

TRIBAL POLICING: AN ALTERNATIVE VIEWPOINT The Oneida Indian Nation of New York Police

Peter W. Phillips
The University of Texas at Tyler

The details of Navajo Police Officer Hoskie Gene's death in the line of duty were sad indeed. As reported by Michaelle Boorstein in a February 23, 1997, AP article, Officer Gene was responding to a robbery call an hour away and "his crumpled and beaten body was left in the dirt, like trash alongside the remote highway in the silent desert night, . . . weapon and vehicle stolen" (p. 49A). The vast area to be covered by lone officers, sometimes having to travel 100 miles to answer a call, with no back-up and often out of radio communication range, exacerbates other problems faced by many tribal police officers.

In the mid-month April, May, and June, 1996 issues of Law Enforcement News, Jacob R. Clark presented a three-part series outlining the problems faced by tribal police officers. In addition to rising crime rates, increased gang violence, and inter-jurisdictional disputes, the overriding problem is money-funding for an adequate police response to contemporary problems. Although these reports focus principally on problems faced by Indian tribes in the western United States, adequate funding of police operations and certain jurisdictional issues are extant in the East as well.

One tribe that has made significant progress in overcoming many of the problems identified by both Boorstein and Clark is the Oneida Indian Nation of New York (OIN), which created its own police agency in 1993. It was, in a sense, however, a defensive move.

Historical Antecedents

The "troubles" for the Oneida Indian people, which led them to create their own police force, did not originate from a single source nor at any particular point in time. Rather, a syndrome of socio-political causes existed. First, it must be understood that the OIN reservation exists within several political entities-the U.S., the State of New York, the County of Madison, and the City of Oneida-all with the power and resources to provide mutual aid to the Nation and the apparent power to withhold those resources.

Chuck Fougner (1996), a member of the Men's Council, provided an historical perspective on the problems leading to the decision to create a Nation police force: The decision to create a Nation police department emanated from years of non-responsiveness to Native Americans' calls for assistance by the police jurisdictions representing majority society.

The Oneidas were poor people until about 1985, Fougner said, when they began to organize and the road was started toward fiscal strength for the Nation. The first enterprise was a bingo hall and smoke shop. In 1987, an armed, militant faction calling itself "The Warrior Society" took over the enterprise buildings and burned them to the ground. The legitimate Nation representatives called upon local and state authorities to investigate the arson, but there was no response. Each agency attempted to "pass the buck." Only after the federal Bureau of Alcohol, Tobacco, and Firearms accepted jurisdiction was there a thorough investigation, subsequent prosecution, and eventual conviction of the arsonists (U.S. District Court, 1991).

Keller George (1996), First Assistant to the Federally Recognized Nation Representative, said that, in the eyes of the Nation, local and State governments were practicing discrimination in

terms of non-responsiveness to them as a group of minority-class citizens. Indians were not being provided equal protection in terms of police services, either quantitatively or qualitatively. The non-responsiveness became so egregious that, in 1988, the OIN sued the City of Oneida et al. alleging civil rights violations under 18 USC §§241 and 242.

The case was settled in 1989, through a Memorandum of Understanding (MOU) among the defendants, the US Justice Department, and the plaintiff (U.S. Department of Justice, 1989). In addition to other provisions, the MOU required the City of Oneida to provide all of its police officers, with cultural diversity and civil rights training, to make full disclosure of all requests for assistance from the Territory and to reveal all actions taken as a result thereof, including prosecution reports, and to make compliance reports to the Department of Justice every six months hence.

By 1990, the bingo hall and smoke shop were open again, but the Nation's legitimate leadership was still concerned about protecting its people and resources. Further, as plans were being formulated to expand Nation enterprises, including a gambling casino, developing internal public safety resources became a high priority. Beginning in 1991, and continuing through 1992, therefore, much discussion took place in the Men's Council and other forums regarding the establishment of a Nation police department.

Opposition arguments to creating a Nation police department had two foci, Keller George (1996) explained further. One was an expression of general distrust toward all police, based on members' recollections of both the recent problems, as noted above and, for many, recollections of past problems. Sometimes from the Oneidas' own territory and sometimes from childhoods spent on other reservations, many recalled repeated instances of police use of excessive force, warrantless searches and seizures, and other violations of Constitutional and civil rights. The second focus of debate concerned the question of whether or not to have a police force that included Native American officers.

It was decided finally that there would be a police department, but that no Oneidas or other Native Americans would be recruited for the police department, at least during its formative years. The Oneidas are a small tribe. It would not be prudent, it was reasoned, to place an Indian in a position of being pressured to, or berated for, treating a relative more leniently or someone from another clan less leniently because of blood ties.

