforcement personnel, who tend to be NCN members, need training in community relations and how to be more "community friendly."

An objective of the ICJI is to improve training for law enforcement personnel for the BIA. However, the limited number of patrol officers at Northern Cheyenne creates an administrative dilemma where choices must be made to maintain adequate law enforcement coverage and/or take advantage of training programs. The general opinion of at least 80 percent of the 56 people interviewed in the NCN is that the response rate for BIA and FBI investigations of crimes is unsatisfactory.

Respondents are concerned about the increase in violence, drug-related crimes, child abuse, and breaking and entry, as well as the poor record of follow through by the local BIA law enforcement and/or FBI. This perception creates a feeling of injustice and frustration among NCN residents [Interview Northern Cheyenne Court (NCC) 1997]. At least 60 percent of respondents indicated that they were not likely to report drug incidences to police because they

view the police as unresponsive. Furthermore, they fear retaliation from the drug dealers (Interview December 1997).

Another central component of the BIA justice system for Northern Cheyenne is the Criminal Investigator, another office that is severely underfunded. Currently, there is only one CI to handle a growing population of more than 5,000 people. During the evaluation, the CI operated out of the BIA Agency Office in Lame Deer, without clerical assistance. Moreover, in some instances the CI's budget was so limited he had to use his own money to purchase supplies such as film and to have the film developed for the investigation of crime scenes (Interview December 1996).

In addition to an inadequate budget, the supervision and budgetary responsibilities for the Criminal Investigator are divided between two departments (the BIA Area Office Criminal Investigator and the BIA Lame Deer Agency Office). This bifurcated system creates a cumbersome and fragmented working environment for an already overburdened and understaffed office. The BIA Office of Law Enforcement Services (OLES), located in the Billings' Area Office, has supervisory oversight for the CI's office. However, funding for the CI comes from the BIA's Agency Office in Lame Deer, via the BIA Area Office in Billings.

This split creates both administrative and personnel confusion for the five programs involved: the local BIA police department, the BIA Area Office in Billings, the OLES, the BIA Agency Office and the CI's office. In addition to the administrative confusion, it tends to isolate the CI from other law enforcement personnel and further diminishes the possibility for sharing information, services and limited resources with other programs. The CI is an important part of

the ICJI and an active member of the Weed and Seed Steering Committee. Plans to place the three law enforcement personnel to be hired under the COPS grant under the CI's supervision may help alleviate these problems.

Interviews demonstrated that many NCN residents have lost confidence in the CI, BIA police and FBI and accuse these law enforcement personnel of violating their rights. Fifty percent of the respondents perceived the CI to be ineffective in performing his duties. Many felt that the CI was not adequately investigating drug-related charges. However, the CI indicates that drug-related charges are the most difficult to prosecute because people refuse to file charges against alleged perpetrators for fear of retaliation or because the perpetrators are related. Concerns about BIA law enforcement and the FBI resulted in a petition being circulated in the fall of 1997. Within a one week period the petition was signed by 81 NCN citizens. Reportedly, the petition was initiated by an individual whose son was recently convicted of homicide. It asked the NCN Council to pass a resolution requesting the U.S. Civil Rights Commission and DOJ review allegations against the CI, the BIA police and the FBI. The charges included obstruction of justice, misconduct, mistreatment of prisoners, lack of investigative work, and intimidation. The petition also requested that AIN members' personal testimony and documentation be included in the investigative process. The petition further requested that the Tribal Council enforce and implement ORDINANCE 14(94) which calls for a Law & Order Commission to begin the process of contracting the BIA law enforcement services (Northern Cheyenne Nation 1997).

Limited resources also place juveniles at risk—unsafe holding facilities for juveniles is a major concern among the NCN. People are concerned about the increase in crime among juveniles as well as the apparent lack of parental supervision. Juveniles are implicated in an increasing number of status offenses and criminal offenses.

However, the current justice system is ill prepared to handle these cases. One of the Weed and Seed Steering Committee's projects is to develop the juvenile justice system further, (e.g., developing a juvenile detention facility), and their proposal states, "Juvenile criminals in the community are well aware of the fact that not only can they not be held in the facility, they cannot and will not be sentenced to any incarceration there.... Thus, there is no deterrent aspect to the juvenile justice system as it presently exists" (Northern Cheyenne Nation 1997, 10). This lack of a juvenile detention facility creates a potentially unsafe environment for juveniles and hampers prevention and intervention efforts. Although the AIN code prohibits detaining juveniles with adults, the police have no choice in serious cases but to hold the juveniles in the adult facility. According to one law enforcement official, they are "walking on thin ice" in terms of liability.

AIN courts are also inadequately funded. The respondents expressed concern about the ability of the courts and the Prosecutor's Office to maintain confidentiality or recruit and retain qualified personnel. Moreover, the respondents complained about the deteriorating physical condition of the court building. Currently, the court office space is limited and court personnel are forced to work in cramped quarters. Additionally, court files are often not kept in secure areas or locked, fire-proof files. Appropriate funding is essential to further develop AIN justice systems. As one respondent noted:

Tribal justice systems should not be treated as stepchildren of the federal system but rather be encouraged to develop through sufficient funding for all aspects of justice in Indian country, i.e., courts, investigations, prosecutors, police, buildings, law libraries, tribal Attorney General offices, etc.

Another problem experienced by the Northern Cheyenne Court was the difficulty in having their court orders honored off the reservation. According to the Chief Judge, the state of Montana and the surrounding counties seldom recognize court orders from the Northern Cheyenne Court and refer to these court orders as “foreign” documents (Northern Cheyenne Nation June 1997).

Personnel Changes. Personnel changes are common occurrences throughout the entire justice system. During the evaluation period, for example, two changes occurred within the AIN judiciary. A respondent observed that as many as ten different people had served as AIN judge within the past six years (Interview May 1997). The high change rate in this position tends to disrupt the continuity of the court and creates a lack of confidence in the judicial system. Furthermore, inconsistency in personnel makes it difficult for the ICJI to maintain a consistent working relationship with the AIN judges. The two new judges, who have been in their positions for four and one-half months, were unaware of the ICJI and stated that they had no professional contact with any DOJ or BIA representative within that time period. Personnel changes also occurred at the federal level—the BIA and FBI. During the evaluation period, the BIA agency superintendent had recently assumed responsibilities at the Lame Deer agency, the BIA Chief of Police resigned, and a new FBI agent was hired.

Additional Concerns of the Justice System.

Perceptions of Bias, Unfairness and Civil Rights Violations. A majority of the respondents perceived the federal justice system as negatively biased towards AINs. Furthermore, they perceived certain actions, or inaction, by the federal government as a violation of their human and civil rights. Respondents indicated that because federal cases from Northern Cheyenne are processed in Billings, (approximately 100 miles from the reservation) people caught up in the federal justice system (both victims and/or their families and the accused and their families) must incur additional hardship traveling to and from their homes to the court proceedings. A stipend is provided by the federal courts for these types of expenses. However, distance, time away from home and cultural differences—such as language problems or unfamiliarity with the adversarial dynamic of the court—combined with racist and paternalistic attitudes create additional concerns for the families involved.

Because federal trials are not held within the reservation communities, the juries are most likely comprised of nonnative and noncommunity members. This practice fosters the perception among the NCN citizens of a biased jury panel. If convicted, the American Indian defendants are usually incarcerated in federal facilities that are located out-of-state, thus creating an additional hardship on family members. Moreover, removing decisions of punishment from the community infringes on the sovereignty of the AIN.

A respondent claimed that the FBI had been involved in a civil rights violation. Allegedly, an FBI agent broke down the door to the home of a young man suspected of committing a felony. No one was home at the time, so the agents went to the suspect's aunt's

home and did the same thing. The young man later turned himself in at the Billings, FBI office. His attorney asked to see the warrant and the FBI were unable to produce one. The federal agent had to request a warrant from the Salt Lake City office. Based on this experience, the respondent suspects that the FBI agents did not have a warrant when they came to the NCN in search of the suspect.

Respondents were also concerned about lack of information regarding the investigation of two major fires that destroyed the AIN administration office and the IHS clinic. Although the fires occurred several years ago, no report has been issued to the Northern Cheyenne citizens regarding the causes of these fires—the federal government investigates suspected arson cases. Additionally, over two years ago the U.S. Attorney's Office in Billings announced that it planned an in-depth analysis of four federal cases from Northern Cheyenne to identify problem areas. As of late 1997, the Chief Judge and Chief Prosecutor for NCN had not received an update on this study (Interview June 1997).¹⁰

Reportedly, information about the IHS fire appeared in the *Billings Gazette*, a paper available on the reservation, shortly after the fire had occurred. The newspaper reported that the fire was accidental. According to a federal official, "This is the normal way such information is made available to the public."

10 According to a federal official, the review of three of these cases was completed and agreement as to their disposition reached in November of 1996. One case is still pending, awaiting the completion of the FBI's review. Furthermore, the official states, "It was not intended that the Chief Judge be privy to this review. Part of this process was to determine if any of these cases merited further prosecution and it would be inappropriate to share the results with the NCN judiciary, who could have further involvement with the cases."

There is also widespread concern about the apparent lack of aggressive prosecution of child sexual abuse cases. Furthermore, there is general concern about the length of time it takes for the federal government to prosecute cases, and the lack of updated information provided to the victim's family regarding the status of cases. For example, a family member of a murder victim reported that federal officials, such as the FBI and CI, made minimal attempt to contact and follow up with the victim's family. Because the family does not have a telephone, members faced the additional hardship of making special trips to Lame Deer for updated information. Although the murder had occurred several years previously and the case was resolved, the FBI agent never reported back to the family. Concerns were also expressed about the length of time it takes to process crimes through the federal justice system. According to respondents, indictments—when obtained—take on average between two to three years to process.

NCN Justice System. Prior to the appointment of two new NCN judges, respondents expressed concern about the NCN court and the NCN prosecutor's office. There was also concern that the NCN court did not follow established legal procedures. Some cases do not go to trial and other cases are not completed within the 90 days specified by AIN law. These delays and inconsistencies have caused some NCN citizens to lose confidence in the court system (Interview March 1997). Moreover, approximately half the respondents questioned the professionalism of the prosecutor's office, indicating that at times decisions appear to be based on "favoritism rather than fact" and that confidentiality is jeopardized because files are lost or misplaced. Furthermore, they faulted the head prosecutor for not being legally trained. A majority of respondents appear to have minimal expectations of the justice system (federal and NCN) and are hesitant to utilize the services.

