

104
BIA TASK FORCE

Y 4. IN 2/11: S. HRG. 104-143

BIA Task Force, S.Hrg. 104-143, 104...

HEARING

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE**

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

**TO FOCUS ON THE REPORT AND RECOMMENDATIONS OF THE JOINT
TRIBAL BIA/DOI REORGANIZATION TASK FORCE**

**MAY 18, 1995
WASHINGTON, DC**



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RECOMMENDATIONS OF THE JOINT TRIBAL/ BIA/DOI TASK FORCE ON THE REORGANIZA- TION OF THE BUREAU OF INDIAN AFFAIRS

THURSDAY, MAY 18, 1995

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to recess, at 9:31 a.m., in room 485, Senate Russell Office Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senators McCain, Inouye, Wellstone, Domenici, and Simon.

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. I would like to welcome the witnesses here today for our second hearing on BIA reorganization. This hearing will focus on the report and recommendations of the Joint Tribal BIA/DOI Reorganization Task Force.

The work of the Joint Tribal Reorganization Task Force spanned 4 years, covered hundreds of hours of meetings, across all parts of Indian country. The report sets out these general principles:

Any reorganization of the BIA must: One, decentralize decision-making in the BIA; two, transfer maximum authority and funding to the tribes themselves; three, establish well-defined roles and responsibilities for the Federal and tribal governments; and, four, adhere to a Tribal-Federal consultation process which will govern all aspects of the reorganization.

I share the views presented by tribal leaders in this report. These views have been long held in Indian country and represent the very foundations of the Federal-Indian policies of self-governance and self-determination. It's time to bring an end to the paternalism that has plagued the relationship between Indian tribes and their trustee. It's time to break down the barriers to true tribal self-governance and self-determination by providing Indian tribes with the authority to design both the structure and function of its trustee, the Bureau of Indian Affairs.

As I have stated numerous times since we started this progress, I am committed to bringing real and substantive change to the Bureau of Indian Affairs. Since its creation in 1824, native Americans have relied on the Bureau of Indian Affairs as the principal agency of the Federal Government which is responsible for meeting this

Nation's trust responsibility to American Indians and Alaska natives. And, yet, based on its own studies and investigations, the Bureau of Indian Affairs has failed miserably in carrying out this Nation's solemn obligation to American Indians. If the health, social and economic conditions on Indian reservations are the measure of our performance as the trustee for American Indians, then as a nation we have failed miserably. I'm convinced that we will not make significant improvements in the living conditions of native Americans without a major reform of the Bureau of Indian Affairs.

Yesterday, I introduced S. 814, the Bureau of Indian Affairs Reorganization Act of 1995. This bill reflects the spirit and intent of the recommendations of the Joint Tribal Reorganization Task Force. It provides Indian tribes with the authority to reorganize and restructure the Bureau of Indian Affairs at each level of the bureaucracy. It provides Indian tribes with the ability to tailor the Bureau of Indian Affairs to meet their unique circumstances and needs. The bill provides Indian tribes with the authority to shape and redefine the trust relationship with the Federal Government. The introduction of this legislation marks only the first step in carrying out the commitment made to Indian tribes when the Joint Tribal Reorganization Task Force was first chartered. I remain committed to working closely with the Indian tribes and the Secretary of the Interior to realize the vision of those tribal leaders who participated in the work of the task force by bringing real and lasting change to the Bureau of Indian Affairs.

I look forward to hearing from our distinguished panelist on the work of the task force and the need for a major reorganization of the Bureau of Indian Affairs. Please be assured that your entire statements will be made part of the hearing record.

Let me reemphasize a couple of points:

One, this legislation is based on the recommendations of the Joint Tribal BIA/DOI Reorganization Task Force, not on the recommendations of any member of the U.S. Senate but the recommendations of the tribes themselves;

Two, if anyone believes that the status quo is satisfactory in Indian country today, then they have not seen the conditions nor read the reports that I have about economic, social, and other conditions that exist on Indian reservations. So if you are not satisfied with the status quo, then you should be open and willing to at least consider these changes that need to be made in order to fulfill the trust responsibilities that we consummated by solemn treaty. I have no illusions as to the significance of the difficulty or the enormity of this task. There's been over 1,000 studies, commissions, and sets of recommendations made in the last 100 years, and, yet, there has been no substantial change in the BIA.

If this effort fails, which I intend to pursue for the rest of this year, then it will not be the first, nor perhaps the last, but it will be the last that I engage in since, clearly, it is not a proper use of this committee's time to engage in endeavors that will not lead to a meaningful result.

I understand from Senator Inouye, the distinguished vice chairman, that he would be more than happy to yield to Senator Wellstone, who has an opening statement.

Senator Wellstone.

STATEMENT OF HON. PAUL WELLSTONE, U.S. SENATOR FROM MINNESOTA

Senator WELLSTONE. Thank you, Mr. Chairman, and I thank the Senator from Hawaii for his graciousness. I have a small business committee hearing that actually focuses on two programs—the guaranteed loan programs—that are just critical to my State, and I thank the Senator from Hawaii.

Mr. Chairman, I want to take this opportunity to commend you on your leadership in convening this hearing and to welcome your introduction of the Bureau of Indian Affairs Reorganization Act of 1995. As I was reviewing this legislation and what it is intended to accomplish, I found myself reflecting about the history of the Federal-Indian relationship and the past policies of Congress that have guided this relationship. I must say, Mr. Chairman, that the more I reflected, the more dismayed I became when I thought about the struggle our first Americans have had to endure just to survive.

Mr. Chairman, as you well know, to say that congressional Indian policy from colonial times to the present has been inconsistent would be an understatement, and I think two Senators that are with me today in this committee have been two Senators who have really, with a tremendous amount of courage and integrity, have stood up for people in Indian country. These Federal policies have run the gamut from outright annihilation, to removal to reservations, to assimilation, to termination, to the present and more realistic and viable policies of self-determination and self-governance.

This bill is an effort to implement the policies of self-determination and self-governance. I support the intent of this legislation because it holds the promise of a true Federal-Tribal partnership.

Mr. Chairman, I have forwarded copies of this legislation to the tribes in my State for their review, and I look forward to hearing from them. We need to ensure a reorganization of the BIA not as others would reorganize it, but in the way the Indians themselves best determine their needs. Mr. Chairman, I would also like to inject a cautionary note into these proceedings, and I am sure you and the vice chairman will agree with me on this point.

There is a growing disquiet among the Indian tribes. This disquiet centers around the fear of a return to the policies of termination of the 1950's. Let me repeat this: The one cautionary note I would sound is that there is a growing disquiet among Indian tribes, and this disquiet centers around the fear of a return to the policies of termination of the 1950's. Genuine efforts by the friends of Indians to downsize the BIA and to enhance the power of Indian tribes to control their own destinies were taken as an excuse by some to eliminate the BIA and to terminate the Federal-Indian trust relationship. I know that it is the intent of the chairman and the vice chairman, and it is mine, to reduce the BIA bureaucracy and waste and to increase tribal self-determination by this bill, but we must assure the tribes that this effort will not become the vehicle for those who wish to return to the era of termination. We, as well as the Indian tribes themselves, must be vigilant that this does not occur.

Mr. Chairman, I look forward to working with you, the vice chairman and the tribal leaders and membership in my State to craft a measure that can fulfill the promise of this legislation and to ensure that the special trust relationship between the United States and the Indian tribes will endure into the next millennium.

Thank you, Mr. Chairman, and I would ask that my written statement be a part of this record, and I again thank my colleague from Hawaii for his graciousness. I wanted to make this statement and I wanted to kind of lay out my framework as a Senator and ways in which I would like to be a part of this effort, and I do apologize for the conflict of hearings.

I thank you.

[Prepared statement of Senator Wellstone appears in appendix.]

The CHAIRMAN. Thank you, Senator Wellstone, and I thank you for your continued involvement and commitment on these issues. You are, in my view, an extremely valuable member of this committee, and we appreciate all your active participation.

Senator WELLSTONE. Thank you, Mr. Chairman.

The CHAIRMAN. I understand that you have another hearing this morning to conduct. Thank you.

Mr. Vice Chairman.

STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUE. I thank you very much, Mr. Chairman.

I am pleased to join my chairman in this hearing today. The recommendations of the joint task force have received full scrutiny of the members of the committee, and we look forward to hearing from those who are the experts on these matters. I wish to commend the chairman for his introduction of a bill that is designed to provide legislative authority for the implementation of the task force recommendations. It represents much work and a very good beginning for the discussions and consultations and considerations that will follow this hearing.

And so, Mr. Chairman, with that, I thank you and I look forward to listening to the testimony of the witnesses this morning.

The CHAIRMAN. Thank you very much, Senator Inouye, and we would like to ask the first panel to come forward:

Dr. Eddie Brown, the director of human services at the Tohono O'odham Nation of Sells, Arizona, and the former Assistant Secretary for Indian Affairs, the U.S. Department of the Interior, and the former Cochairman of the Joint Tribal BIA/DOI Task Force on the Reorganization of the Bureau of Indian Affairs.

Wendell Chino who is the President of the Mescalero Apache Tribe, Mescalero, NM, and Cochairman of the Joint Tribal BIA/DOI Task Force on the Reorganization of the Bureau of Indian Affairs.

Mr. Chino, I believe—Wendell, are you accompanied by Bernie Teba?

Mr. CHINO. Yes, Mr. Teba.

The CHAIRMAN. Bernie, if you would like to also sit at the table, you're more than welcome.

Welcome to both witnesses who are old friends of the committee, and before you give your statement, I would like to thank both of

you for your efforts as cochairmen of the Joint Tribal BIA/DOI Task Force on the Reorganization of the Bureau of Indian Affairs.

Maybe you could begin, Eddie, by telling us how many years you have spent on this effort.