Governance Structure and Nation Demographics

The Oneidas are one of the six nations of the Iroquois Confederacy, and the Oneida Indian Nation of New York is a federally recognized Indian Nation. The society is matrilineal and the Nation is divided into clan families, of which there are three. As Ray Halbritter (1994), the Federally Recognized Nation Representative, explained, "Women in the clans, the 'Clan Mothers,' nominate the leaders of the nation from among the men. Each clan can nominate a certain number of leaders, who must be approved by a consensus of their clan and then by a consensus of all the clans in the nation. This requirement of consensus is also mandated for general political decisions [of the Nation as a whole]" (pp. 541-542). At present, each clan is represented by three men and this collective constitutes the Men's Council.

Land claims against the State of New York for over six million acres notwithstanding, the Oneida Nation Territory today consists of a 32-acre tract in the central part of the state, approximately 30 miles east of Syracuse, and about 3,100 acres or re-acquired (purchased) in several other parcels in a two-county area. The OIN has 1,109 enrolled members, but provides services for approximately 4,400 Native Americans in a six-county area.

The largest Nation enterprise is the Turning Stone Casino that provides over 2,300 jobs;

other enterprises include a recreational vehicle park, gas stations, Internet services, and a rapidly expanding textile printing business. The casino alone draws approximately 8,000 visitors per day who spend \$12.4 million annually in the area, according to a 1995 Coopers & Lybrand study. More than \$63 million was spent by the Nation in 1996 in the purchase of goods and services from nonIndian vendors in New York State. Nearly \$250,000 was given by the Nation in the same year in grants to education and in charitable contributions to area organizations.

These economic data are important to understanding the public safety responsibilities of the OINP. For example, the ratio of police officers to population appears disproportionately high, bordering extravagant, if only the Nation's enrolled membership is considered. In actuality, this is not the case considering the numbers of visitors and employees on Nation Territory and re-acquired lands each day; and considering that the re-acquired lands constitute several non-contiguous parcels spread over two counties.

Current Operations

The Oneida Indian Nation initiated operation of its public safety functions on July 16, 1993 with the official inauguration of the Oneida Indian Nation Police Department (OINP). At the end of 1996, the OINP had a force of 45 sworn officers and five civilian employees, making it the third largest tribal police agency in the United States. Of the five civilian positions, four are assigned to a research and development section attached to the commissioner's office. The OINP budget for FY 1997 is approximately \$2.5 million.

As Clark (1997b) reported previously, a number of tribes are planning to set up their own police agencies: "Transitions to self-policing are not without hardship, but once achieved the resulting tribal police departments are usually better funded, more responsive to the needs of tribal members and less likely to engage in brutality and other misconduct. Over 100 tribes now administer their own police services, including an increasing number who have gambling casinos on their reservations" (p. 18).

The OINP is directed by a Public Safety Commissioner and a Chief of Police. The first officer chosen by the Nation's leaders was Commissioner Arthur F. Pierce, a retired New York State Police captain and academy deputy director; the second, to be Chief of Police, was James A. Foster, a former New York State Police recruiter, law enforcement consultant, and part-time faculty member at the University of North Florida. Pierce, on board in April 1993, and Foster, on board shortly thereafter, brought 21 years of police experience each to the OINP. To them fell the task of recruiting and selecting other members of the force.

"The goal from the beginning was to create a police department second to none in professionalism and know-how in the region," said Ray Halbritter (1996). As a result, the Nation hired only New York State certified police officers, many with a college education; all with a minimum of five years of police experience, and an established or developing police/investigative specialization. Although more have been recruited from the New York State Police than any other agency, 32 former agencies are represented by the individual officers. At the end of the first year of operation, OINP officers already accounted for more than 700 years of combined police experience, an average of 16 years police experience per officer, and training in more than 40 specialized areas of police work ("Experience, . . .," 1995).

Authority Issues

Sovereignty

Sovereignty sometimes can be a two-edged sword for Indian Nations. The Oneida Indian Nation was granted the sovereign right to govern its land and affairs by the Trade and Intercourse Act of 1790 and the 1794 Treaty of Canandaigua. Transactions between the Oneida Indian Nation

and the United States of America, the State of New York, or any other political entity are considered to be government-to-government. The Oneida Indian Nation Police force is established and directed as an entity of Nation government, and its policies, procedures, and organizational relationship to the community it serves can be characterized and evaluated as any other police agency's may be. This is a positive aspect.

Examples of police officers in New York State are sworn members of the State Police, Sheriffs and their deputies, and sworn officers of an authorized police department of a city, town, village, or of a public authority (e.g., housing authority police). Because of the sovereign nature of the Indian Nation, however, it does not fit any of the existing definitions of a municipality under state law, and, without special legislation, its police officers do not have general police powers. This is a negative aspect.