Gun Control. Armed robberies and burglaries are increasing and gun control is an emerging concern among many NCN respondents. Conversely, an increasing number of citizens, frustrated with the perceived lack of law enforcement, are beginning to rely on guns for protection. Some AIN officials are concerned about the potential for a vigilante form of justice developing in NCN.

AIN Public Defender. There appears to be an imbalance within the current justice system. At least 30 percent of the respondents expressed a need for a public defender. Although there is a Prosecutor's Office, there is no public defender. Many citizens who go to court rely on local legal advocates, who charge for their services; people who cannot afford these services go without legal representation.

Lack of Reporting Crimes among the NCN Citizenship. Although there is a growing crime problem, such as an increase in illegal drug use, assaults and burglaries, residents are hesitant to report crimes for several reasons—lack of confidence in the justice system, fear of retaliation, perpetrator is related to the family and/or an unspoken “Code of Silence.”¹¹

B. Findings and Analysis: Laguna Pueblo Nation

The findings for Laguna Pueblo are also presented in three sections. First is a review of the ICJI implementation focusing on the organizational format, personnel, grants and other coordinating and cooperative efforts; second is an analysis of the ICJI's interface with the Pueblo of Laguna's present justice system and the citizens' perceptions of these services; and third is an exploration of the perceptions of the overall justice system.

11 Historically the NCN citizens protected one another from external pressures through silence. Unfortunately, this practice currently extends into their hesitancy to report crimes.

Description and Analysis of the ICJI Implementation and Programs. *MOA*—As stated earlier, the MOA between the DOJ and the Pueblo of Laguna Nation was signed in July of 1996. This MOA is a formal agreement between the two government entities that outlines the goals of the ICJI and the responsibilities of both parties in the implementation of the Initiative. The MOA outlines the DOJ grants available to the participating AINs. It also includes the Pueblo in the hiring process of the Native American Probation Officer, noting that the Pueblo of Laguna “shall be consulted regarding the employment” of this individual.

Furthermore, the MOA stresses the importance of establishing a long-term partnership between the federal government and the Laguna Nation and the importance of ensuring that a “holistic” approach to criminal justice is taken so that traditional Laguna Nation values are emphasized. The MOA also highlights the importance of identifying and assessing the existing criminal justice system, with input from community members (both youth and adults), council members, Mayordomos, security officials, religious leaders, elected leaders, and federal and AIN government personnel. The MOA, a useful reference guide, clarifies the cooperative agreement between the two entities and provides written documentation about this effort.

The MOA focuses on the goals and objectives of the Initiative and is useful in defining the ICJI activities and procedures. For example, it is useful in clarifying information about the NAPOL. According to the MOA, the Pueblo is to be consulted in regard to the employment of the NAPOL. However, the Pueblo citizens felt they were not adequately informed and requested more information regarding the process for hiring.

Staffing. As mentioned earlier, the DOJ site manager for Laguna was selected to prosecute cases as well as to serve as the ICJI site manager. It soon became evident that both of these responsibilities required full time attention. As a result, a coordinator was hired in the fall of 1997 by the DOJ Criminal Division to work on-site with the Laguna Nation site manager. The hiring of the coordinator has made a significant and positive difference between the coordination efforts of the Pueblo and the DOJ. Prior to the hiring of the DOJ coordinator, accessibility to the DOJ site manager was reportedly sporadic and the working relationship between the DOJ site manager and the Laguna site manager suffered. Although the DOJ coordinator was hired towards the evaluation period's end, the initial indications are that this position's creation will make a positive contribution to the ICJI.

As a result of the Initiative, the DOJ site manager has been designated as the primary prosecuting attorney for all major cases from Laguna Pueblo. This arrangement provides more consistency for both the AUSA and the Pueblo. Currently, the USAO procedure is to randomly assign federal cases to various attorneys within the office. However, the Initiative assures that cases from the participating AINs are assigned to a specific AUSA. This practice provides consistency over time by assisting the AUSA to develop familiarity with the AIN, including the families. This background knowledge enhances the attorneys' effectiveness in case preparation and provides the Pueblo with a point of contact in the USAO. Consequently, the DOJ site manager has aggressively prosecuted cases from the Pueblo of Laguna Nation. Furthermore, the DOJ site manager is working cooperatively with the Laguna Social Service program to establish a diversion program for less violent "borderline" cases.

The DOJ site manager's understanding of the Initiative is that prosecuting cases is an important part of the Initiative and she concentrates most of her efforts in this direction. The DOJ site manager has a consistently cooperative working relationship with the law enforcement entities, including the Laguna Pueblo Police Department, the BIA's CI and the FBI.

Conversely, the Laguna Pueblo site manager focuses attention on prevention and intervention and is guided by the MOA's emphasis on a "holistic" approach to criminal justice, in which "traditional Laguna values are emphasized, consistent with practices involving community members" (MOA 1996). Therefore, the Laguna Pueblo site manager works closely with the schools, the youth and their parents as well as other prevention and intervention programs. At times, the different approaches used to meet the ICJI goals created tension between the two site managers, particularly in balancing the law enforcement and prevention components of the Weed and Seed grant (e.g., the timing of grant submissions, and/or the lack of availability of the DOJ site manager to attend planning meetings). Nevertheless, these problems have not hindered the overall efforts of the Initiative. Furthermore, the inclusion of the ICJI Coordinator compliments and strengthens the Initiative's efforts to bridge the gap between prevention and law enforcement activities.

As noted earlier, an overall concern regarding the role of the DOJ site manager is the lack of written duties and responsibilities. Currently, there is no documented job description for either of the DOJ site managers (Montana or New Mexico). Since both DOJ site managers participated in the Initiative's developmental stages, this may seem unnecessary. However, if the Initiative is

to be implemented in other areas, written duties and responsibilities should be clearly outlined and understood by both the DOJ site manager and the AIN government involved.

The Laguna Pueblo site manager, nonetheless, has played a significant role in working towards the Initiative's goals. She has taken the lead in writing and submitting grants. Once funded, the Laguna Pueblo site manager generally directs the implementation of the grants. Furthermore, she involves the traditional officers and the youth with the planning and implementation process. The Laguna site manager also began the process of holding community meetings to define and articulate the Pueblo's concept of justice.

Strategic Justice Community Planning meetings are currently being held throughout the Pueblo to define the meaning of justice. Community input and involvement is a major aspect of this activity. Moreover, the Laguna Pueblo Nation sees its culture, and respect for the culture, as important long-term structural considerations to be incorporated into the ICJI. The Pueblo's strong emphasis on cultural preservation and maintenance, inspires the belief that the village officers have a role in crime prevention, intervention, sanctions, and post-incarceration activities. Youth involvement is also a major emphasis of the Laguna Pueblo site manager. Thus far, a Youth Corps has been implemented, a Laguna Youth Council is being established and there are plans to develop a Boys and Girls Club at one of the Pueblo villages. A major aspect of Laguna's Initiative is to concentrate on prevention programs directed at the youth and to develop programs that can prevent violence from occurring in the first place.

The NAPOL assigned to work with the Pueblo of Laguna Nation has prior experience working with the Pueblo, demonstrates sensitivity to the community's concerns, and works

cooperatively to assist in the Pueblo's efforts to integrate the village officers' roles in diversion programs and post-release activities. At the request of the Pueblo, the NAPOL attempts to notify Pueblo officials when offenders are released from federal prison and requires that these individuals report to their village officers. The Pueblo has requested DOJ assistance in obtaining state notification when individuals are released from state prison.

While coordination efforts between the Pueblo's law enforcement department and the DOJ law enforcement entities were established prior to the Initiative, the ICJI has enhanced that process. Reportedly, regular communication and interaction occurs among the PLN Law Enforcement Department, BIA CI's Office and the DOJ (including the FBI and the USAO). Unfortunately, the FBI agent assigned to Laguna Pueblo for the past five years recently was relocated. During his tenure, he developed a strong working relationship with the BIA CI and the Laguna police department. He participated in joint training programs for law enforcement at the Pueblo and worked closely with many Pueblo intervention programs such as Social Services, Child Protection Team, and Community Services and Housing programs. The agent spent at least one or two days a week in Laguna. According to the FBI agent, his longevity provided consistency and in-depth knowledge of the people which proved invaluable in his investigative work.

Weed and Seed Steering Committee. The ICJI has been instrumental in developing a working partnership between the DOJ and the Pueblo, as evidenced by the cooperative effort on grant-related activities which has been orchestrated by the Weed and Seed Steering Committee, which serves a number of important functions. First, it promotes coordination and

communications among a multitude of agencies and disciplines through a shared set of common goals, and begins bridging the gap between law enforcement and prevention/intervention programs. Secondly, it generates much needed funds and personnel for the LPN justice system and promotes more interest about justice-related issues. The BIA's involvement with the ICJI in terms of the Weed and Seed Steering Committee has been minimal—primarily the CI coordinates with the Pueblo's police department and focuses on investigative work.

Grants. Although most DOJ grants were submitted prior to January 1997, hiring and implementing the grants at PLN did not occur until late fall. A major concern for the Pueblo is the lengthy delay in receiving award monies from the DOJ sponsored grants. According to the Laguna site manager, there is about a 10- to 12-month delay. Of the six grant-award notices received beginning in March 1996, as of January 1997, the Pueblo had received funds for only one (COPS). Furthermore, award notices arrived in the latter part of 1996 for the AIN prosecutor, a victim-witness advocate, an investigator and a court-appointed special advocate; however, funds to hire personnel and implement programs did not arrive until the fall of 1997. *Because of budgetary constraints, the Pueblo is unable to proceed with program implementation until it receives the funds for the particular grant. Therefore, hiring personnel implementing programs could not begin until fall of 1997.*

In October 1997, PLN began to implement programs for the Prosecutor, Court Appointed Special Advocate (children's advocate). It filled three of the four COPS officers' position and the DOJ/ICJI coordinator. Additionally, the Ounce of Prevention grant was started. The contract officer for this grant subsequently helped provide information to the Pueblo about various

training programs. The three COPS personnel hired as of November are located within the Laguna Pueblo police department. In addition to the COPS grant, the police department was seeking Law Enforcement Block grants to purchase equipment and provide training for its personnel.