STATEMENT OF EDDIE F. BROWN, DIRECTOR, HUMAN SERVICES, TOHONO O'ODHAM NATION, SELLS, AZ, AND FORMER ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, AND COCHAIRMAN OF THE JOINT TRIBAL/BIA/DOI TASK FORCE ON THE REORGANIZATION OF THE BUREAU OF INDIAN AFFAIRS

Mr. BROWN. Well, Mr. Chairman, let me first begin by saying that I've submitted my comments for the record. Since they are somewhat brief, I would like to present them as indicated. I would also like to thank you and members of the committee here this morning for the opportunity—I don't think it's often that some of the former appointees have a chance to come back and to talk a little about what is happening, what has happened and what should happen. So I'm grateful for that opportunity. I also, Mr. Chairman, bring you greetings from the Tohono O'Odham Nation, and we thank you for your commitment and your interest in Indian affairs, as well as the rest of the committee and Senator Inouye as well. It's good to see you again and to see many of the old familiar faces that are still here battling what has proven to be a long-term situation.

The CHAIRMAN. It seems like we've been here forever. [Laughter.]

Mr. BROWN. As indicated, I'm Eddie F. Brown, formerly Assistant Secretary of Indian Affairs and currently executive director of the Department of Human Service of the Tohono O'Odham Nation. From December 1990 to June of 1993 I served as cochair of the Joint Tribal Reorganization Task Force alongside the Honorable Wendell Chino, president of the Mescalero Tribe, Apache Tribe.

The CHAIRMAN. So 3 years?

Mr. BROWN. Pardon?

The CHAIRMAN. Was it 3 years?

Mr. BROWN. Approximately 3 years. I'm honored to be here today to support the efforts and recommendations of the Joint Advisory Task Force. As cochair of the Reorganization Task Force, I had the opportunity and privilege to preside over 18 of the past 22 task force meetings. In my testimony today I want to make three major points, that I believe make the efforts of the Joint Advisory Task Force unique in the history of Federal-Indian relationships, and the reasons it is critical that this Congress enact legislation to ensure the implementation of the proposed recommendations.

In September 1990, as Assistant Secretary of Indian Affairs, I presented a proposal for the restructuring of the Bureau of Indian Affairs central and area offices at a national tribal leaders conference in Albuquerque, NM. The proposal was rejected by the over 1,200 tribal leaders present—and I might say that's mildly stated. The reason voiced for rejection of the proposal was that it was not developed with the participation and input of tribal governments. Tribal representatives clearly stated that any actions taken by the Department of the Interior which impacts the lives of Indian people should be done with the participation and input of those tribal enti-

ties. This is in concurrence with the Federal-Tribal government to government relationship. As a result, and with the support of then Secretary of the Interior, Manuel Lujan, I immediately met with tribal leaders at a National Congress of American Indians Conference and there jointly drafted an agreement that created a Tribal-Federal participatory process whereby tribes would jointly assist in the development of a new proposal of the reorganization of the BIA. On December 20, 1990, the Joint Tribal BIA/DOI Department of the Interior Advisory Task Force was officially established by charter. This charter was later further supported by Congress in the 1991 Appropriations Report which prohibited the use of Federal dollars for BIA reorganization unless it was recommended by members of the task force.

Now my first point is that the formal appointment of the Joint Tribal BIA Department of the Interior Task Force marked a new era in Tribal-Federal relations. This was the first time in the history of relations between the United States and tribal governments that a partnership was formed in which, and I quote, "tribes actively participated in Federal decisionmaking, as decisions were being made, not after the fact," unquote. The appointment of a 43-member task force, 36 tribal representatives—three from each area location—five BIA administrators and two Department of the Interior appointees with reporting requirements to all tribes at the local level put in place the most extensive tribal consultation and participation network to date.

As a result, tribes have been full partners in the development and presentation of the task force recommendations. The Joint Advisory Task Force at its very first meeting agreed, given the legislation changes and the increased operations of tribal governments within the last two decades, that, first, the BIA's current structure and operations are outdated and obsolete; and, second, any substantive reorganization of the Bureau of Indian Affairs would have to include more than just adding, eliminating or shifting organizational boxes and functions. It was further agreed upon that a more comprehensive approach would be necessary. This approach would include not only structural changes but substantial changes in the budget development process and in the internal operating systems and internal processes of the Bureau.

Based on these three broad agreements, a new BIA mission statement was developed, along with a set of guiding principles to ensure that any proposed changes in the Bureau met a specific level or standard of expectation. Major areas of discussion included, one, streamlining of central and area office with financial savings being passed down to the tribe-agency level; second, providing flexibility for the delegation of what we call "designer areas" and agencies to meet the specific needs of the local tribes; third, continuing the development of the tribal budget system, which would lead to the eventual tribal control of 95 percent of tribe-agency dollars; fourth, the strengthening of the Office of Indian education by fully implementing Public Law 95-561; and the fifth area is establishing a regulatory reform team to review the BIAM and 25-CFR and implement needed policy changes.

An understanding of this comprehensive approach taken by the Joint Advisory Task Force, as well as corresponding recommenda-

tions is depicted in the attached, which I took from the report, which shows an overview of the reorganization of the task force efforts, and I think clearly sets out the comprehensive approach across the entire operations leading to tribal empowerment.

This takes us to point two; that is, for the first time in the history of the Bureau of Indian Affairs a joint comprehensive review of all aspects of the Bureau's organizational structure, operational processes and regulatory policies has been completed. Realistically prescribed recommendations have been jointly presented. These recommendations address the necessary BIA organizational, regulatory, educational, and budgetary reforms needed to achieve, Mr. Chairman, what you have called for—greater accountability and more effective use of limited Federal resources.

Now when the announcement of a task force to restructure the BIA was first made, the reaction of most Federal and tribal members was, well, here we go again; another study to sit on some shelf and collect dust. It was also the feeling of many that an attempt to bring together both tribal and Federal representatives to jointly develop a restructuring proposal would only end in disagreement and further frustration. The results would be either no report being submitted or both the tribes and Department of the Interior submitting individual reports to the administration and Congress with eventually little to no administrative or legislative actions being taken since there would be general agreement between the participating parties.

Others complained that the process would take too long and that when recommendations would be proposed, they would not be timely or relevant. The results, however, of the Joint Advisory Task Force have proven to be very successful, productive and timely.

And this brings us to point three, which is the efforts to develop a comprehensive reorganization proposal has taken over 4 years, 22 joints Tribal-Federal task force meetings, numerous work group sessions, thousands of tribal and Federal person hours, and an estimated \$4.4 million taxpayers spent across two Administrations. This process, however, has produced a final report, which was submitted to the administration and Congress. This report included realistic, prescribed recommendations and time lines. These efforts, therefore, I believe, as well as the recommendations of the task force, deserve to be put before the American people in the form of proposed legislation for review, comment, and hopefully eventually legislative action, as well special effort should actively be taken to ensure thorough explanation of proposed legislation to tribal members and to provide ample opportunities for discussion and input.

Now, in conclusion, as an enrolled tribal member, citizen and taxpayer, I am a believer in the statement that says, "The government which governs best is that government closest to the people." That is, strong local governments with flexible, Federal regulations and as little Federal control as possible. I am also a believer in strong communities and families, such as communities with the resources to offer employment opportunities to parents so that they can raise their children with the same opportunities as other Americans, locally controlled and administered school statements, and community family support systems which seek to strengthen family

ties and values; in other words, many of the same concepts and values being supported by today's Congress.

However, I am also painfully aware that tribal governments and communities continue to be deprived of these resources and the flexible policies needed to ensure access to these rights and privileges of our members. At a time when Congress is forging a new contract with America, congressional members must not forget the original and historical contracts and promises founded in the U.S. Constitution and guaranteed through treaties, acts of Congress, judicial decisions and Presidential directives.

It is imperative that these legal and moral obligations be recognized and upheld. Efforts must be continually made to ensure that direct Federal Indian government to government relations be maintained, enhanced and being addressed in any new congressional initiatives.

Mr. Chairman, and members of the committee, this concludes my presentation, and I will be pleased to answer any questions that you may have.

Thank you.

[Prepared statement of Mr. Brown appears in appendix.]

The CHAIRMAN. Thank you, Mr. Brown.

Wendell, welcome back.

STATEMENT OF WENDELL CHINO, PRESIDENT, MESCALERO APACHE TRIBE, MESCALERO, NM, AND COCHAIRMAN OF THE JOINT TRIBAL BIA/DOI TASK FORCE ON THE REORGANIZATION OF THE BUREAU OF INDIAN AFFAIRS ACCOMPANIED BY BERNIE TEBA, ECONOMIC DEVELOPMENT DIRECTOR, PUEBLO OF SANTA CLARA, NM

Mr. CHINO. Mr. Chairman, and members of the U.S. Senate Committee on Indian Affairs, we appreciate the opportunity to appear before you today and address the most criticized, most poorly rated, condemned and questionable Federal agency; namely, the Bureau of Indian Affairs and the need for reorganizing this Bureau.

I served as a tribal cochair of the task force, which was initiated and chartered under the former Secretary of the Interior, Mr. Manuel Lujan, Jr., and under the Secretary of the Interior, Mr. Bruce Babbitt, after he recharted the task force under the present administration.