OINP authority, bestowed by the Indian Nation under its ordinances, was, initially, strictly limited to only Nation rules, only on Nation land, and only involving Indians. To enforce state criminal or vehicle and traffic law, to serve warrants, or to transport persons in custody off Indian lands, assistance from an outside police agency was necessary. To obviate such dependence, however, was one of the higher priority reasons for establishing the Nation's own police department in the first place.

In 1990, after an uprising on the St. Regis Mohawk Reservation, wherein, two Indians were killed, an Army Medivac helicopter was hit by rifle bullets allegedly for "invading sovereign airspace," and the New York State Police found itself caught between rival factions, the Governor's Office sponsored legislation to permit any Indian Nation in New York to establish its own "indigenous" police force (Tobin, 1993). To date, however, there has been insufficient legislative support for the passage of such a bill.

Because the Oneida Indian Nation claims sovereign independence and because it is at odds with the State of New York over two important issues – land claims and taxes-the state will not administratively recognize the OINP as an authorized police agency. New York has also denied participation to the OINP in certain of its programs which benefit all law enforcement agencies in the state. Could this be "deja vu all over again?"

Without the State of New York recognizing at law the OINP and given the perceived need to have full police powers both on the reservation and, under certain circumstances off the reservation, an attractive alternative presented itself in the form of deputization. OINP officers may be sworn as special deputy sheriffs pursuant to the Constitutional authority of a county sheriff in New York State.

Deputization

In late 1993, a plan was set in motion to secure full police powers for OINP officers to enforce state law by securing their deputizations in two counties. In February of 1994, all qualified OINP officers received special deputy sheriff commissions from the Oneida County sheriff, the action having been sanctioned by the county attorney and legislative body. In October of 1994, a similar action was sanctioned by the Madison County Board of Supervisors and the sheriff of that county extended special deputy commissions to the same set of OINP officers (Tobin, 1994). As deputy sheriffs, OINP officers now had full police powers on the reservation and reclaimed Indian lands, and could enforce all laws of the State of New York thereon – regardless of whether or not the target was an Indian or a non-Indian.

Recalling that the Nation's complaint against local law enforcement was one of non-responsiveness, these agreements were significant steps in remedying that grievance – at least with the two sheriffs' departments involved – as the concurrent nature of the sheriffs' jurisdiction was likewise reinforced by the deputization agreements. This configuration of authorities resembles, but is not

technically the same as the cross-deputization, which Clark (1 996c) reported as a present-day trend in the West.

The principal benefit of deputization to the OINP is that it allows the Nation Police to respond to situations on Indian land in which any police authority may legitimately intervene and to exercise full police power depending upon the situation. Although the expanded powers are derived, in a sense, through a third party rather than from the state directly, deputization allows the OINP to be a true full-service police agency.

Cooperation between the OINP and the Oneida County Sheriffs Department was enhanced further when, in May, 1995, the two agencies opened a shared field office in Verona, NY, in a house owned by the Nation. "Permanently staffed as a sub-station by both agencies, police services will be both quantitatively and qualitatively increased in a rapidly growing area of the county in proximity to the Turning Stone Casino," said Commissioner Pierce and Sheriff Dan Middaugh in a joint statement at the dedication (quoted in Tobin, 1995).

Deputization at another governmental level has broadened further the authority of the OINP. In January, 1996, the Bureau of Indian Affairs (BIA) issued a Deputy Special Officer Commission to the OINP Commissioner of Public Safety (Pierce, 1996). In so doing, BIA granted the OINP authority to enforce federal law on the reservation. With authority to enforce tribal law granted by the Nation itself, authority to enforce state law conferred through the deputization by the sheriffs of the two counties in which the territory and re-acquired lands were situated, and authority to enforce federal law now made possible by action of the BIA, the full range of investigative and arrest powers required by the OINP to be independent was available. Of equal value, according to Pierce, considering the human and other resources which were available through the OINP, was their ability now to provide mutual aid to police departments in contiguous jurisdictions-an important statement in view of historical antecedents.

The OINP and Community Policing

In less than a decade, the Oneida Indian Nation has pulled itself up by the bootstraps – from abject poverty for many of its members to a flourishing community and major economic hub. Clearly, resources such as these play an important part in being able to establish and command superior governmental services for Nation members, employees, and visitors-not the least of which is a police department that literally defines the term state-of-the-art in relation to its technology and management science.