Administration of Grants. With the exception of the DOJ/ICJI coordinator position, the Pueblo of Laguna Nation directly administers all grants and is responsible for hiring, supervising and compensating individuals hired with grant funds. This simplifies implementation and clarifies administrative concerns about which agency or department will supervise the employees or which employment policies the personnel will follow. An exception to this rule is the DOJ/ICJI Coordinator, who works closely with both Initiative site managers (DOJ and the PLN). The position, funded by the DOJ, is located directly on-site within the Pueblo of Laguna.

Visibility. As with the NCN site, DOJ personnel directly involved with the Initiative were more aware of the special relationship that AINs have with the federal government and their role within the process. The Initiative also helps highlight issues regarding criminal justice at the PLN and serves as an impetus for community meetings to examine justice issues. These meetings, conducted by a skilled group facilitator, are attended by government officials, service providers and community members (both adults and youth) and politicians.

Networking. Cooperative working relationships are being enhanced between the youths and adults at LPN. A Youth Corps program has brought the youths in contact with village officers and Pueblo officials on a regular basis. Furthermore, the Weed and Seed meetings and the Strategic Justice Community Planning meetings engage the community in discussions about

justice and injustice. Moreover, important connections are being made between the New Mexico State Police and the PLN prevention and intervention programs. Notably, a U.S. Congress staff person has participated in Weed and Seed meetings.

Analysis of ICJI Laguna Projects. Developing the MOA had created a cooperative atmosphere between the DOJ and the PLN, serving as a written reminder of the Initiative's purpose. The Pueblo of Laguna Nation has begun implementing various DOJ grants. The grant process encourages a closer working relationship between the AINs and the DOJ agencies. Furthermore, it provides additional funding sources for the Pueblo. Nevertheless, it is intensely time-consuming and inefficient as presently structured. The excessive delays in funding hampers program implementation. Moreover, each grant agency's requirements add to the complexity of the grant-management process. The DOJ should consider ways to consolidate grants for AINs into one office, streamlining a complex and time-consuming process.

According to Laguna Pueblo officials, the DOJ grant process has other flaws that should be corrected. Accordingly, the DOJ and other federal programs that provide services to AIN governments must recognize that there are basic differences among AINs and state governments. For example, some AIN governments continue to utilize traditional processes with their secular government. Many DOJ grants require them to establish advisory committees. At PLN, this requirement is redundant because an integral part of the governmental process includes community involvement through regularly scheduled village meetings. The DOJ needs to be aware of these differences and provide greater flexibility for AINs to implement their grants in a more culturally appropriate fashion.

Furthermore, limitations placed on how grant monies can be spent create limitations on program enhancement. AIN governments must have discretion in determining grant monies usage because they are in the best position to know their needs. The Tribal Priority Allocation (TPA) process is a working model of flexible spending now used by the BIA. The TPA allows AIN governments the flexibility to determine how funds will be allocated based on their identified needs. As one Laguna official noted, "Tribal governments know their needs and should have more autonomy in how to appropriate DOJ grant monies" (Interview October 1997). The official also suggested that the various DOJ grants be consolidated into one ICJI grant. This would streamline the grant process for AIN governments and give the site manager more time to spend on program activities rather than administrative tasks.

Another AIN official advises other AIN governments interested in developing ICJI programs first to establish a formal advisory committee. Community input and support at the initial planning stage of the Initiative is essential for a comprehensive program firmly grounded in community support. Solutions to community problems can be determined at the community level with input from religious leaders, community members, village officers, youths and elders. Lastly, it is important to recognize that DOJ assistance is limited by time and resources; therefore, the challenge for AIN governments is to maintain the Initiative beyond the various federally funded programs.

Coordination efforts among the diverse programs in the DOJ, BIA and PLN are crucial to the Initiative's success. The ICJI has been instrumental in attracting grants to the Pueblo. To insure the success of these programs, the DOJ site manager's coordination responsibilities need

to be more clearly defined. The DOJ site manager did not have a written job description which may have contributed to the misunderstanding with the PLN site managers. The DOJ site manager did not view grant writing as a role. As a result, the Laguna site manager had to assume a major portion of the grant writing process. Furthermore, the DOJ site manager's time was consumed by prosecuting cases, leaving her only minimal time for participating in ICJI activities. The resolution to these mutual concerns was the creation of a DOJ coordinator position.

Perception of Justice and the Justice System at the ICJI Site: Pueblo of Laguna

Nation. The perceptions of justice in the PLN are contextualized within the framework of their existing political structure. Presently, the PLN has a stable government that attempts to incorporate traditional governing bodies within the current system. Furthermore, the Laguna Nation has complete responsibility for the courts (including recently the Prosecutor's Office) and law enforcement activities. Additionally, the Laguna justice system appears to have a good working relationship with surrounding jurisdictions.

Overall Justice System. Approximately 90 percent of people interviewed attributed the recent increase in violence to the loss of tradition and culture. There is a general concern about this loss. Many interviewees stressed that the Keresan language and culture must be further integrated in all aspects of the PLN government, including the justice system. These concerns were resoundingly echoed by the Pueblo leadership, adult community members and school-aged youths. According to a number of youths interviewed, disrespect for the culture is widespread. Reportedly, some school-aged children who are fluent in their language and attempt to speak the

language with their peers are teased for doing so (Interview 1997). Many of the youths also felt that the adults do not respect them and there is inconsistency regarding how the different villages react to their youths. Some villages are perceived as more progressive in providing activities and services for youths whereas others are perceived as less progressive and more punitive.

An adult respondent stated that not only have traditional methods for prevention or punishment of crime been eroded over time by the secular Laguna government, but also that the authority of the Mayordomos has been usurped by the court system. Consequently, the Mayordomos' ability to prevent, police and punish small offenses has been transferred to the AIN Council by way of the police and court system (Interview July 1997). Several village officers suggested that greater emphasis be placed on the role of the village officers within the government structure and that they be provided a more central role in the justice system.

Cultural preservation is viewed as a significant aspect of crime prevention in Pueblo of Laguna Nation. Many respondents felt assertive steps must be taken to strengthen and support the sense of family within the villages: the immediate family, the extended family, and the village family. Furthermore, they noted that preventive programs should be developed for children.

Another major concern was the ineffective Laguna courts and police. This concern was expressed by both adults and youths, and many (especially the victims of violent crimes) also commented about state and federal court ineffectiveness.

Most adult and juvenile respondents were worried about how the justice system processed juveniles. The Pueblo's current legal system is considered ineffective and inconsistent for

juvenile offenders. Almost 40 percent of the youths interviewed related incidences where their peers had broken laws without being punished. The justice system's perceived ineffectiveness tends to undermine the sense of justice and fosters a general distrust of and disrespect for the law among the youths. At least 75 percent of the Laguna youths interviewed held very negative views of the Laguna Police Department, stating that police were not well trained and were too ineffective or unavailable.

Despite these views about the ineffectiveness of the current system, the Probation Officer's caseload was exceedingly high (approximately 250 cases). A father indicated that he and his son had to reschedule their appointment several times because the Probation Officer had missed the meetings. While there was only one Probation Officer at the time of the interviews assigned to work with both adults and juveniles, the Pueblo has since hired additional probation officers on a contract basis.

Respondents also stressed the necessity of the AIN Council enacting, updating or developing various laws and codes. The laws and codes in need of immediate attention include the *Juvenile Code*, the *1989 Law and Order Code*, the *Domestic Violence Code*, and the *Alcohol Policy*. The Pueblo is now revising its *1989 Law and Order Code*, but the AIN Council has yet to adopt the *Juvenile Code* that was presented in 1994. Additionally, although Laguna Pueblo passed a referendum several years ago to legalize alcohol, it continues to prohibit its use. Several respondents questioned the benefits of prohibition in an area where alcohol is readily available and claimed that the prohibition appears short sighted. These respondents further noted that

people needed to be educated about and socialized to alcohol's proper use, rather than be treated as children by prohibiting its use.

Currently, alcohol appears to impact AINs more intensively because of prohibition. Respondents felt the continued prohibition of alcohol may be more harmful than helpful in the long run. Furthermore, they indicated that few positive role models exist for moderate alcohol use and that a lack of education about proper use contributes to widespread abusive behavior. Both adult and youth respondents stressed the critical role that the AIN Council and officials have in promoting positive role models for the youths.

Inadequate Funding. Budgetary constraints greatly affect all levels of the Laguna justice system. Prevention and intervention programs, along with the services of the courts and law enforcement are limited in both resources and staffing. The court, police department and detention facilities are inadequate and office space is at a premium. Additionally, the lack of an adequate juvenile justice system is becoming more apparent. As stated previously, juveniles are detained in the same facility as the adults and, although they are separated by sight and sound, the current arrangements are hazardous and unsafe for the juveniles. According to one official, at least sixteen juvenile girls were incarcerated in the detention facility over a six-month period. During this time, a jailer was accused of rape and is presently under investigation (Interview April 1997). The police department has difficulty attracting and maintaining qualified personnel because of budgetary constraints, and personnel training and adequate equipment for officers are severely limited.

At least 75 percent of the youths and 60 percent of the adults who participated in this evaluation viewed the police as ill trained in such areas as: domestic violence, juvenile delinquency, public relations, preserving evidence, gathering information, and report writing. At the time of the interviews, the Family Service Center was having difficulty getting the Laguna police to refer cases to its office. Additionally, as mentioned earlier, the youth view police as too ineffective, not physically fit and ill prepared to handle criminal activities. According to one respondent, local residents had to intervene in a domestic violence incident because the police did nothing to stop the attack. Additional resources are also needed for child case workers and to train existing personnel on investigations of child assault cases.

The Chief of Police recognizes the importance of maintaining a well-trained staff. Recently hired law enforcement officers attend a six-week training course at the BIA police academy in Artesia, New Mexico. They have also participated in various training workshops sponsored by the FBI or other service agencies, but, the police department is short staffed when officers participate in training. The Police Chief also commented about the need to change the image of the patrol officers from an authoritarian role to a community-based concept of policing.