Point 1 that I wish to make, the background and history of the reorganization task force:

The Joint Tribal BIA Tribal Department of the Interior Advisory Task Force on the reorganization of the Bureau of Indian Affairs task force was chartered on December 20, 1990 by the Secretary of the Interior. The charter was to develop baseline goals and plans for reorganization to strength the BIA's administration of Indian programs. The creation of the task force was based on a congressional mandate in response to tribal concerns that the Department of the Interior was planning to move forward with the reorganization of the Bureau of Indian Affairs prior to appropriate participation and consultation with Indian tribes. The initial task force charter was for 2 years and was extended an additional 2 years by the Secretary of the Interior on November 18, 1992, in order to en-

sure that the task force's efforts were tribally driven; yet, at the same time, a joint partnership effort—36 of the 43 members of the task force were tribal members, 5 were BIA employees and 2 were Department of the Interior employees. The 36 members were 3 representatives from each of the Bureau's 12 area locations who were nominated by the tribes and appointed by the Secretary. The task force was led by cochairpersons representing the tribal and Federal partnership. The Assistant Secretary of Indian Affairs was named the Federal cochair by the Secretary, and the tribal representatives elected Wendell Chino, President of the Mescalero Apache Tribe, the tribal cochair. The task force held its first of 22 meetings on January 22 through 24 1991, in Crystal City, VA.

During the 4 years of its charter every effort was made to conduct its meetings in different administrative areas to allow as many local tribes to participate as possible. To further ensure that this effort was tribally driven several steps were taken:

One, time was set aside at each meeting to listen to the concerns and comments of the tribal leaders; two, tribal task force members were made responsible and held accountable for meeting with their respective tribes; three, each BIA area appointed Federal coordinators to facilitate ongoing consolidated sessions with the tribes; four, all tribes were invited to submit written comments for task force consideration.

As a result of this participatory consultation process, tribes have been full partners in the recommendations presented.

Point 2, summary of the task force report and recommendations:

Formerly institutionalized through legislation the partnership process for bringing about and managing changes, which include full participatory and consultations with tribes and all issues require continued oversight and attention to the development and implementation of the task force's recommendations by identifying and empowering oversight committees or groups made up of tribal and BIA officials most familiar with budget, education, the BIA manual, Code of Federal Regulations, U.S. Code processes and reorganization recommendations;

Mandate adoption of the recommended mission statement for the BIA mandate that all reorganization of the BIA follow the task force's guiding principles and be consistent with the task force's long-term vision for the BIA and tribes;

Eliminate or revise as necessary any provisions or manuals, regulations and laws which restrict implementation of the reorganization in keeping with task force principles or otherwise impede self-determination;

Mandate the BIA to continue the development and implementation of the tribal budget system components;

Amend the Indian Self-Determination Act to provide a new title which sets out the requirements for the three components;

Mandate other actions regarding budget which include direct use of savings from area and agency streamlining in accordance with the wishes of the tribes in those respective areas and agencies;

Establish a formal policy and system for the appropriate administration of contract support;

Continue efforts to provide minimum based funding for small tribes without reducing services to other tribes;

Ensure that all resources saved due to decentralization or streamlining of the central office or central office west remain with the Bureau to provide additional services to tribes in accordance with tribal priorities;

Provide the staff support required to implement and manage the on-going efforts and systems recommended by the task force, including key staff to coordinate the tribal budget system components;

Provide a response and an annual report to the tribes on the status of implementation of the task force recommendations.

Point 3, the implementation:

In January 1993 Secretary Babbitt had the opportunity to disassociate himself from the task force and promulgate his own approach to the BIA reorganization. It should have been clear to him, and he was so advised, that if he did not do so, he would be seen as embracing the task force cochaired by his own Assistant Secretary for Indian Affairs and would be identified with its conclusions and recommendations. The worst thing he could do would be to continue the Department's involvement with the task force and then ignore its recommendations.

For some unfathomable reason, the Department of the Interior has taken the worst possible route. The Assistant Secretary continued to cochair the task force right up to the final meeting. She and the Secretary have expressed to this committee and to the tribes support for the task force report and recommendations. At the same time, the Department and the Bureau of Indian Affairs have offered numerous reorganization proposals to Congress, to the tribes and to the Vice President's National Performance Review, all of which have been developed with no amenable tribal consultation, with no apparent reference to the work of the task force. It sometimes appeared to us that no one in the Department of the Interior has even read the report other than the BIA employees assigned to provide staff support to the task force.

I am told that at a recent meeting before this committee it was quite obvious that the Secretary himself had not read the report and was unfamiliar with its findings.

Mr. Chairman, the Indian tribes of this country are as baffled by the Department of the Interior on this matter as the committee appears to be. If the Department would reject the task force report and give us their reasons, we would know what to work on. But when they accepted in theory and ignore in practice, I am led reluctantly to the conclusion that they are reacting negatively to the tribal involvement in the task force process, not the substance of the report and its conclusions and recommendations.

The fact that this report has created the expectation on the part of the Indian tribal government that they will be intermittently involved in all such decisions that affect their lives seem to pose a greater threat to the Department than the recommendations of the task force. Congress is often accused of micromangement in Indian affairs, and, indeed, a certain amount of unnecessary detailed legislation has been enacted in the past 25 years, but the record is replete with unfilled promises from the Bureau of Indian Affairs and the Department of the Interior promising a new initiative, a cure for persistent management problems, and implementation

plans for new legislation and a host of other assertive actions just around the corner. But they never seem to turn the corner.

The Indian tribes of this country share the frustration of this committee with the Department and its indolence. The question for us today then is what is the best action that can be taken to ensure that all this task force work does not end up on the shelf, as many of the reports have? How can Congress legislate an attitude? People in this city often seem unaware that we tribal leaders run governments too. We knew from the beginning that the task force exercise was a process, not an event; that is, we could work for years with the Department and the Bureau on studies and recommendations, but we would also need to be involved as the recommendations are put into practice, as they are finally shaped into the forms, guidelines, budgets, action plans, and redelegations of authority that would be necessary to implement the task force report. We knew from the outset that our final report was just the beginning of a much larger process, but we thought that it was an excellent first step and one which had the essential elements of tribal involvement in the Federal executive process.

That is why those of us who stayed with the task force to the end did so. We would like to see the general recommendations of the task force adopted and put into practice, and if it takes legislation to accomplish that end, then we will support such legislation. We would also like to be involved with the executive branch in the process, and no matter how detailed the legislation is, there will be a process of implementation. The problem is how does the Congress' legislation provide an appropriate role for Indian tribes in the executive process, especially in a situation where the administration does not seem to want our involvement. We have only recently received a copy of the discussion draft of your proposed Bureau of Indian Affairs Act of 1995. It appears at first reading to be an excellent attempt to force the Department of the Interior to address the task force report and to include Indian tribes in the process.

Let me address a few considerations concerning this proposed legislation, reserving the right to make further comments after I have had the chance to review it in greater detail and to discuss it with my own tribal council, with other Indian tribes and with Indian organizations having an expertise in Federal Indian policy.

Fourth, the recommendations:

First, we want the task force report to be the basic reference document that guides the departmental and BIA reorganization effort. That only makes sense in light of the enormous tribal and Federal effort that went into the task force. By this I do not mean that the task force report should be enacted word for word, but that it be recognized as the framework it was intended to be. Proposed legislation, while it does not mention the task force report specifically, appears to force the Department to address issues contained in our report and for that reason we generally support it.

Second, we want Indian tribal governments and their representatives to be meaningfully involved in the reorganization efforts. We understand that some Federal decisions must be made on a short schedule that does not allow for consultation with nearly 600 federally recognized Indian tribal governments. The proposed legislation

appears to require the maximum feasible involvement in the form of the processes referred to as the agency, area and central office compacting processes. We suggest that there be added a national advisory group composed of tribal representatives with provisions for their staff capability to consult and serve as a watchdog at the national level, not only over the central office compacting process, but to ensure that the area agency processes are conducted in the spirit of the legislation. The problem with consultation only at the agency and area level is that it leaves enormous discretion in the hands of the Department and the Bureau to interpret the meaning of these consultation processes in light of the most favorable to their own interest. It may be suggested that in this recommendation we are trying to prolong the life of the task force. We do not recommend anything as elaborate as the task force that was recently concluded. It seems clear, however, that left to its own devices, the Department of the Interior will see the task force report and all the work that was done during that time go to waste. We are not willing to let that happen.

Third, we would suggest that the process for reviewing the Code of Federal Regulations and for reviewing the Bureau of Indian Affairs' manual be combined. We do not take the position that the BIA manual should be abolished. Every Federal agency needs a set of guidelines to aid its employees in the conduct of their duties, and these guidelines need not be so formal as to be a part of the Code of Federal Regulations. If the manual is abolished, something very much like it will soon take its place under another name. The problem with the present manual is not only that it is out of date, but also the BIA offices at all levels do not have up-to-date copies due to the incompetence and territory of the central office employees responsible for its maintenance and promulgation.

Further, it is the essence of due process of law that the Indian tribes whose affairs are governed in part by the BIA manual also have access to this document. Historically, tribes have not been able to secure copies of the manual. Yet, the manual is too often used negatively as an excuse for the Bureau to refuse to perform a service for a tribe, or an eligible individual Indian or to allow a tribe to take a certain action based on an interpretation of the manual, parenthetically, to which the affected tribe does not have access. There will always be guidelines; we simply want to know what they are, those who have been trying to implement the CFR and program benefits for which they are otherwise eligible simply because either it is assumed by Federal agencies and parenthetically State agencies administering Federal funds that their needs are being served by the BIA, IHS, or the tribes.

And, finally, we call the committee's attention to the fact that in the mid-1970's when the Indian Self-Determination Act was under consideration, the Indian tribes were repeatedly assured by the Congress and the Executive Branch that self-determination contracts, 638, and the subsequent self-governance compacts were options to be considered by the tribes and would never be forced upon unwilling tribes. We think there is some explicit language in this legislation reaffirming that promise would be timely. We have heard disturbing rumors from the Bureau that tribes will be increasingly forced into 638 contracts for self-governance compacts to

enable the Department to create the appearance of complying with the general goals of the National Performance Review and departmental streamlining goals.