More important, however, is the change that has occurred in the apparent attitude of the Nation members about a continuing police presence in their midst, with concomitant interventions in their daily lives. Dick Lynch (quoted in Demare, 1996), a Tribal Council member, reiterating that the exclusion of the Oneidas as officers was a decision made by the 13 men and women who serve on the council, said, "With any change that takes place in a society there are some concerns, but those concerns were put to rest by the level of professionalism shown." OINP officers initially undergo many hours of formal training in the history, traditions, and culture of the Oneida Peoples, and the informal training is continuous.

Men's Council Member Chuck Fougner (1996) summarized the attitudinal change in the following account of a most remarkable transition. In July, 1993, when the OINP first started patrolling the reservation, a police car passed by the Longhouse at the time of particular meeting. A Men's Council member called the chief and said that he was truly offended because a police vehicle was on the Territory and drove by the Longhouse during a traditional meeting. "Stay up by the old bingo hall and smoke shop," the tribal official said, "and perform your police functions up there."

In October, 1995, a member of the Men's Council died. Few non-Native Americans are ever invited into the Longhouse or to actively participate in an Indian ritual, particularly to enter into the Tribal Burial Ground. In less than two years after its inception, the OINP had so ingratiated itself with the Nation members that not only were police officers welcomed at the funeral, but the police chief was invited to be a pall-bearer-and the deceased was the uncle of the original complainant.

All Oneidas interviewed to date have spoken of the manner in which the OINP has delivered both traditional and non-traditional police services to their Members. In delivering traditional police services, primarily in response to calls for service, the mediation skills of the officers aimed at reducing levels of conflict are rated as outstanding. Arrest is seldom necessary because of the wide variety of alternatives that the police are willing to explore, and diversion into counseling and treatment programs administered through the Nation's Family Services Unit is common. Chuck Fournier (1996) noted that police officers carry groceries into the house when they see elders unloading their cars; they play basketball with the kids; they are friendly, well-informed; and they are always respectful, even when they have to take adverse action.

It appears that the OINP is practicing community policing. As a matter of public policy, the Nation's leaders and the police department's commanders have prescribed a certain approach to the maintenance of order which embodies the spirit as well as the letter of the law. That approach embraces the notion of respect for and preservation of human dignity. It is captured in the following statement by Commissioner Pierce: "I don't think you have to be a Native American to serve Native Americans or, for that matter, a member of a particular minority or ethnic group to serve that group. If you're fair, objective, impartial, and care about the people you work for – and you have a high level of integrity – anyone can be successful" (quoted in Demare, 1996).

Postscript

In November, 1998, the Oneida Indian Nation Police became the first tribal police department to receive full accreditation from the national Commission on Accreditation of Law Enforcement Agencies (CALEA) (Pierce, 1999).

Works Cited

- Boorstein, M. (1997, February 23). Solitary job of Navajo police plagued by danger, tribal woes. The Dallas Morning News, p. 46A.
- Clark, J. R. (1996a, April 15). Complex job in changing times. Law Enforcement News, pp. 1, 6-7.
- . (1996b, May 15). Money matters for Indian policing. Law Enforcement News, pp. 1, 18.
- .(1996c, June 15). No reservations about gangs. Law Enforcement News, pp. 1, 6.

- Coopers and Lyband, L.L.P. (1995). Analysis of the economic impact of the Oneida Nation's presence in Oneida and Madison Counties. New York: Author.
- Demare, C. (1996, June 2). Cops protect a nation known as the Oneidas. Albany Times Union, pp. A1, A16.
- Experience, professionalism hallmark of nation police. (1995, Spring). The Oneida [Special Nation Police Issue], pp. 1-6.
- Fougner, C. (1996, July 10). Personal communication [interview]. George, K. (1996, July 1). Personal communication [interview].
- Hallbritter, R. (1994). Empowerment or dependence? The Practical value and meaning of Native American sovereignty. Journal of International Law and Politics, 26, 531-572.
- . (1996, February 14). Personal communication [interview]. Pierce, A. F. (1996, January 17). Personal communication [interview].
- . (1999, June 21). Personal communication [letter].
- Tobin, D. (1993, December 28). Full powers sought for Oneida's police. Syracuse Post-Standard, pp. B1-2.
- . (1994, October 12). County invests nation's police. Syracuse Post-Standard, pp. B1-2.
- . (1995, May 25). Sheriff, tribal police share field office. Syracuse Post-Standard, p. B1.
- U. S. Department of Justice. (1989, February 8). Memorandum of Understanding between the United States Department of Justice and the City of Oneida. United States Attorney's Office, Syracuse, NY.
- U. S. District Court, Northern Judicial District of New York (1991, February 12). Judgment in a criminal case: Don Marks et al. (Case No. 89)