Additionally, the courts are impacted by limited funding and staff turnover. The Pueblo has not had a permanent Chief Judge for over a year. The acting Chief judge is a well-qualified, law-trained member of the Pueblo and a council member. As mentioned earlier, until recently (July 1997) the Pueblo had one probation officer assigned to work with both juveniles and adults. The average caseload was reportedly between 180 to 200 cases. The Pueblo subsequently hired two probation officers on a contract basis and one is assigned to work with juveniles.

Finally, budget constraints hamper the BIA Criminal Investigator's office's operations. The CI does not have secretarial or clerical assistance and therefore office duties routinely detract from investigative field work. As mentioned earlier, the CI not only investigates all federal crimes in Laguna Pueblo, but also those occurring in the nearby community of Canonicito.

Youth Concerns. Focus groups on perceptions of justice were conducted with over 140 youths who participated in the Laguna Youth Summer Corps. The majority (80 percent) of them felt that there was a crime problem at the Pueblo. Their greatest concern was underage drinking, drug use, DWIs, killings, graffiti and burglary. They also felt that the police were ill trained and the courts were ineffective or took too long to process murder cases. When asked their opinions on improving the justice system, they emphasized such preventive activities as employment for youths, public transportation, recreational programs, family communications, village officer patrol, teaching traditions and creating a forum for youths to express their opinions. The majority of youths were unfamiliar with the roles of the FBI and the USAO and wanted more information about the operations of these federal agencies in Laguna Pueblo.

Families Impacted by Violence. At least half of the adults interviewed felt that the federal government gave low priority to serious crimes committed on the reservation. Consequently, families affected by violence feel they must aggressively pursue the federal government to assure that murders will be investigated. If they do not, these cases may go unpunished or take years to get through the system. Families impacted by violent crimes need to be informed about federal justice procedures. Specific policies for working with the families crimes should be established and step-by-step information about the federal legal process should

be given. Regular updates on cases should be provided to these families in a culturally sensitive and understandable manner.

The mother of one murder victim, for example, is convinced that had she not persistently called the FBI and the USAO, the investigation would have taken longer to resolve.

Furthermore, she was frustrated with federal agencies assuming the family was aware of and familiar with federal court procedures. She was notified of the sentencing hearing the night before it was scheduled and was surprised to hear that there were limits on the number of people allowed to speak about the victim. Furthermore, an individual who was an accessory after the fact (a juvenile at the time of the murder) was relocated to a Job Corps program near the victim's mother's reservation in another state. Relatives were alarmed when they saw this individual at a Pow Wow, and they contacted the family in Laguna.

The federal government's insensitivity to such cultural differences causes additional hardship on families in grieving and experiencing stress as a result of violence. Information about grief support services should be readily available for families in need. Currently, PLN lacks a support group for victims of violence, so people travel to Albuquerque for these services. Moreover, families of offenders should be encouraged to take an active role in the pretrial, diversion and post-release programs. Greater efforts must be made to coordinate services and communicate information to families affected by violence.

VI. Overall Findings and Analysis

A. Strengths and Accomplishments of the ICJI.

- **Acknowledges the government-to-government relationship.** One of the Initiative's most important aspects is that it begins to recognize the government-to-government relationship that exists between the federal government (DOJ) and the AINs. Additionally, there is an awareness among certain departments within the DOJ of the need to enhance coordination efforts and communication with AINs.
- **Fosters greater awareness of DOJ's responsibilities in Indian Country.** The Initiative also fosters greater awareness within the participating AINs about DOJ's role as it relates to justice in Indian Country.
- **Promotes a multiagency, multidisciplinary approach.** Organizationally, the Weed and Seed Steering Committee serves as the ICJI's coordination mechanism in both of the demonstration sites. This committee represents a multidisciplinary approach with people from various organizations and programs representing the federal, state, local and AIN governments. Economic development is a key component of the proposed Weed and Seed Program in NCN. Recently, the First Interstate Bank in Billings became an active committee member and pledged funding for one of the Initiatives.
- **Increases understanding of unique needs of AINs.** Through the ICJI, various federal agencies have come to recognize the importance of maintaining consistency in personnel assigned to work with AINs. Both the FBI agent and the DOJ site manager for PLN noted that first-hand knowledge of the community—developed

through continuous visits and interaction with individuals in the community—provided highly valuable insight into solving and resolving federal cases. Consistency in personnel is essential for building trust within AINs. Previously most FBI agents were moved every three years; currently federal prosecutors are assigned cases based on when rather than where they occur.

- **Encourages coordination and communication.** Coordination and communication efforts are major accomplishments of the Initiative. As it progresses, hopefully the ICJI goals will become established DOJ policy. Education, multidisciplinary coordination and information sharing about justice activities are emerging.
- **Advocates innovative approaches to justice.** An important aspect of the ICJI is advocating innovative approaches to justice, primarily traditional mechanisms of social control. Both AIN governments have strong traditional components that are intact. Laguna has Village Officers and Mayordomos and Northern Cheyenne has the Council of Forty-Four Chiefs and their Warrior Societies. Furthermore, the evaluation identifies other innovative approaches to justice.
- **Provides AINs eligibility to previously inaccessible DOJ funds needed to strengthen the justice system at both ICJI sites.**

B. Weaknesses and Concerns at the ICJI Sites.

Federal level

- **Federal funding for the AIN's justice system is severely limited.** The lack of adequate funding affects all levels of the justice system on AIN reservations from BIA law enforcement to the AIN court system.
- **Federal justice system is perceived as biased and unfair.** Based on our sample of over 200 community members, approximately 75 percent (nongovernment employees) from both sites expressed concern about the biased federal justice system. For example, federal cases for both sites are tried off the reservation. Consequently, people involved in the federal justice system (both the victims and their families and the accused and their families) incur additional hardship traveling to and from their communities for the court proceedings. Although a stipend is provided by the federal courts for these types of expenses, distance and the time commitment away from home continues to create problems for the families involved.

Because the cases are not tried within the reservation communities where the crimes occurred, the juries selected to hear the cases are most likely comprised of nonnatives and noncommunity members. This practice tends to foster the perception, among family members and the general AIN, of a biased jury panel. The length of time it takes for the federal government to prosecute cases and the lack of updated information provided to the victim's family on the status of the case also cause

concern. Furthermore, American Indians must contend with the additional barriers of cultural and language differences.

- **Federal Justice System is slow to respond to community safety concerns.**

Currently, the general consensus among the majority of respondents interviewed (approximately 90% of NCN and 75% of PLN adults) is that federal law enforcement personnel are not aggressive in processing major crimes that occur on the reservations. In Lame Deer, illicit drugs are reportedly a major problem; however, federal law enforcement officials seldom prosecute individuals for illegal drug use. Furthermore, the federal government is slow to provide information to the community. Four of the traditional leaders interviewed in Northern Cheyenne expressed concern about the federal government's lack of feedback to community members concerning two major fires that destroyed their Indian Health Service facilities and the AIN administrative offices. Although the fires occurred several years ago, the community members interviewed have not received an update on the status of the investigation.

- **Federal system and the *Major Crimes Act* usurps AIN jurisdictional capacities.**

The complex involvement of the federal justice system within AIN courts tends to undermine the importance of AIN courts.

- **Paternalistic attitudes toward AINs.** Paternalistic attitudes among some federal employees tend to foster feelings of mistrust and resentment among respondents. The

recent plan of the DOJ to assume law enforcement responsibilities from the BIA was perceived by some respondents as indicative of paternalism.

- **Inflexible DOJ grant application process except where waivers have been obtained make it difficult for AINs to fully participate in the grant process.**

Many AINs continue to utilize traditional processes in combination with their secular governments. Some DOJ grants fail to recognize these difference and certain requirements make the grant process cumbersome for AINs. Furthermore, the Initiative sites received over half a dozen DOJ grants with different deadlines and requirements thus making it administratively complex and time consuming.

Additionally, the lengthy time between notification of the award and actually receiving the funds creates a temporary financial burden for the Initiative sites.

Moreover, restrictions on how the funds can be utilized creates limitations on program enhancement. (Refer to section on Analysis of ICJI Laguna Projects, page 92).

AIN Government, BIA and Local Level

- **Northern Cheyenne court orders are not being recognized by some state and county courts.** The Northern Cheyenne Court orders are reportedly not being recognized by local courts bordering the Northern Cheyenne Community. This contrasts with the Pueblo of Laguna Nation because New Mexico courts accord full faith and legitimacy to judgments and orders from the Laguna government.
- **Biased Justice System.** The Northern Cheyenne respondents view the NCN Prosecutor's Office and the BIA Law Enforcement and Criminal Investigator Office as biased and arbitrary in processing certain individuals in the community.
- **Lack of sufficient funding for AIN and BIA Justice System.** Both Laguna and Northern Cheyenne respondents and federal government respondents expressed concern about the lack of adequate funding for the justice system, particularly for law enforcement and the AIN court systems. The BIA Police Department and Criminal Investigators are understaffed and overworked and, furthermore, BIA law enforcement officers urgently need *training*. Additionally, the Northern Cheyenne Nation's and the Pueblo of Laguna Nation's courts are short staffed and lack adequate facilities.
- **Lack of a comprehensive Juvenile Justice System.** Both the PLN and the NCN see a need for a comprehensive juvenile justice system. A major concern among respondents is that the present system is ineffective and inconsistent. Many juveniles

are not being punished for violating laws and status offenses are ignored. This view was expressed by both adults and juveniles.