Thank you for allowing me to testify, and I would be glad to answer any questions.

[Prepared statement of Mr. Chino appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Chino.

I note your friend, Senator Domenici, is here, and I would like to ask him if he would like to make any comments at this time.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Thank you very much, Mr. Chairman, and Senator Inouye.

First, let me indicate, Mr. Chairman, that I'm a cosponsor of your bill, which is an effort to implement the task force's report, and I want to congratulate the task force led by Wendell Chino for the efforts that they put forth and the positive approach they have taken to some of the problems that the Federal Government has created with reference to the Bureau of Indian Affairs' handling of the Indian people's problems and resources.

I look forward to a time when the Bureau is greatly deregulated and when more and more authority is given to the Indian tribes and Indian people. Clearly, we are trying to put more authority in the hands of the Indian people, and that's what your effort was all about, and that's what this bill is all about.

I won't be able to stay for the rest of the hearing, but let me just thank you for all your effort, and thank you, Bernie, for your efforts. I greatly appreciate it and will be as much a part of it as I can as we move it through.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Domenici, and I think we are all aware that the budget, which is on the floor as we speak, is under your chairmanship, and I appreciate the fact that you would be able to take the time to join us here for a few minutes. And I want to thank you for your continued consultation on this and other issues that affect Indian tribes, including the many year-long efforts we have made to stimulate tribal economies, and I'm very grateful for that.

So thank you, Senator Domenici.

Senator DOMENICI. Thank you very much, Mr. Chairman.

The CHAIRMAN. We wish you every success——

Senator DOMENICI. In the next 5 days.

The CHAIRMAN [continuing]. In the next 5 days, yes. Thank you, and I'll know you will always have our native American issues in mind as we address the budget, as you have in the past.

I want to thank you all for your testimony.

Eddie, I want to talk just for 1 minute about this so-called BIA manual. Do you know of any other branch of government where a manual that governs and provides regulations for any other segment of government is kept from the people that are subject to it?

Mr. BROWN. No, sir, I am not.

The CHAIRMAN. Isn't that just bizarre?

Mr. BROWN. Yes; and I think it just goes along with the whole history of the Bureau, the original intent, the operation of the Bureau, and the fact that the Bureau is outdated and obsolete and has to be reviewed and brought up to date to reflect the Indian self-determination policy. Part of that, as stated in the task force, has to look at the BIAM as well as the CFR.

The CHAIRMAN. Wendell, as Chairman of your tribe, have you ever seen this manual?

Mr. CHINO. I have just seen a voluminous copy, as well as all the other documents that relate to Federal-Indian relationships. I understand that most of these regulations pertaining to Federal-Indian relationships composed of 22,000 pages.

The CHAIRMAN. 22,000 pages which have never been enacted into law, nor published in the Federal Register? Isn't that correct, Eddie?

Mr. BROWN. I believe so, sir.

The CHAIRMAN. Well, that's just mind-boggling. Could I review for you just 1 minute—both of you are the cochairs of an effort that took place over a 4-year period and cost—I think in your testimony—\$4.4 million, and these recommendations were made. Describe to me what happened then. There was an enormous disconnect between your effort and the BIA and the Department of the Interior.

Can either you, Eddie, or Wendell describe in your view what happened then?

Mr. BROWN. Let me just say that there was concern from the tribes with the change in the administration. It was based upon the discussions—if you will recall, that I stayed on for an additional 6 months because of the tribes' concern to ensure that what was put in place continued. Based on that, we did work—the task force was transitioned over into the next administration with the understanding that the task force would continue and that the products that came out would continue and that whole effort based from the original would continue.

When I left office, that was still in operation with the intent that the report would be taken, completed, and presented not only to the administration but to Congress. After that, I would have to turn it over to President Chino or Bernie Teba to indicate what happened after that.

The CHAIRMAN. Bernie, either you or Wendell—whichever.

Mr. TEBA. Thank you, Mr. Chairman, and members of the committee. My name is Bernie Teba, and I will just provide a brief response.

I guess a good example is the legacy on the tribal side. The tribal representatives to the task force, as well as tribes, believed in the process. As an example, the Albuquerque area tribes—we have Pueblo governments and the majority of them have an annual turnover in tribal governments, and our legacy has been that they have always been in support of the process. And because it is an involved process, I think the BIA is forever going to be changed now that tribes have been involved in the process. We have yet to meet with Secretary Babbitt to go through the report. We have asked for meetings with the Secretary, and, unfortunately, he has not met with us.

The CHAIRMAN. Let me back you up here for a second. The two cochairmen completed the task force and recommendations were sent to the BIA. OK, is that correct?

Mr. BROWN. Yes; they were completed, finally completed, under this current administration. They were not completed under the past administration.

The CHAIRMAN. Exactly, but the 3- to 4-year effort, costing \$4.4 million, was completed, signed by both cochairmen and other members of the task force, and given to the BIA/Department of the Interior, correct?

Mr. TEBA. Correct.

The CHAIRMAN. Then something happened at the point where the BIA made its recommendations for the reorganization of the BIA, which were soundly rejected by the tribes. I don't understand what happened between point A and point B is my question.

Bernie, can you illuminate us on that?

Mr. TEBA. Yes, Mr. Chairman; I think the problem is the tribes have an expectation as a result of the task force process and that's to be involved meaningfully, and the proposals that have been involved by the administration, as Cochairman Wendell Chino's statement indicated, have not been involved in this process of the administration providing alternative proposals.

The CHAIRMAN. Then after the tribes rejected the BIA recommendations, the position of the BIA/Department of the Interior is, what, neutral?

Mr. TEBA. The latest initiative, Mr. Chairman, is an NPR initiative, and, again, no tribal involvement.

The CHAIRMAN. But wasn't the NPR given a 1-year moratorium?

Mr. TEBA. We understand there is a committee comprised of BIA employees as we speak who are looking at implementing the NPR initiatives without tribal involvement.

The CHAIRMAN. Mr. Vice Chairman, I'm sorry to get into this kind of a process side of it, but I think it's important for us to try to understand what happened so that we can perhaps cure the problem in some respect because one of the things that my friend, Secretary Babbitt, told me personally and told this committee was that he would seek to work with the committee and with the tribes to try to implement some of these changes. But, apparently, at least at the BIA level, that's not the case. Is that correct?

Mr. CHINO. Mr. Chairman, these recent moves by the Department and the Bureau appears to be an attempt to circumvent the report of the task force. But we believe that the only answer is the proposed legislation and that that legislation be enacted.

Mr. TEBA. Mr. Chairman, let me——

The CHAIRMAN. I think we need some more communications with the BIA and the Secretary's office, I guess. I don't—go ahead.

Mr. BROWN. Mr. Chairman, having sat on that other side of the fence, let me say that, you know, it's difficult to propose a major reorganization and then leave it up to that organization to carry it out. That's not the way bureaucracy works. Unfortunately, bureaucracy works to support itself, to increase itself and to continue itself. That's why I believe, as well as support the other efforts, is that if any effort is to be made to ensure that these things happen just like the Indian Self-Determination Act, it's got to be legislated

in some way that directs the Department and the administration with specific guidelines of what needs to take place.

The CHAIRMAN. I agree, but I also from my study of the history of other recommendation studies, conclusions, and legislative proposals is that without the cooperation of the agencies involved, it's almost doomed to failure.

Mr. BROWN. I have often found that if you put legislation in there and overview it or have an oversight, as presented here, the bureaucracy eventually follows, and that is, I believe, what has to happen within the Bureau of Indian Affairs, which has long refused to change for a number of reasons, and I won't go into those today. But, clearly, if we expect anything to happen, it's got to be happening with the support of Congress.

The CHAIRMAN. Mr. Teba, I'm interested in a figure you have cited that says, "only 25 percent of the services provided by the Albuquerque area actually goes to Indian tribes." What do you mean by that?

Mr. TEBA. Yes, Mr. Chairman; the task force, as part of its charge, conducted several organizational reviews. One of the reviews we conducted was at the Albuquerque area office level, and we found in our resource study that approximately 25 percent of the resource that's appropriated by Congress actually comes down to the service delivery level. We also conducted a study at the Muskogee area office and the Anadarko area office, and at those levels it's even less. In Muskogee's case, it's 9 percent.

The CHAIRMAN. What happens to the rest of the funds?

Mr. TEBA. It's in the bureaucracy, Mr. Chairman.

The CHAIRMAN. Well, let me just ask one more question, if I could, from a practical standpoint. There's going to come a time, President Chino, and Eddie, where if we carry through on this that the money and the resources are going to go to the tribes to administer themselves, OK, if we reach the conclusions, as recommended by your task force. At some point, it's going to mean a downsizing of the BIA area offices and central offices here in Washington, right?

Mr. CHINO. That's correct.

The CHAIRMAN. What's going to happen then?

Mr. CHINO. Well, I believe that——

The CHAIRMAN. When we start laying people off, when we start reducing the size of the bureaucracies, what's going to happen then?

Mr. CHINO. Well, I think that as the report shows, that if we decentralize resources and decentralize resources to the lowest level—meaning the tribal agency components—that they can administer a good many of these functions at that level.

Mr. BROWN. Also, Mr. Chairman, what is happening has been happening since the passage of the Indian Self-Determination Act, and that is many of those employees move over to tribal government. As we 638 contract, we not only take over the positions but in those situations where there are tribal members, or Indian people working or employees that every effort is made to transition those individuals that want to come over and work with tribes to work with tribes.

Again, we talk about passing on the savings, the importance of not—as we streamline, the importance of not taking those savings away, but putting those savings down to the tribe agency where they can be put to the use that's needed in assuring the kind of programs, as well as staffing, takes place to carry out and to allow tribes to be successful in those efforts.