- **Lack of Victims/Survivors of Violent Crime Support Groups.** Both the PLN and NCN citizens stressed a need for a victims/survivors support group.
- **High turnover of Justice Personnel.** The PLN has not had a permanent Chief Judge for one year and their probation officer of approximately three years recently resigned. NCN has had at least 10 judges in the past six years and has also experienced a high turnover rate for the Juvenile Prosecutor position. During the evaluation process last month, the Chief of Police (BIA-Northern Cheyenne) resigned.
- **PLN and NCN methods of traditional social control are not clearly defined in the existing justice system.**

VII. Summary and Conclusion of Both Initiative Sites

The bottom line is to ask the hard questions—are Indian Tribes going to be allowed/responsible for ensuring justice on their homelands? If so, is our trustee, the federal government, going to support this effort? Clarify this first, then we can go from there. (Northern Cheyenne Nation 1997)

The ICJI has made important contributions at both sites in terms of coordination and funding. It acknowledges the government-to-government relationship between federal and AIN entities. It fosters greater awareness of the DOJ's responsibilities in Indian Country, promotes a multiagency, multidisciplinary approach to justice issues, and increases understanding of the justice needs of AINs. It encourages coordination and communications and innovative approaches to justice. It has enhanced coordination among different programs within the participating AINs, creating additional justice-related programs and positions. Collaborative grant writing activities have enhanced programmatic coordination and communications by bringing together federal and AIN personnel for planning, writing and implementing federal grants. Similarly, the Weed and Seed Steering Committees at both sites have promoted extensive cooperative interaction between DOJ and AIN personnel. These committees appear effective and knowledgeable about community needs and concerns.

Grant funding attached to the ICJI has provided much needed resources to both sites. These grants offer a short-range solution that can be leveraged into long-range structural changes. Each site selected different approaches to address the problem of violent crimes. NCN opted to focus on economic development as one of its Weed and Seed projects, creating the

potential for long-lasting improvements such as jobs and business opportunities for community members. NCN also obtained a COPS grant to hire three additional police officers. Conversely, PLN decided to concentrate its efforts on youth and prevention and intervention programs.

Despite these accomplishments, areas of concern have surfaced at each site. First, problems of coordination exist. Because it is a broad-based program, the Initiative's overall direction tends to get lost within the day-to-day operations of specific activities. Neither DOJ site manager has a written job description. Although this arrangement can encourage innovative approaches, it can also create *misunderstandings about responsibilities*.

Second, external grants awarded each site have provided significant outcomes if not adequate resources to offset the chronic funding limitations, rooted in the poverty of the AINs and the parsimonious manner in which the federal government has carried out its trust responsibilities, that severely restrict the AINs justice system. As a result, understaffed courts, shortages of police officers, heavy social service case loads and crowded jails continue to hamper justice matters as in the past.

Third, a serious problem of community distrust of federal intentions looms ominously over both ICJI sites. For historical reasons, this cloud of suspicion is especially heavy at NCN. As a respondent put it, "Congress does not take its trust responsibility to Indian Tribes very seriously. But where do Indian Tribes go for a remedy-for enforcement of the trustee's obligation to protect tribal self-government? As 'domestic dependent nations,' Indian Tribes, by virtue of their legal classification, have little residual power to force their legal trustee to fulfill

[its] fiduciary responsibilities.” Fourth, a paternalistic attitude among some federal government officials toward AINs undermines AIN sovereignty.

Next, at both sites, individuals expressed concerns about the inadequacies of the justice systems. Among other things, they criticized the ineffectiveness and inconsistencies of the courts, the undermanned police departments and the lack of adequate detention facilities. Operating without adequate resources, both sites hold juveniles in adult facilities—hereby creating an unsafe environment for them. Individuals at both sites criticized the juvenile justice systems serving their people. They believed that ineffective and inconsistent judicial system for juveniles did not deter crime.

Solutions to the AIN crime problems at the two sites must emanate from a cooperative approach. First and foremost, remedies must be found in the communities where the crimes occur, with input from religious leaders, traditionalists, village officers, youth and elders in the dialogue process. Second, because it is unlikely that federal agencies will provide the AINs adequate funding to meet their justice needs, the challenge for them is to extend efforts begun by the ICJI beyond the various federally funded programs.

The ICJI is an initial step in developing a government-to-government working relationship within government entities to improve the safety and quality of life for native citizens. Because it is a broad-based program, the Initiative’s overall direction tends to get lost within the day-to-day operations of specific activities. Additionally, because the people involved with the Initiative have parallel responsibilities, this further diffuses and absorbs the Initiative’s goals—which has both advantages and disadvantages. It provides flexibility, which can be

conducive to creativity, but also decreases accountability. Currently, the DOJ site managers do not have written job descriptions. Furthermore, unlike the PLN, the Northern Cheyenne government and US Attorney's Office in Montana did not develop a Memorandum of Agreement detailing the Initiative's expected activities. A written document, such as an MOA, is a useful guide for governmental entities and for the personnel designated to carry out the activity.

The Initiative's most laborious aspect is the amount of time devoted to grant activities—planning, writing and implementing grants. A number of the grants involved staff co-supervision by the federal government and the AINs, and needed additional time to coordinate. Although time consuming, the process develops and encourages communication and coordination among federal- and AIN-government personnel. An MOA was used between the BIA and the Northern Cheyenne government for the COPS grant.

Furthermore, the Weed and Seed Steering Committee has enhanced coordination and cooperative efforts among prevention, intervention, and law enforcement personnel. The committees for both sites appear effective and knowledgeable about community concerns; however, the Committee should be as inclusive and representative of the citizenry as possible. Although coordination efforts have improved among prevention-and intervention-related programs (referred to as the seed component), additional progress made will enhance coordination between the justice system's weed components (law enforcement), including the AIN courts and the DOJ and BIA law enforcement.

Another overriding concern is funding: without adequate funds the justice system cannot function at its optimal level. The grants brought in by ICJI offer a short-range solution that can

be leveraged into long-range structural changes. NCN is focusing on economic development as one of its Weed and Seed projects which has the potential to provide long-lasting improvements, but currently is based on temporary funding. The PLN has concentrated its efforts on youths and prevention and intervention programs.

The ICJI is an important effort to improve justice in Indian Country; however, much more needs to be done. The Initiative has enhanced coordination among a number of programs within the participating AINs and has created additional programs and positions within the justice system. Furthermore, it has given the DOJ more visibility within the two Nations. Based on our findings in the NCN and the PLN, the team recommend:

@BULLET = recognizing the sovereign status of AIN governments and work with them on a government-to-government basis:

- providing adequate funding for all aspects of the justice system (AIN courts, law enforcement, probation officers) and reinforcing and supporting the AIN justice system in its responsibilities of assuring justice in Indian Country;
- hiring more American Indians within the DOJ, (particularly within the USAO) and hiring a full-time ICJI site manager within the DOJ utilizing Indian Hiring Preference and encouraging the site manager to live within the Nations served;
- developing written job descriptions for the DOJ site managers and a Memorandum of Agreement between each AIN and the DOJ;
- encouraging citizen input into the Initiative; and

- integrating AIN dispute-resolution methods into the existing justice system.

An outcome evaluation of the ICJI should be considered after the programs have operated for at least one year. Moreover, federal employees must be educated about the sovereign status of AINs and the cultural differences among the AINs. Most importantly, structural changes need to occur to improve justice within AINs (such as those described in the following paragraphs). One of the major impediments is the complex jurisdictional system of justice imposed on the AINs.

To improve this system of justice, the U.S. government must recognize the sovereign status of AINs within the justice system. A number of key AIN government officials expressed concern regarding the difficulty and delay in receiving information on cases that have gone to the federal level. The NCN, in particular, is frustrated with the general lack of respect federal officials demonstrated for the government status of the NCN and for its court system. Until the sovereignty of AINs are recognized and they regain greater control over their own justice systems, the practice of justice will continue to proceed in a fragmented and inefficient manner despite well-intentioned projects like the ICJI.

Based on our findings, preventive efforts within AINs need to focus on youths and the promotion of the native culture. Classes that focus on American Indian history, civics and languages are important components of a comprehensive program to prevent violence among youths/adults and to promote respect for the native culture and their governments. Both the NCN and PLN expressed a need and desire to strengthen and restore respect for their respective cultures and traditions among their citizenship. Moreover, they perceive an important need to

strengthen and support the immediate family, the extended family, the community family and their Nations.

There was also shared concern about the lack of an adequate juvenile justice system. Both sites expressed concern about the ineffective and inconsistent judicial system and the lack of adequate facilities to detain juveniles caught up in the justice system. Both sites are forced to detain juveniles in adult facilities, thereby creating an unsafe environment for them.

To insure that the lines of communication remain open among the key agencies and the AIN governments, coordination activities must be emphasized further. The primary role of the DOJ site managers should be focusing on coordination activities and acting as an advocate for the AIN government with the DOJ. It is unfair and unreasonable to expect the DOJ site managers to prosecute cases and coordinate prevention and intervention activities. In a demonstration project such as this, the DOJ site managers should devote 100 percent of their time to working with the AINs to build trust between them and the DOJ.

Once this trust is established, the DOJ site managers can focus on areas of need identified by the AINs (such as juvenile justice and integrating traditional mechanisms of justice into various programs). Additionally, consistent and committed personnel at the federal level enhances communication with the AINs. Federal personnel who have consistent, long-term working relationships with a particular AIN government are more knowledgeable and familiar with the community and, thus, are better able to serve that community.

As stated earlier, solutions to community problems can be found in the villages and at the community level with input from religious leaders, community members, village officers, youths

and elders. Lastly, it is important to recognize that assistance from the DOJ is limited by time and resources. Therefore, the challenge for AIN governments is to maintain the efforts begun by the Initiative beyond the various federally funded programs.

VIII. Recommendations

A. Federal level

- **Support the sovereign status of AIN governments and their right to establish and administer their own systems of justice and coordinate efforts with them on a government-to-government basis.** The federal government should share information on current cases with the AIN courts to ensure that crimes do not go unpunished.
- **Implement, on a consistent basis, the government-to-government relationship between the federal government and the AIN governments.** Cultural barriers must be overcome and years of stereotypes put aside. Although the U.S. President and the U.S. Attorney General have issued policy statements directing federal employees to work with AINs on a government-to-government basis, these policies are not consistently practiced on a day-to-day basis at the two study sites.
- **Establish a process for returning criminal jurisdiction to AIN courts to prosecute major crimes.** Trying major crime cases within the community where the crime occurred would lessen perceptions about the biased and unfair nature of the federal justice system. Furthermore, it may also strengthen the AIN justice system.
- **Increase federal funding for all aspects of the AIN's justice system.** AIN courts and law enforcement facilities are in disrepair and inadequate. Juvenile detention facilities are lacking. The entire justice system is understaffed and lacks adequate training, office space, equipment and supplies.