The CHAIRMAN. Well, I just see some problems when we downsize bureaucracies. We see that in other parts of government, and that's one of the reasons why we will rely on your recommendations as the fundamental basis of anything that we do.

Mr. Teba, would you provide us in writing with that information concerning the 25 percent of the funds actually are rendered in services to the Albuquerque tribes, and the 9 percent to Oklahoma tribes? Would you provide us with that in writing?

Mr. TEBA. Mr. Chairman, I will be submitting for the record that information, as well as an operational manual that was developed by the task force and the task force report also, just as part of the record.

The CHAIRMAN. Thank you very much.

Senator Inouye.

Senator INOUE. Thank you, Mr. Chairman.

Your task force recommendations call for rather massive reorganization at all levels—at the agency level with 102 superintendents, at the area level with the 12 directors, and at the central office with the assistant secretary and the commissioner. Now all of these, as you have pointed out, Dr. Brown, are interdependent in function and responsibility because of the bureaucracy that has been established over the years.

That being the case, how do we proceed? Do we reorganize the central office first, or do we reorganize the agency office first, or the area office or do we reorganize the whole thing at the same time?

Mr. CHINO. Senator, I believe that we ought to start at the tribal agency level. That's where the first move of the implementation process should take place and work our way up into the area office and the central office because some tribes are no longer interested in maintaining a line authority office, which is called the area office. They want to convert some of these line offices into technical centers to provide the necessary services, rather than be a part of the micromanagement of Indian tribes.

Senator INOUE. The Chairman brought up a question that I think is rather fundamental. We are dealing here with sovereign Indian nations and they come in all different sizes, and shapes and resources. Some tribes are exceedingly wealthy and others are exceedingly impoverished. The term "streamlining" has been used throughout the testimony. I would assume from that you are going to be cutting away the bureaucracy and cutting away functions and responsibilities.

The tribes with resources and with experience can carry on and assume self-governance activities. What will happen to the smaller tribes with very little resources when all of these functions have disappeared? Can they receive services, and, if so, from where?

Mr. BROWN. Mr. Chairman, let me respond to that. Just like we have 50 States in the United States, they all vary in resources, et

cetera, and the tribes are no different in that aspect. That is why, if you will look in the report, we talk about designer areas and designer agencies where the tribes, depending on their resources, their current capability, are able to negotiate with the Bureau of Indian Affairs exactly what type of area they would like—whether it's a technical center, whether it's a more traditional approach, whatever—and the same with the agency as well. The concept of designer area and designer agency becomes critical and for the first time recognizing, as you have indicated, tribes are not all the same—different resources, et cetera. We are also looking at budgets and any budget development we also look at some kind of administrative base for the smaller tribes that allows them the dollars to manage and operate their tribal governments. So we look at it from that aspect of understanding that there's got to be differences. The tribes in the East are not necessarily like the tribes in the Southwest, nor their direction the same. The same way with tribes that have many resources, et cetera. We would hope that those tribes that are well-to-do through their own efforts and through economic development are not penalized because of those efforts by pulling away or not recognizing that legal and moral obligation that the United States has to tribal governments.

Senator INOUE. President Chino, you have raised the concern that some tribes have been forced to enter into self-determination contracts and self-governance compacts, and I would assume you are saying that these are tribes that are not ready to enter into such arrangements.

How would you resolve or address that problem under your recommendations?

Mr. CHINO. Let me touch very briefly on the concern that you have for small tribes. I think that under the recommendations that we are making in our report, that it is possible to develop a base funding for the small tribes so that they can begin to move.

Now, the exercise of self-governance by Indian tribes to me is a process that belongs to the tribes, and it is a choice that they must make because if everybody goes into 638 contracts and self-governance, what's going to happen to the small tribes? They are going to be forgotten, they are going to be lost and they are going to be far removed from this very important process that we are supporting.

Senator INOUE. We have heard much about the manual, the 22,000 page manual. Have all tribes received this manual or have some tribes received the manual?

Mr. BROWN. I could not respond to just how many tribes have had the manual, or have the full manual or have what exist today. I think that would probably be determined by the more assertive tribes that probably went out and got it versus those that did nothing.

Senator INOUE. How does the assertive tribe get it, by applying?

Mr. BROWN. I would assume that they would go through their agency and area office. That's an assumption.

Senator INOUE. President Chino, does your tribe have it?

Mr. CHINO. I think in our report we are proposing that the tribes and the Federal representatives work together to look at all of these important documents and redesign them so that they become

more effective documents for the benefit of the tribes. At the present time if any of these documents are looked at by Federal representatives and if they want to utilize a negative approach, they will find something in these documents to do that.

Senator INOUYE. Well, I have other questions, if I may submit them in writing?

Mr. BROWN. Sure.

Senator INOUYE. I thank you very much.

The CHAIRMAN. Before you leave, I have a few more questions. If this 22,000 page document—it seems to me the proper addressing of that would be, as you said, Wendell, to work together between the tribes and the agencies, but also once those rules and regulations are determined, we should go through the normal procedure that every other agency of government has to do, and that is publish them in the Federal Register, et cetera. I mean, it's frankly beyond my comprehension that an agency of government is able to have somewhere a manual of 22,000 pages with rules and regulations that govern American citizens and tribal nations, sovereign nations, without their knowledge, or permission or their comment at least. Sometimes our citizens read of rules and regulations that are published in the Federal Register that they don't agree with, but at least they are allowed to comment and to provide input both in the formulation of those rules and regulations, as well as the final implementation of them.

So I would welcome any comment that you have on that, but it is just hard for me to understanding.

Mr. TEBA. Mr. Chairman, I think your proposed legislation addresses that fact in creating a CFR task force. That's one step, certainly, in the right direction, but we also recommend that that be expanded to a larger oversight group to look at these other areas, and just one comment I would like to make, Mr. Chairman, if I may. Self-determination, self-governance and self-sufficiency all are resource driven, and if the resources are not available at the tribe agency level, tribes are not going to make these decisions, and certainly then it's not an option for them if the resources aren't there.

Finally, the task force report—I don't think States that we are trying to reduce the bureaucracy. What it's trying to do is strengthen the tribal agency level, as well as the central office. We feel that the central office needs to be looked at, there needs to be some redirection at that level, and then the area that we are really looking at downsizing is at the area level. But, again, that's a role that tribes from those areas are requested to play in the task force report.

The CHAIRMAN. Well, I agree with you but I would hope that it's logical that—you would agree with me that it's just logical if we transfer responsibilities to the tribes, then the current size of the Federal bureaucracy is unnecessary. I mean, it just computes that way. If only 25 percent of the funding is getting to the tribes, that's a compelling reason for us to have in place a mechanism where 90 percent of the funding gets to the tribes. I don't know how you do that without, frankly, reducing the size of the Federal bureaucracy as you implement self-governance and self-determination and self-sufficiency. The object of the game is not just to reduce bureaucracy

but the reduction of bureaucracy is a natural outcome of this whole proposal. Are we in sync there? Do you agree, Bernie?

Mr. TEBA. Yes, Mr. Chairman.

Mr. BROWN. Mr. Chairman, one thing here that I think is important to realize is that even as we speak, there is reorganization going on right now in the BIA and in the Indian Health Service through the reduction of FTE, through early buy-outs, et cetera.

The CHAIRMAN. Absolutely.

Mr. BROWN. Down at the area and agency level people are being forced to restructure now without any specific direction or plan, and the tribes are feeling the pinch from both the Bureau and IHS and this reorganization wondering how it fits into the recommendations, trying to decide what direction this is going. So, you know, we are looking for some direction and guidance from not only the administration, but hopefully the support from Congress as well.

The CHAIRMAN. I understand that and I thank you for that. That's a very important point.

Senator Inouye, do you want to say something?

Senator INOUE. Yes, Mr. Chairman; I just want to followup. When you brought this matter of the 25 percent, I looked over Mr. Teba's testimony and it says, "The services provided by the area office administrative functions was determined to be 25 percent to the tribes and 75 percent to other."

What do you mean by "other?"

Mr. TEBA. Other includes the—our area office provides administrative support to Central Office West, which is the operation in Albuquerque, NM, as well as to providing administrative support to the area offices. Approximately one-third of that resource is to support Central Office West using Albuquerque area resources.

Senator INOUE. Thank you.

The CHAIRMAN. Thank you all very much. We appreciate it, and I'm afraid you will be seeing a lot of us or we will be seeing a lot of you—I don't know which is correct.

Thank you for all your hard work, and we appreciate it very much.

Next is Stanley Speaks who is the Portland Area Director of the Bureau of Indian Affairs;

And Ken Smith who is the Senior Advisor and Former Secretary Treasurer of the Tribal Council of the Confederated Tribes of Warm Springs Reservation of Oregon, and Former Assistant Secretary of Indian Affairs.

Mr. Smith will be accompanied by Chief Nelson Wallulatum and Chief Delvis Heath, Sr., of the Warm Springs Tribal Council. Welcome, gentlemen.

First, Ken Smith, I'm very happy to see you again. You haven't aged a bit and I'm sure I haven't either since we first encountered each other some 12 years ago, and I want to thank you for your continued service to our country and to your tribe.

Mr. SMITH. Thank you.

The CHAIRMAN. Mr. Speaks, I'm especially happy to have you here because, you know, quite often our criticism of the BIA is somehow interpreted as criticism of people who work in the BIA, and the fact is that there are some very outstanding—many, many outstanding, dedicated public servants such as yourself who are a

part of the Bureau of Indian Affairs who do a dedicated job. And what you have achieved and what you are about to testify—because I did read your entire testimony—is ample evidence that there are people in the Bureau of Indian Affairs who are dedicated to exactly the goal that this legislation seeks, the provision of the best possible services to the tribes at the least possible cost, and providing the maximum amount of funds to those tribes.