- **Support AIN efforts to integrate accurate information about the history and current status of AINs within schools on and off the reservation.** Courses on American History, Civics, U.S. Government Class and Social Studies should have sections that discuss AINs and their role within the American society.
- **Support the development of education programs and activities that promote knowledge and institution building on reservations especially for legal systems which are complex interrelated activities involving both an understanding of justice and law on reservations.** AINs have experienced considerable political, economic and cultural turmoil over the past hundred years, much of which has been imposed by external forces. Programs need to be developed to bring law concepts and models to community college curriculums, AIN officials, U.S. government officials and to community people in general. Some justice conferences and professional associations now exist and some research and community building is undertaken but more needs to be done. AIN-controlled community colleges should be funded and encouraged to develop training and academic programs for paralegal, law enforcement officers, AIN court personnel, AIN leaders and prelaw students to develop skills to create stronger AIN justice systems built upon traditional and contemporary concepts of justice.
- **Hold federal trials on reservations where the major crimes occurred to lessen perceptions about the bias and unfair nature of the federal justice system.**

- **Work with AINs to strengthen their courts and to clarify and reform the fragmented jurisdiction in Indian Country.**
- **Support the integration of traditional mechanisms of justice within the current system.** Models such as the Navajo Nation Peacemaker court provide excellent examples of drawing from cultural concepts of justice to settle disputes and concentrate on restoring harmony to the community.
- **Employ more American Indians within all aspects of the DOJ including placing Indian U.S. Attorneys in areas with sizeable Indian populations.** These individuals should be familiar with the culture and lifestyle of the areas they are assigned to work (when possible utilize the Indian Preference Hiring).
- **Provide internships and scholarships for AIN students and/or faculty-in-residence programs for AIN scholars in the DOJ.**

@BULLET = **Establish a comprehensive centralized location for Indian Country crime-related statistics.** The lack of a management information system for AIN crime statistics hinders a comprehensive understanding of crime trends in Indian Country and limits the development of effective strategies for crime prevention, intervention, incarceration and post-release.

B. ICJI

- **Formalize and clearly define the role of the DOJ/AIN Site Managers.** The site managers' responsibilities for both the DOJ and AIN governments should be clearly defined in their position descriptions and be included in their yearly job evaluations. This would further legitimate the function of the DOJ /AIN Government ICJI site managers as well as the Initiative itself.
- **Strengthen DOJ communication, coordination and public-relations efforts within the AINs.**
- **Assist the NCN court in its effort to obtain recognition of its decisions by the State of Montana.**
- **Establish programs to bring legal concepts and models to community college curriculums, AIN officials, U.S. government officials and community people.**
- **Establish dialogue sessions in the ICJI sites to work through unresolved and problematic issues.**
- **Increase the presence of the NAPOL (Native American Probation Officer Liaison) at Laguna Pueblo.** Respondents within the family services, social services and the AIN courts were unaware of the NAPOL and its role with ICJI.
- **Provide cultural and sensitivity training for all DOJ Personnel in Indian Country.**

- **Improve the timing of the DOJ grant-award process.** The PLN experienced a lengthy delay between receipt of the award announcement and the actual receipt of the grant monies, causing delays in hiring personnel and making program enhancements.
- **Consolidate the DOJ grants for AINs.** Currently the Initiative sites are working with at least six or more DOJ funding agencies, each with different requirements and funding cycles. The management of these grants takes considerable time away from program implementation and program activities. The following grants are currently being implemented by the Pueblo of Laguna Nation:
 - (1) AIN Prosecutor funded by the OJP, *Children's Justice Act* Discretionary Programs for Native Americans;
 - (2) Victim Witness Advocate, funded by OVC;
 - (3) Court Appointed Special Advocate (CASA); funded by OVC and OJJDP
 - (4) Community Oriented Policing Services (COPS) funded by COPS;
 - (5) Detective/Investigator funded by STOP Violence Against Women (VAWGO);
and
 - (6) Weed and Seed grant funded by EOWS.
- **Disseminate this report and accompanying video to AINs.**

C. AIN Government Level

- **Establish and maintain a comprehensive and consistent Juvenile Justice System.**

Both the PLN and the NCN expressed a need for a comprehensive juvenile justice system. Both communities indicated that their present system is too ineffective with juveniles and police rarely enforce status offenses such as curfew violation. Enact the Juvenile Justice Code for Pueblo of Laguna Nation.

- **Enhance prevention and intervention programs.** At both sites, there is a need to enhance prevention efforts, including recreational activities, juvenile employment, parenting classes, and anger management programs.

- **Establish victim/survivor of violence support groups at the ICJI sites.**

Respondents in PLN expressed a need for a victim support group within the Pueblo. The nearest support groups are located 60 miles away in Albuquerque. A similar situation exists at NCN.

- **Establish a public information system such as a regularly published newspaper, newsletters and/or a local radio station at the ICJI sites.** Both ICJI sites need a comprehensive means to provide information to the community. A regularly published newspaper, newsletter and/or radio program would assist in disseminating updated and accurate information. As evaluators, our primary role is to provide regular feedback to the participating governmental entities. The team found itself in the role of information providers for the respondents—many respondents were unaware of the Initiative, had minimal knowledge of the Initiative, or had not been

updated about the Initiative. A systematic and comprehensive communication process would assist the information flow in these Nations.

- **Continue efforts to integrate traditional mechanisms of justice within the current system of justice.**
- **Establish civics classes within the AINs that emphasize culture, language, AIN sovereignty and native citizenship and discuss jurisdictional issues as they relate to justice and crime in Indian Country.**
- **Implement a public relations initiative to establish community confidence in and support for the reservation law enforcement, courts and the prosecutor's office.**
- **Seek additional funding and innovative strategies for addressing justice issues in the context of their respective cultures and structural needs.**

Other Recommendations

It is important to build on the existing strengths of people, community and culture and to encourage incorporating traditional mechanisms of social control into the current justice system. The ICJI begins to acknowledge the importance of this critical area of justice in Indian Country. If people do not perceive the system as just, they will not trust it or utilize it to their benefit. Therefore, the AIN governments must explore innovative approaches such as the ICJI and incorporate traditional and contemporary forms of justice to improve the delivery of justice in Indian Country. Furthermore, the federal government must recognize the sovereign status of AINs and relate to them on a government-to-government basis. Most importantly, the solutions to criminal justice issues can be found within the AINs' citizenry and their cultures.

Concluding Comments

In closing, the information included in this study reflects the responses of both youth and adult community members, federal government personnel, Northern Cheyenne government personnel and officials, and the Pueblo of Laguna government personnel and officials. The study provides insight into the justice experience with the ICJI as a backdrop. The problems faced by AIN governments reflect both *external* and *internal* concerns. Externally, these concerns include racism, unemployment, lack of a working government-to-government relationship with the federal government, relations with state and local governments, funding shortages for law enforcement and the court system (including inadequate police protection, minimal resources for youth prevention and intervention programs, inadequately trained law enforcement personnel), lack of support for families affected by violence, as well as allegations of discriminatory practices and civil rights violation by federal officials. The *internal* concerns of AINs include a historical distrust of the imposed federal justice system (Riding In, 1998), inadequate resources for the justice system, cultural erosion, the apparent breakdown of the extended family structure, political factionalism and a general hesitancy to report crimes.

Despite these major barriers the Initiative is perceived as a positive initial step to improve the safety and quality of life for AIN citizens as it invests in the justice system and encourages coordination and communication among the two governmental entities (federal and American Indian) responsible for justice in Indian Country.

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Appendix A
Suggestions and Guidelines for AINs Interested in ICJI

Suggestions and Guidelines for AINs Interested in ICJI

For AINs interested in strengthening and enhancing their justice systems the following activities are presented as guidelines based on the lessons learned from the two Initiative sites. The first list of activities requires either no funding or minimal funding. However, it requires commitment time, effort, careful planning and coordination. The second list of activities require significant funding as well as commitment, planning and coordination. Basic information about the ICJI and the DOJ is also provided.

A. *Initial Activities Involving Minimal Funding and/or No Funding*

1. Appoint an individual to coordinate the justice initiative. Provide the coordinator with clear expectations and a written job description. Both sites selected individuals who were working in preventive programs with juveniles.
2. Develop a Community Definition of Justice.
 - a. Community Involvement. Solutions to community problems should be sought directly from community members. Additionally, community support and involvement is an essential component in developing a fair and equitable justice system. Plan community meetings to develop a community definition and vision of justice. If possible, use people who are skilled in facilitating group dialogue. Set goals to maintain interest and momentum.

- b. Involve Traditional Leaders. Seek out assistance from traditional leaders and integrate their advice within the overall plans.
 - c. Involve Youth and Elders. Seek out assistance from youth and elders as well as the general population.
 - 3. Coordination and Collaboration within the AIN
 - a. Form an advisory committee. Form an advisory committee. Involve people who represent various aspects of the justice system including prevention and intervention programs, law enforcement and the courts. Encourage representation from a cross section of the community (age, gender, education, traditionalism, culture, politics, etc.) to participate as advisory committee members.
 - b. Develop achievable objectives and establish long-range goals.
 - 4. Coordination and Collaboration Activities with other governmental entities including other AINs and federal, state and local governments.
 - a. Encourage coordination and collaboration among the various federal agencies and other AIN governments that are involved when major crimes occur on the reservation including the FBI, USAO, the BIA and local governments. Develop activities that encourage these departments to work together. For example, the ICJI was successful in establishing a collaborative working relationship based on the federal grant seeking activities.

- b. Work with the local U.S. Attorney's Office to assign a specific attorney to handle cases from your reservation.
 - c. Foster coordination between prevention and law enforcement.
 - d. Develop Memorandums of Understanding among various governmental agencies to clarify and delineate the coordination and collaboration activities and expectations of each agency.
5. Information Dissemination.
- a. AIN should disseminate fact sheets to their citizens describing the justice process when a violent crime occurs including information on the following:
 - 1. Role of the federal agencies including the BIA, FBI, USAO, AOUSC.
 - 2. How to report a serious crime.
 - 3. Procedures that occur once a serious crime is reported.
 - 4. Rights and expectations of the victim
 - 5. Rights of the offender
 - b. Provide accurate information on the status of high profile cases and other heinous crimes that impact the citizens.