So I want to thank you for what you have done in the Portland area office, which will be part of your testimony, and I want to thank you for the example you set to many others of outstanding service and as an outstanding public servant.

Thank you, Mr. Speaks, please go ahead.

STATEMENT OF STANLEY SPEAKS, PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, PORTLAND, OR

Mr. SPEAKS. Thank you, Mr. Chairman.

I believe that Mr. Ken Smith is going to refer to his trustee to make the first presentation. [Laughter.]

Good morning, Mr. Chairman, and members of the committee. As a charter member of the Joint Tribal BIA/Department of the Interior Task Force on Reorganization on the Bureau of Indian Affairs and as the Portland Area Director of the Bureau of Indian Affairs, the BIA, I am honored to appear before the committee to report on the efforts taken by the Portland area to implement the task force recommendations.

In the Portland area more than 80 percent of the total funding has been contracted or compacted by the tribes. Ten Northwest tribes representing more than one-third of the self-governance tribes nationwide have entered into self-governance compacts. In fiscal year 1996 we expect at least 6 more Northwest tribes out of an expected 20 new tribes throughout the United States to enter into self-governance compacts.

With this background, it was natural that the Northwest tribes would join with the BIA in creating the Portland area plan, which is based on identifying a tribal share of our annual budget. In response to Public Law 93-638, as amended, and the National Performance Review all program functions were examined to determine which would be retained when all programs were contracted to tribes. The Portland area restructuring plan, which was developed with and approved by the tribes, develops an area office that is streamlined and capable of shrinking further as more tribes contract their share. When all tribal shares are contracted, only a residual staff will be retained to carry out the inherent Federal functions of the trust. All other functions or services will be administered by tribes through Public Law 93-638 contracts.

The Portland area plan I am describing today is the cumulative result of 3½ years of joint tribal BIA efforts. The intensity of our efforts picked up in May of 1993 when the Portland area's task force representatives recommended that the affiliated tribes of Northwest Indians facilitate the Portland area reorganization effort.

As a result of that recommendation, the joint BIA ATNI cooperative agreement was established to ensure that tribes were involved,

that increased levels of communication and participation between Portland area tribes and the BIA staff would exist. The cooperative agreement with ATNI put Northwest tribal leaders, tribal staff people and BIA personnel face to face in often intense work group sessions and consultation meetings.

As a result, we received immediately tribal input and response to specific joint task force BIA reorganization strategies, and we created a forum to provide for the exchange of information between the national reorganization efforts and the efforts of the Portland area BIA and tribes. In all, more than 270 individuals representing 41 of the 42 recognized Portland area tribes and all 12 Portland area agencies contributed to or participated in some or all of the Portland efforts since May of 1993. Jointly, the Northwest tribes and BIA employees defined inherent Federal functions for each program, each area program. Inherent Federal functions was defined as a residual trust responsibility to be maintained when all program services are contracted to all area tribes. We also finalized an appropriate formula for use in the distribution of the program funds to the tribes.

And, finally, we agreed upon the percentages to be used in computing that formula. We then made area functions and funding available to tribes based on their desire to contract for those services. Eleven tribes then elected to enter into Public Law 93-638 agreements to assume their share of contractible area functions and responsibilities.

As a consequence, approximately 400,000 of previously non-contractible funding was added to existing tribal bases and public Law 93-638 contracts in fiscal year 1995. At current projections, nearly \$1.2 million of area funding will be added to existing tribal contracts in fiscal year 1996. Our experience using the Public Law 93-638 process as a vehicle to downsize the BIA has resulted in real, immediate, dramatic impact on BIA operations in the Portland area, effectively shifting resources to tribes and downsizing Federal operations.

As part of the identification of tribal shares, we have made fiscal year 1996 base transfers to restructure our area office operations, area direct, and area field programs tribal priority allocations. In fiscal year 1996 our area office operations program will contain only that funding necessary to fulfill our inherent Federal functions associated with residual trust responsibility in a fully contracted setting.

Likewise, our area field program will consist of appropriated funds which have been identified by program and by dollar amounts and which are contractible to tribes. Both programs will be utilized to support BIA functions until all tribes take their share of every field.

We have identified other efforts in the Portland area in support of the task force recommendations. For example, I am pleased to report that with some exceptions all of my operating authorities have been delegated to the agency superintendents in the field. We accomplished this with no increase in funding by simply designating that the area office staff provides support to the agency superintendents to carry out those authorities.

The unknown in this effort is whether such a delegation will require us to maintain existing staff to support agencies at the regional level. We believe that we maintain economies of scale and avoided costly reductions in force in employee relocations.

As a result of implementing the tribal shares concept, the area office has had to redesign its organizational structure. The new structure when completed will reflect the NPR objectives of increasing spans of control by instituting a team matrix design. This structure replaces the traditional hierarchical BIA organization with a project management-oriented approach, allowing for sharing of resources with concentration on measurable results and outcomes. In this type of matrix organizational employees join interdisciplinary teams, rather than work within the confines of judicial branches, the residual staffing level left to fulfill the inherent Federal functions. Sixty-five FTE is approximately one-third of the previous number of employees in the Portland area office. Out of necessity, the reorganization has forced us to make better use of the technical staff and to respond to the ecosystem management, requirements used in other efforts such as the Northwest Forest Plan.

We are optimistic that this reorganization will allow for the orderly transition to an ultimate residual level, which will require the staff to do more with less. As we develop the Portland area plan we find particularly at the agency a need to design the organization to meet the varied and individual needs of tribes to be served.

There is no question on the diversity of Indian tribes, and certainly for the Northwest tribes there is no satisfactory one-size-fits-all approach. For example, of the 42 tribes in our area, 10 tribes have entered into self-governance agreements. In addition, the Colville Tribe chose a cooperative agreement by which the BIA and tribal resources are pooled to achieve tribal goals. The Grande Ronde Tribe has opted for and negotiated an Indian self-determination accord that essentially designates the area office as the primary source for performance of the Federal official role in the delivery of trust services.

We expect that similar, unique agreements will be developed with the Makah, the Coquille and other Northwest tribes. It is clear that the Portland area plan will be design of both the agency and area level to allow tribes the greatest flexibility to do business with the Federal Government in the manner best suited to their needs.

In all the actions we have taken in the Portland area we have maintained a good faith effort to comply with Public Law 93-638, as amended. Over the course of our effort we learned that because of the multitude of issues to meet the tribal shares determination process we need to develop a more orderly structured process that addresses, to the extent practicable, all issues.

In summary, the essence of the Portland area plan is that the BIA and tribes created a relationship which led to the working partnership to define the future of the BIA. Through this process everyone developed an understanding of the government to government and provide the means to clearly identify the limits of exist-

ing resources within which the BIA and the tribes can work jointly to achieve neutral goals.

This concludes my prepared statement. I will be glad to respond to any questions that you may have.

[Prepared statement of Mr. Speaks appears in appendix.]

The CHAIRMAN. Thank you, Mr. Speaks. Before I turn to Mr. Smith, just let me ask one question. If you've been able to do all of these things which are truly remarkable, why is it that we may need legislation, in your view?

Mr. SPEAKS. From my own point of view, I was a member of the task force for 4½ years. I was a part of the recommendations being made by the task force. I was privy to the recommendations made by tribes on tribal leadership across the country, and I also worked with some very progressive tribes in the Northwest. They are tribes that certainly have strong leadership and strong governance, and they excel in about everything they do.

So that's probably the reason for the Northwest being where it is today, and I respect the tribes. I understand their capabilities and I understand the leadership and what they are able to do, and I have also experienced with them the partnership and being able to meet many of their needs.

The CHAIRMAN. I'm not sure you answered my question. [Laughter.]

If you in the Northwest have been able to achieve these truly remarkable things, can we achieve that in other parts of the country without legislation?

Mr. SPEAKS. I think that would entirely depend upon perhaps leadership at the agency level and at the area level.

The CHAIRMAN. Maybe Ken can address that too because it is neither the vice chairman or my desire to pass unnecessary legislation, but it's obvious that with the proper initiative and proper motivation that, at least in your area, some pretty remarkable things have been achieved. And so, anyway, thank you very much for your testimony.

Mr. SPEAKS. Thank you, Mr. Chairman.

The CHAIRMAN. Ken.

STATEMENT OF KEN SMITH, TRIBAL MEMBER, THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON, ACCOMPANIED BY CHIEF NELSON WALLULATUM, WARM SPRINGS TRIBAL COUNCIL AND CHIEF DELVIS HEATH, SR., WARM SPRINGS TRIBAL COUNCIL

Mr. SMITH. Mr. Chairman, I am Ken Smith, as you've read, past Assistant Secretary for Indian Affairs and I'm a member of the Confederated Tribes of Warm Springs and I also work with the tribe in a number of capacities. With me today from our tribal council is Chief Nelson Wallulatum and Chief Delvis Heath sitting to my left here.

The CHAIRMAN. Would you please stand, sir, and be recognized, both of you?

Thank you, welcome to the committee and we are glad you are able to be here today.

Mr. SMITH. First, it's a real pleasure to be here today to discuss the BIA reorganization task force report, and, like Stan said, we

spent a long time—4 years—with this project involving BIA and tribal people, which is most important, and the Department of the Interior had some representatives on it, and I think that we came up with some very good recommendations. I think this is the first time that tribes have ever been directly involved in laying out and working with the reorganization plan of the Bureau. It's usually done the other way around—the Bureau comes up with a reorganization plan and tries to pawn it off on the tribes.

You are already aware of the activities of the Department and the BIA since the task force completed its report. I felt we had an excellent partnership with the BIA on the task force. Today, however, it is clear that the BIA is not calling the shots. Since we have no control over the Department or the driving force of the NPR, I would suggest any plan to reorganize the BIA must begin first with the task force recommendation. I think that's the foundation, and it appears that legislation is needed to ensure that the key themes and principles are not left to the discretion of the Department.

I will address my comments to three particular parts of the reorganization effort: first, the Portland plan, the budget reform and the central office downsizing.

In the Portland area reorganization plan—I think Stan pretty much covered that—but in the Portland area we are trying to develop a process where we can improve the delivery of services to Indian people, and I think that's what it's all about, regardless whether the Bureau is delivering that service or the tribes are delivering that service. I think the whole key in the Portland area was the process we used, all tribes participated in developing that particular plan. When we first started out in the Portland area, we took a survey of where tribes were going, trying to get an idea, and in that survey practically all tribes, said they want to be able to take all programs under a 638 contract or a compact within the year 2000.

So we asked ourselves what should the BIA look like? And I think this is where we started talking about how much resources should the BIA hold on to be able to carry on their trust responsibility and how much of those resources could be moved over to the tribal sector, and let the tribes start providing the services to their own people. That's where we started.

I feel there are some key items that need congressional attention to make it fully successful. First of all, protection of tribal shares—we need to make sure that tribal shares are protected equally whether they are compacted, contracted or left with the Bureau. To accomplish this, two separate budgets are needed. It is time to separate BIA funding for services, including tribal shares from the residual funding provided to carry out inherent Federal functions. Legislation could require separate budgets, and the reason I'm saying that today in Portland we have determined what the residual is of the area and we have determined tribal shares. There are some tribes, like the self-governance tribes, who have taken their shares. There are a number of other tribes that came up to the plate and contracted their shares. There's a number—50 percent of the tribes' shares are still there.

Well, if there are budget cuts, which we assume there will be, we're afraid that they're going to take away those shares and the

tribes that are getting the services from the Bureau are going to be short-changed down the road. For instance, if we wait 2 or 3 years to take our shares, there will be less money in that pot. So we feel there should be some protection once we come up with what our share is. For instance, if Warm Springs has got a share, we would like to see it protected in some fashion so that if we decide to take that opportunity to contract part of the area office programs, then 2 years from now that share will be there.

Tribal participation, we think is very key. Naturally, you can't get 42 tribes agreeing on every little thing, and that's one reason we came to consensus that we really felt that the trustee should call the shot on what these residuals should be because he is the trustee and we wanted to make sure that he had adequate funds to carry out his responsibilities. But you need full tribal participation in that process.

Laws, regulations and procedures in the Portland area—I think Stan did a great job in delegating all the authority he could down to the superintendents, and I think he just about delegated everything possible. I think more authority needs to be delegated out of the central office, and I totally agree that the outdated laws and regulations should be eliminated.

On the budget reform, one of my primary goals on the task force was to cochair the budget reform work group. I was joined by tribal leaders, technical staff—both BIA and tribal—in an effort to bring the budget system in line with the evolving self-determination policy. This effort was a partnership, and I think it was really a true partnership and we accomplished a lot in that work group. Our recommendations were encompassed in the tribal budget system. By implementing the tribal budget system recommendations, we will see a long-term strategic plan for the BIA developed in partnership with tribes based on their plans and needs; a partnership in evaluation focused on opportunities for improvement; annual tribal profiles containing social, demographic, economic and resource information needed to make prudent investment decisions; an effective needs assessment system to report on tribal funding needs, and tribal specific recurring based funding rather than program based funding.

The main theme of this effort was to ensure maximum tribal control and decisionmaking. In all, Congress and the administration have approved or implemented 46 of the 65 tribal budget system recommendations. Some of them are in the process of being implemented right now, and we are hoping to get a higher percentage figure.

The 1994 self-determination amendments included a number of our earlier recommendations, and we were delighted with the progress made in the self-determination process. We are very grateful for the work of this committee in passing those 1994 amendments.

To build on those improvements, the task force made the following legislative recommendations:

Establish a partnership in planning, evaluation and information management; two, require a needs assessment process which accurately measures and reports tribal needs to Congress; and, three,

ensure the transition from program-specific funding to tribal-specific stable based funding.

Now about the central office, the task force recommended that the central office be downsized, streamlined and decentralized. I feel this needs to be done first before we start to carve up the central office for tribal shares. We shouldn't view the central office as an island. We need to look at the total organization. If the BIA is going to determine its residual on what funds it needs to carry out its responsibility, they have to not only look at the central office, they have got to know what's happening in the area on how much funds they are retaining, and they have got to know what they have got at the agency. You can't take one at a time. I think you have got to do it together because if I was the assistant secretary today or secretary, I would want to know that I have enough resources and FTE to carry out my responsibilities? That's what I'm charged with, and I want to make sure I have those resources to be able to do my job, and I think the way it's going about now is the wrong way.

The task force recommended streamlining the central office, and we felt the savings that we would get in streamlining, and downsizing, consolidating, doing away with regulations, making the decisionmaking at the lowest possible level would free up some money, and we felt the dollars should go to the tribes themselves to carry out and improve the programs.

Regarding the central office reorganization, we suggest legislation that will ensure that the central office is able to meet its mission and obligation, and that tribal leadership is fully engaged in making that determination.

Mr. Chairman, that concludes my remarks, and I would like to thank the committee for its continued support.

[Prepared statement of Mr. Smith appears in appendix.]

Senator INOUE [assuming Chair]. Thank you very much, Mr. Smith.

Before I proceed, I would like to convey to you the apologies of the Chairman. He had to go to the Armed Services Committee because at this moment there is a very important decision to be made there.

I would like to join the Chairman in welcoming our wise and respected friends, Chief Nelson Wallulatum and Chief Delvis Heath. Welcome to the committee.

If I may, I would like to follow up the Chairman's concern. I too would like to join him in commending Mr. Speaks for your accomplishments in your area. It appears that you have made these changes by beginning the reorganization in your area offices. Is that correct?

Mr. SPEAKS. That's correct.

Senator INOUE. And then proceeded down to the agency level?

Mr. SPEAKS. The agency and the area office reorganization structures occurred at about the same time.

Senator INOUE. Without central office reorganization?

Mr. SPEAKS. That's correct.

Senator INOUE. I ask this because I asked the other panel how should we proceed? Should we start at the central or at the agency level? And you started your activities at the area level.

So my question is, is this legislation necessary or can it be done without legislation, and that is the Chairman's question also?

Mr. SMITH. Mr. Chairman, I think it's necessary. As you know, it's just like no one is paying too much attention to our report. I think there's a lot of excellent recommendations. It would improve the delivery of services to Indian people if those recommendations were implemented. It's stymied right now. The NPR seems to be more important and the NPR is just a plain budget cut. It's not going to improve the delivery of services to Indian people—I think our recommendations will—and they have not going to deal with regulations unless it's required and mandated by Congress, and that's the way the Administration is going to work. It's not a high priority with the Department of reorganizing the Bureau of Indian Affairs. I don't see the Secretary involved in it. I might add that he did not turn out to any one of our meetings, of the 22 meetings, and the previous Secretary attended a number of them. So I have to feel that the reorganization of the Bureau is not a high priority in the Department.

Senator INOUE. Both of you have spoken of tribal shares, and, Mr. Speaks, in your area I gather there are a few small tribes who do not wish to contract out their tribal share. How are you going to protect that tribal share?

Mr. SPEAKS. We have identified the tribal shares. These tribes know exactly what their percentage of funding—our base funding is in the area office, as well as the agency. The only way that could be protected would be if our budget was stabilized and that we did not receive cuts in the future. If we did receive cuts, then it would be very difficult for us to totally maintain that trust obligation and services to those tribes that are not moving into the self-governance arena or into contracting of their programs.

Senator INOUE. And would the downsizing of your area staff, would that be sufficient to provide the services to these tribes?

Mr. SPEAKS. If our budget is stabilized and the process that we have gone through to identify the residual staff to carry out the inherent Federal functions of the area, then we could provide those services.

Senator INOUE. And do you agree with Secretary Smith that legislation is necessary?

Mr. SPEAKS. From my point of view, legislation is not necessary for the Northwest, but I cannot speak for the other parts of the Bureau.

Senator INOUE. I think it would be rather difficult to pass legislation just to affect 11 areas and not the 12.

Mr. SPEAKS. I understand that.

Senator INOUE. Do you find that the recommendations of the joint task force would do havoc to your changes that you have already implemented?

Mr. SPEAKS. The recommendations?

Senator INOUE. Yes.

Mr. SPEAKS. Have they been very supportive?

Senator INOUE. No; you have studied the recommendations of the joint task force.

Mr. SPEAKS. Yes; I was part of the task force.

Senator INOUE. Now if those recommendations were implemented by legislation, put into law, would that cause you problems in your area?

Mr. SPEAKS. If they were implemented according to the recommendations of the task force, they would not cause us difficulty because we are probably two-third of the way through implementing those recommendations in the Portland area.

Senator INOUE. You are in close contact with the central office. Mr. Smith has suggested that reorganization is not a matter of high priority. What is your thought? What is your view?

Mr. SPEAKS. I think that the organization of all three entities—the agency, the area and the central office—are necessary. If we are going to use the concept of identifying the residual of how we carry out our Federal trust obligations to the tribes and if we're going to provide the tribes the opportunity to either compact or contract when they are ready, when tribes are ready to contract, then I think that's the process that we should use.

Senator INOUE. Now you consider that high priority but does the central office agree with your priority?

Mr. SPEAKS. I consider it to be a high priority, but I'm not privy to knowing exactly what the central office's priorities are.

Senator INOUE. You don't communicate with them?

Mr. SPEAKS. I communicate with them, but I'm just not up to speed on what their recommendations are and so forth.

Senator INOUE. What is the line of authority? Do you report directly to——

Mr. SPEAKS. I report directly to the deputy commissioner.