B. *Initial Activities Involving Funding*

1. Create a position for a justice coordinator. Hire an individual to work specifically on coordinating justice programs. Specify the responsibilities for this position and place the individual directly in the office of the president, governor, and/or chairperson.
2. Hire an individual to assist the Initiative coordinator.
3. Hire a grant writer to aggressively seek funding for all aspects of the justice system from DOJ Office of Justice Programs as well as private corporations and foundations.
4. Invest in community programs that strengthen the native language, culture, family and AIN.
5. Develop a comprehensive program for youth development.
6. Implement a public relations initiative to establish community confidence in and support for the reservation law enforcement, courts and prosecutor's office.

C. List of DOJ grants and offices involved at the ICJI site(s):

U.S. Attorney's Office (USAO)

Office for Victims of Crime (OVC)

Office for Juvenile Justice and Delinquency Prevention (OJJDP)

Bureau of Justice Assistance (BJA)

National Institute of Justice (NIJ)

Violence Against Women Grants Office (VAWGO)

Executive Office for Weed and Seed (EOWS)*

Criminal Division (CD)

Drugs Courts Office (DCO)

Corrections Program Office (CPO)

Community Oriented Police Services (COPS).

OVC *Children's Justice Act* Grant for a Victim/Witness Advocate program

VAWGO Domestic Violence Arrest Policies Project

Court Appointed Special Advocates (CASA) program, a joint OJJDP and OVC

COPS grant to hire additional officers

Ounce of Prevention

* NCN and PLN are the first AINs to receive EOWS grants.

Other Information:

EOWS is the primary funding for the Initiative

NIJ funded the evaluation

Administrative Office of U.S. Courts (AOUSC) created two full-time positions for the Initiative sites.

D. *American Indian Governments and Federal Agencies Directly Involved in the ICJI.*

1. Pueblo of Laguna Nation
2. Northern Cheyenne Nation
3. Department of Justice, Criminal Division, Washington, D.C.
4. U.S. Attorneys Office, Albuquerque, New Mexico and Billings, Montana
5. Administrative Office of U.S. Courts, Washington, D.C., Albuquerque, New Mexico and Billings, Montana
6. BIA Criminal Investigators, located at Pueblo of Laguna and Northern Cheyenne Nation, Montana

E. *Who to contact for more information about the ICJI?*

If the community decides that they want to pursue the ICJI format contact the following offices at the Department of Justice:

National Institute of Justice Clearinghouse 1-800-851-3420

www.ojp.usdoj.gov/nij

National Criminal Justice Reference Service

www.ncjrs.org

F. *Who to contact for information on funding sources.*

Department of Justice

Office of Justice Programs

Appendix B
Indian Country Justice Initiative Documents

ICJI GOALS

1. Secure full and effective access to equal protection under the law for the people on the pilot reservations
2. to increase the overall potential for effective supervision, treatment, prevention, training, and other essential programs, and
3. to gain experience that we can transfer to other reservations.

ICJI OBJECTIVES

1. Strengthening Tribal Judicial systems
 - a. Assist tribe in revising criminal code and/or constitution
 - b. Expand and improve training of lay advocates
 - c. Attract law school interns and recent law school graduates
 - d. obtain funds to improve essential court functions
 - e. establish procedures for referral by USA to tribal court
 - f. Create a tribal position of victim/witness coordinator
 - g. Develop reciprocal supervision arrangements with federal and other probation departments
2. Accessing resources for prevention, rehabilitation, and diversion
 - a. Develop a series of programs aimed at high-risk children e.g. truancy prevention, conflict resolution, anger management, and parenting skills
 - b. Develop mentoring programs that draw upon the skills and traditions of the elders.
 - c. Create adequate recreational facilities

3. Creating effective options for probation, treatment, and sanctions

- a. Ensure access to treatment programs for substance abusers and sex offenders
- b. develop a community service program using offenders to build and repair facilities on the reservation
- c. Refurbish a halfway house as an intermediate sanction and a post-release transition facility
- d. Fund and establish on each site a Native American Probation Officer Liaison (NAPOL) position
- e. Encourage use of traditional and innovative approaches to treatment and alternative sanctions
- f. Explore the feasibility of building or upgrading regional detention facilities for adults and juveniles

4. Improving Investigations and Expanding prosecutions

- a. Improve availability and responsiveness of federal investigators
- b. Expand joint training for federal/tribal criminal justice personnel
- c. Develop MOUs and other written procedures to coordinate investigations
- d. Improve reporting of child abuse and neglect
- e. Protect witnesses and victims for intimidation and retaliation
- f. develop pretrial diversion policy
- g. Cross designate AUSA/crim. prosecutors as tribal court prosecutors
- h. Reduce system/induced trauma for children victims/witnesses
- i. create effective DMTs
- j. Establish an information campaign on reservations to inform citizens about federal crimes and victim rights

PROSECUTIONS AND ALTERNATIVE SANCTIONS IN INDIAN COUNTRY FINAL SITE SELECTIONS

Before creating a pool of possible sites, the project team¹ agreed upon a set of "necessary conditions" for participation in the pilot program. If all of the following conditions were met, the tribe would be considered - hence the term "necessary conditions."

1. Objective data must show that the tribe has a high incidence of serious crime (especially the offenses enumerated by the Major Crimes Act) and an historically high rate of declinations by the USAO.
2. The size of the tribe should be medium to large in order to permit confidence that any successful program will have encountered a sufficiently broad array of obstacles and opportunities so that the experience will be relevant to future sites.
3. The tribe must have a functioning tribal court system.
4. For a pilot program, we chose to avoid tribes that are so poor, so isolated, or so underdeveloped that realization of our program goals is unlikely without further, general economic development. The availability - or potential availability - of some minimum level of resources was considered essential, including key areas such as criminal investigation, supervision, treatment, and services for victims and families. At the same time, we agreed that the selection of a relatively wealthy tribe would demonstrate little while exposing us to criticism.
5. The tribe must be located in a judicial district with a cooperative U.S. Attorney and federal judges.
6. The political environment of the tribe must be sufficiently stable to make and implement decisions.

The entire project team conducted interviews on the Northern Cheyenne reservation and in Billings. Phil Baridon conducted the interviews in Window Rock for the Navajo Nation, in Laguna for the Laguna Pueblo, and in Albuquerque. Following his trip report of April 18, the project team unanimously agreed that the Northern Cheyenne and the Laguna Pueblo would be our project sites. Also, there was some discussion of informally assisting Karen Schreier with her efforts on the Cheyenne River Sioux reservation.

¹ Phil Baridon, Tracy Toulou, Kathleen Bliss, and Rene Green.

Appendix C
Northern Cheyenne Nation Documents

COPS - M.O.U.
Document Index

1. Draft M.O.U.
2. N.C. Tribal Council Resolution No. 240 (96)
3. N.C. Tribal Council Resolution No. 136 (97)
4. COPS Universal Hiring Program Application (approved 12/96)

Proposed
Memorandum of Understanding

Between the
Northern Cheyenne Tribe

and the
Bureau of Indian Affairs

May 29, 1997

Memorandum of Understanding

Between the
Northern Cheyenne Tribe

and the
Bureau of Indian Affairs

In December of 1996 the Office of Community Oriented Policing approved the Universal Hiring Grant Application submitted by the Northern Cheyenne Tribe. This application provided the basic administrative framework for the administration of the Grant and the supervision of the Police Officer/Investigators. However, the specifics of day to day management and the relationship between the cooperating parties was not fully defined in this document. This Memorandum of Understanding between the Northern Cheyenne Tribe and the Bureau of Indian Affairs will clarify any and all issues associated with this Grant which will serve to establish the Northern Cheyenne Criminal Investigation Unit. Therefore, the Northern Cheyenne Tribe and the Bureau of Indian Affairs agree that:

- As specified in the COPS Universal Hiring Application, the President of the Northern Cheyenne Tribe will serve as the Government Executive.
- As specified in the COPS Universal Hiring Application, the Bureau of Indian Affairs Criminal Investigator on the Northern Cheyenne Reservation will serve as the Law Enforcement Executive.
- The Governmental Executive will direct the Tribal Personnel Officer to provide assistance and support to the Law Enforcement Executive in the implementation of policies as they related to the advertisement, selection, and performance of personnel under this Grant.
- The Tribal Personnel Officer will work in cooperation with the Law Enforcement Executive will work in cooperation to include the appropriate standards in the advertisement, selection and performance elements of this Grant. To be eligible for consideration for selection under this Grant individuals must meet existing Bureau of Indian Affairs standards for selection for Police Officers and Criminal Investigators. Including, but not limited to, a national criminal history check, local background investigation, age requirements, and physical fitness standards.
- The Governmental Executive and the Law Enforcement Executive will jointly make the final selection from the pool of qualified applicants.

- The Law Enforcement Executive will be responsible for day-to-day supervision, direction, and discipline of individuals hired under this grant. The general duties and responsibilities of the Police Officer/Investigators will be in accordance with the narrative included in Section 6 of the COPS Application.
- The Law Enforcement Executive will be responsible for the fiscal administration of the grants. This includes oversight of contracted services for this purpose which may be provided through the Weed and Seed grant or other appropriate sources.
- The Governmental Executive and the Law Enforcement Executive will ensure that the Law Enforcement Block grant is utilized immediately so that vehicles and equipment are available for the Police Officers/Investigators, and to establish and enhance the functions of the Northern Cheyenne Criminal Investigation Unit.
- The Northern Cheyenne Agency Superintendent of the Bureau of Indian Affairs, or his designee, will act as liaison between the Bureau of Indian Affairs Uniformed Police and the Northern Cheyenne Criminal Investigation Unit.
- The Northern Cheyenne Agency Superintendent of the Bureau of Indian Affairs will make office space available for the Northern Cheyenne Criminal Investigation Unit.

President, Northern Cheyenne Tribe

Superintendent, Northern Cheyenne Agency
Bureau of Indian Affairs

Supervisory Criminal Investigator
Bureau of Indian Affairs

NORTHERN CHEYENNE TRIBAL COUNCIL
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

RESOLUTION No. 240 (96)

A RESOLUTION OF THE NORTHERN CHEYENNE TRIBAL COUNCIL SUPPORTING A GRANT APPLICATION TO THE OFFICE OF COMMUNITY ORIENTED POLICING SERVICES (C.O.P.S.), UNITED STATES DEPARTMENT OF JUSTICE.

WHEREAS, the Office of Community Oriented Policing Services (C.O.P.S.) is accepting a grant application. under the Universal Hiring Program for improvement of community policing; and,

WHEREAS, a supporting resolution from the Northern Cheyenne Tribal Council would greatly assist in the acquisition of the named grant; and,

WHEREAS, the Northern Cheyenne Tribal Council is very dedicated to protecting residents of the Northern Cheyenne Reservation; and,

WHEREAS, the Bureau of Indian Affairs Law Enforcement is currently understaffed, thus unable to properly handle the rising crime rate on the Northern Cheyenne Reservation; and,

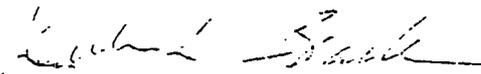
WHEREAS, the funding resources on the Northern Cheyenne Reservation are very limited and there is no funding for hiring additional police officers; now,

THEREFORE BE IT RESOLVED that the Northern Cheyenne Tribal Council fully supports the efforts of the Office of the Prosecution, and the Bureau of Indian Affairs Criminal Investigation Division in the acquisition of the Office of Community Oriented Policing Services (C.O.P.S.) Universal Hiring Grant.

BE IT FINALLY RESOLVED that the additional officers to be hired under the C.O.P.S. Grant will be under the direct supervision of the Bureau of Indian Affairs Criminal Investigator.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 15 votes for passage and adoption and no votes against passage and adoption this 6th day of August, 1996.

ATTEST:



Debra L. BearQuiver, Secretary
Northern Cheyenne Tribal Council



Llevando Fisher, President
Northern Cheyenne Tribal Council

**NORTHERN CHEYENNE TRIBAL COUNCIL
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA
RESOLUTION NO. 136(97)**

**A RESOLUTION OF THE NORTHERN CHEYENNE TRIBAL COUNCIL
SUPPORTING A GRANT APPLICATION TO THE OFFICE OF COMMUNITY
ORIENTED POLICING SERVICES (C.O.P.S.), UNITED STATES DEPARTMENT
OF JUSTICE.**

WHEREAS, the Office of Community Oriented Policing Services (C.O.P.S.) is accepting a grant application under the Universal Hiring Program for improvement of community policing; and,

WHEREAS, the Northern Cheyenne Tribal Council is very dedicated to protecting residents of the Northern Cheyenne Reservation; and.

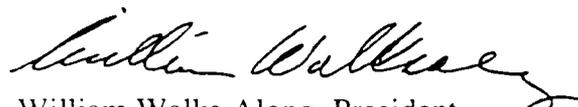
WHEREAS, the Bureau of Indian Affairs Police Force is currently understaffed, thus unable to properly handle the rising crime rate on the Northern Cheyenne Reservation; and,

WHEREAS, the funding resources on the Northern Cheyenne Reservation are very limited and there is no funding for the hiring of additional police officers; and,

THEREFORE BE IT RESOLVED that the Northern Cheyenne Tribal Council hereby supports the efforts of the Office of the Prosecution, in the acquisition of the Office of Community Oriented Policing Services (C.O.P.S.) Universal Hiring Grant.

BE IT FURTHER RESOLVED that the additional officers to be hired under the C.O.P.S. Grant would fall under the direct supervision of the Northern Cheyenne Tribal President.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 9 votes for passage and adoption and 0 votes against passage and adoption this 19th day of May, 1997.


William Walks Along, President
Northern Cheyenne Tribal Council



Sharlene Evans, Secretary
Northern Cheyenne Tribal Council



NORTHERN CHEYENNE TRIBE

INCORPORATED

P.O. Box 128
LAME DEER, MONTANA 59043



Request for Waiver of Local Matching Funds

The Northern Cheyenne Tribe requests a waiver of the matching funds provision of the Community Oriented Policing Services (COPS) program due to severe hardship. The Northern Cheyenne Reservation suffers from an unemployment rate of over 70%. There are no major businesses and a complete lack of industry on the reservation. As a result, there is virtually no source of revenue for Tribal government beyond that accessed through the Bureau of Indian Affairs (BIA).

In 1995 the BIA's budget was cut by more than 25%. As a result of these cutbacks law enforcement services provided by BIA were drastically reduced on the Northern Cheyenne Reservation. For example we lost one of only two criminal investigators and our support staff was also reduced by half.

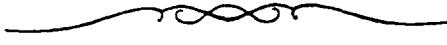
The remaining 9 officers serve a community consisting of approximately 7000 individuals spread over 700 square miles, with at least 3 identifiable towns. There are no State or local law enforcement agencies whose jurisdiction overlap with that of the Tribe. In essence, if one of these 9 officers is not available to respond to a call, there is no other agency available as backup. Further complicating the situation, Northern Cheyenne suffers from extremely high rates of both juvenile and violent crime.

Northern Cheyenne Tribe desperately needs the additional officers requested in the attached COPS application, however, the Tribe simply does not have the resources to match the Federal funding for this program. For these reasons, the Northern Cheyenne Tribe requests that the matching requirement be waived at this time.


Llevando Fisher, President
Northern Cheyenne Tribe

Appendix D
Pueblo of Laguna Nation Documents

**MEMORANDUM OF AGREEMENT
BETWEEN THE
U.S. DEPARTMENT OF JUSTICE
AND
THE PUEBLO OF LAGUNA
(THE INDIAN COUNTRY CRIMINAL JUSTICE INITIATIVE)**



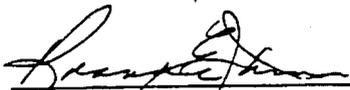
On September 20, 1995, the Pueblo of Laguna and the Department of Justice, through the Criminal Division and the United States Attorney's Office for the District of New Mexico, formally agreed to implement a pilot project at the Pueblo of Laguna. This memorandum of intent describes the goals of the Initiative as understood and agreed to by the parties to the initiative.

1. The pilot project is called the Indian Country Criminal Justice Initiative ("the Initiative"). The purpose of the initiative is to establish a meaningful, long-term partnership between the federal government and the Pueblo of Laguna that minimizes the negative effects of criminal activity while augmenting traditional Laguna values. Results of the initiative will be used in fashioning or replicating federal/tribal criminal justice programs throughout Indian Country.
2. Through the initiative, federal and tribal programs will be identified and examined to determine whether these programs adequately serve and are responsive to the Pueblo of Laguna. Community, tribal and federal involvement is necessary to assure that a holistic approach to criminal justice is taken so that traditional Laguna values are emphasized, consistent with practices involving community members.
3. The parties to this Memorandum have identified several Department of Justice components that have grants and services which may complement the goals of the initiative, including but not limited to, Weed and Seed, GOPS, Office for Victims of Crimes, Violence Against Women Grants Office, and the Office for Juvenile Justice and Delinquency Prevention. The Department of Justice has agreed to provide grants and services to the Pueblo of Laguna as a function of the initiative and waive any monetary contri-

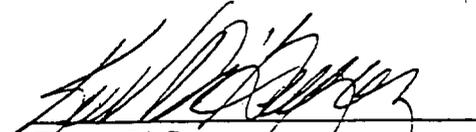
bution by the Pueblo of Laguna for these grants and services. The Criminal Division is requesting waiver of contribution based on the tribe's financial inability to make the COPS matching contribution. Also, the Administrative Office of the United States Courts will provide an additional Indian U.S. Probation Officer who will serve Laguna. The Pueblo of Laguna shall be consulted regarding the employment of the U.S. Probation Officer.

4. The parties agree that all grants and services provided to the Pueblo of Laguna shall be designed or modified by the parties to this initiative to serve the goals of the initiative.
5. Implementation of the initiative includes the following: involvement of key groups who affect the goals of the initiative; identification and assessment of existing programs at the Pueblo of Laguna; evaluation of existing programs; identification and assessment of needs relative to the tribal criminal justice system within the Pueblo of Laguna, including, victim-witness services, prosecution resources, law enforcement resources, judicial resources, and traditional resources.
6. Key group involved in the implementation of the initiative include, community members, council members, mayordomos, security officials, religious leaders, private and public industry representatives, tribal services representatives, tribal justice representatives and federal and tribal law enforcement, including advocates and prosecutors. It is the agreement of the parties to the initiative that these groups will be consulted in accordance with Pueblo practices and procedures.
7. The parties hereby agree that the current grant to the Pueblo of Laguna for this Initiative, plus any future grants to the Pueblo, will not be used or considered as a set-off to any valid claims that the Pueblo of Laguna may have against the federal government, and will not hinder in any way the Pueblo's chances of being considered for future grants.

ENTERED INTO THIS 1st DAY OF July, 1996.



Roland E. Johnson, Governor
The Pueblo of Laguna



Kevin Di Gregory
Deputy Assistant Attorney
Criminal Division

ATTEST:


Tribal Secretary



John J. Kelly
United States Attorney
District of New Mexico



PUEBLO OF LAGUNA

P.O. Box 194

LAGUNA, NEW MEXICO 87026



(505) 552-8598

(505) 552-8654

(505) 552-8655

Office of
The Governor
The Secretary
The Treasurer

TO: Carol Lujan
FR: Diana Ortiz and Sally Hernandez
DA: October 22, 1997
RE: Indian Country Justice Initiative Planning Session

You are invited to participate in the Indian Country Justice Initiative (ICJI) Planning Session. This initiative resulted from Attorney General Janet Reno's sincere desire to improve the working relationship between the Department of Justice and the Laguna Pueblo. She chose Laguna Pueblo as one of only two sites in the United States to implement the ICJI.

We invite and need your participation in developing a long-term plan for the Pueblo of Laguna which addresses safety, law enforcement, and reduction of crime resulting in a safer and healthier community. Please join us for this very important meeting on Friday, October 31, 1997 from 8:30 a.m. to 4:30 p.m. We will meet in the Community Room at the Acoma-Canoncito-Laguna Hospital.

For more information, please contact Diana Ortiz, ICJI Site Manager (552-6654, ext. 33); Sally Hernandez, DOJ Liaison for ICJI (552-6654, ext. 36); or Ernestine Pedro, Tribal Planner's Office (552-6654, ext. 31).