Senator INOUE. And has she indicated concern and high priority in this area?

Mr. SPEAKS. Yes; she has. She has indicated a lot of concern about how to implement the task force recommendations.

Senator INOUE. Mr. Smith, you consider legislation necessary. Do you support this bill as is?

Mr. SMITH. I have not had the privilege of reading the latest version of the bill, but I read an earlier version and I was in complete agreement of the direction it was moving in. I felt very strong that tribes have to fully participate in the whole process whether you do it in the central, area or agency. They have to be involved, and my feeling is that central is moving along with no participation of tribes at this point. The decisions may be one person—I don't know how those residuals and the shares are calculated, but there is no participation from tribes.

Senator INOUE. Do you believe that with the passage of this measure you will have that relationship that's necessary?

Mr. SMITH. Yes; I think it would.

Senator INOUE. You indicated that the central office should be downsized and that reorganization should come about at all levels at the same time. Is that correct?

Mr. SMITH. I think they need to—what I'm saying is before the central office could really calculate its total-share of residuals and the tribal shares, it would have to know what residual it has in the area offices. If I had to lay it out myself as a strategy, I would have every area office determine their residual, and then I would move up into the central office. Then once I know what my residual is

in the area office, I would know better what residual I need in the central office to support my area offices. But I can't do the central office first without knowing what I have got out in the area office because I won't know whether I have enough resources to carry out my responsibility.

Senator INOUE. And you contend that the National Performance Review, as it relates to Indian nations, is just an exercise in the budgetary process and has very little to do with functions and responsibilities?

Mr. SMITH. Yes; it has very little to do with improving the BIA. The first move was to cut the central office by 50 percent, cut the area offices by 50 percent, and then they were going to improve their performance. I don't think it could be done—It's a budget cut.

Senator INOUE. Well, Director Speaks and Secretary Smith, on behalf of the committee, we thank you very much.

Mr. SMITH. Thank you.

Mr. SPEAKS. Thank you.

Senator INOUE. May I now call upon the third panel? The Chief of the Mississippi Band of Choctaw Indians, Phillip Martin; the Chairman of the Washoe Tribe of Nevada, A. Brian Wallace; and the President of the Central Council of the Tlingit & Haida Indian Tribes of Alaska, Edward Thomas.

On behalf of the committee, I am pleased to welcome this distinguished panel. May I first call upon Chief Martin?

**STATEMENT OF PHILLIP MARTIN, CHIEF, MISSISSIPPI BAND
OF CHOCTAW INDIANS, PHILADELPHIA, MS**

Mr. MARTIN. Good morning, Senator, and good morning to the rest of the committee. I am very interested in the conversation here this morning, but first I would like to commend the two cochairmen of the task force. It took us a long time. I was involved in most of those meetings, and there were times when I thought that we would never get anything done, but they kept on trucking and got things in place, and I believe it's a good report to work from in reorganizing the Bureau.

You know, earlier I heard somebody make a statement that we need to know the needs of the tribes. The tribe has related those needs over and over for a number of years saying their needs are not addressed, but the problem here has been, in my judgment, the implementation of whatever policy that was developed by each administration. In this administration I'm not familiar with any policy that has been changed as it relates to tribal governments. I have been one of those that have thought about what can be done, you know, but I haven't made recommendations before in a simplified way—maybe it was too simple—but we are not getting anywhere with any recommendations so far. The Bureau remains the same, and I don't know—I often think it may be impossible to change attitudes or it may be impossible to change. The direction that they seem to be going in is no direction.

I think a lot of tribes are much interested in seeing this change, but we come from the reservation level. We have other needs that we have to address and think very little about what the Bureau should be doing or about its structure. When you have a tribe that has made a lot of progress in its economic development and has the

potential of spinning off from that, doing a lot more community development, but you don't have a spinoff of resources. So here I am having a lot of people employed, but I'm lacking. The biggest need that I have now is housing and day care. We have got the jobs and people are working but no houses. They are crammed three and four families in a house. They come to my office all the time, and I call HUD and they're in the process of cutting back. So I don't expect much help there.

Day care, this is a growing population, a tribe. Several years back we were talking about 6,000 tribal members, but now we are over 8,000. So we have a lot of—this is a young tribe. The average is less than 25 years old. We have a lot of potential of having jobs, but they can't do this without day care. You have a lot of children that need to be attended to. Working parents cannot find day care services so they don't work.

Those are the kinds of problems that we are thinking about, not too much about the reorganization, although we are very concerned about it.

The southeastern tribes—most of the tribes in the Southeast contract most of the programs. Probably the Cherokee and the Choctaws and the Seminoles are the only ones that have a significant amount of Bureau services; yet, not at the agency so much. From this standpoint, you know, we don't need a lot of people in Washington to administer our programs. We are administering those programs ourselves, and we are having no problem. I believe that when we contracted the programs at the agency level, we made the hard decisions. Most of the people there were Bureau employees. Some of them were tribal members, but we decided that if we're going to reform and take advantage of the tribal contracting with Governments—638 contracting—then we had to make these hard decisions, and I think that's what Government has to do too. They know that there may be over-staffing or there might be a lot of extra people in the Bureau that the tribes don't need, but they have to make that decision. It's not for us to say you ought to do it. I think it's the government's responsibility to know that they have to do it, and do it.

So I believe we can do without a lot of bureaucracy. We need the resources to do something for ourselves, and we know what we want to do. So there are a lot of arguments and talk going on about self-governance and 638 shares. The problem with that is there's not enough money to make that thing work the way that it was designed. It is not—the resources are not there so we applied for a 638 IHS governance compact. The law says we can negotiate it ourselves with the agency, and we did. We negotiated and executed a good compact, what we thought was one we could live with, and now that others are coming in to compact for self-governance, there seems to be this argument or obstacle of shares. And I think maybe Congress needs to look at that because I think IHS and—I don't know about the BIA because we don't have one with them yet—but the IHS has failed in analyzing what it had to compact with. So the law says, tribes, you can write your own compact, and that's what we did and got additional money—not a great amount of money, but we got additional money, which helped us. And then we came back and we have other tribes that are not getting their fair

share and those who are not going to compact are very concerned if they're going to have any money left.

So that's not the tribes' fault. I think it's the legislation and the lack of resources to carry that out. That's the problem right there. So, you know, I'm going to break it off right there, and if you have any questions for me—no, one more thing. This is what I've always advocated, that in this day and time we don't need a lot of government. What we need is less government—I sound like Republican talk but it's not. It's the way I see it so we need the resources. The way to cut offices down is if the tribes are going to contract, then establish a contracting office that does nothing but contract negotiation and contract relationships with the tribes. Then we are worried about trust relationship and rightly so. We ought to be establishing another office that would deal with nothing but trust responsibility, and within that office you would have the legislative function to the Congress and to the tribes. But I've also got another idea: I think the tribes ought to deal directly with Congress in getting the budget, not the form that we historically do—somebody prepares a budget and we come up here and comment on it, and that's it. I'm talking about a legislative office to sit down with tribes and come up with individual compacts or contracts and take that package to Congress to have it legislated and appropriated.

We've got to mean business. If we're not meaning business to work with tribes, then we're going to continue this slow progress that we're making year after year, and it's time to change. The tribes have changed, tribes are progressing, tribes can do a lot of things themselves that they weren't able to do maybe 50 years ago. The Bureau was important in those times, and they came in and worked with the Indian people, but the times have changed now and they have to change with the times as well.

Thank you.

[Prepared statement of Chief Martin appears in appendix.]

Senator INOUE. Thank you.

May I now call on Chief Wallace?

STATEMENT OF BRIAN WALLACE, CHAIRMAN, WASHOE TRIBE OF NEVADA, GARDNERVILLE, NV

Mr. WALLACE. Thank you, Senator. Thank you very much. That's the first time I've ever been called a chief.

If I may, I wanted to depart a little bit and follow up on what Chief Martin has done with regards to my written statement for the record, and we've also submitted some supplemental information, but when we got involved in the task force effort, we took it very, very seriously because we were very hopeful that it was going to make some meaningful changes and difference to us. And then in our experience—myself being from Nevada and California—we got heavily involved in the budget reform work, and then offered our talent and our ingenuity to the task force which they accepted in coming up with a demonstration project on what Nevada tribes could bring to the budget reform discussion with regards to better resource allocation processes in multi-tribe agency settings. So we did that and we did all that work very seriously and very diligently, and we performed to the expectations of the task force.

But then stepping back a little bit and as I got a little older, I really kind of had to revisit why we were doing this work, and I think it came back to a very fundamental question to myself and I think it's one that we need to ask here, which is why are we doing this?

I think the real question is not what we do for the BIA, but I think it's what we do for the tribes instead. There is a big difference in kind of which way we have gone, you know, if you look at it that way. Our demonstration effort took a lot of energy to come up with a very succinct and complicated process on reallocation, but it really didn't do anything with growth and it didn't really do anything with assisting the tribes in the development processes. All it did was, you know, help us relate very narrowly to a budget calculation process.

Once we started looking at that, it really became clear that we needed to really understand and begin to look at developing our own nationhood and reinventing that ourselves. So we kind of backed off on our original effort and started this project, which I have provided for the committee on a development model, which we were asked from the task force to produce called reinventing nations, and it was done by the tribal leadership in the State of Nevada. Basically, what it entails is looking at government development models and how those assist sovereign communities, tribes, in getting on this development track and moving forward either despite or with the Federal sector, but also taking an advantage of what the private sector in America has and some of the things even outside this country with regards to the development of sovereign communities in addressing their expectations and their visions of the future.

We began to look at, well, you know, we are sovereign communities and what are we up to? Where are these other experiences? And we discovered that most of them kind of occur outside this country where there are small nations that are trying to lift themselves up by themselves, develop viable private sectors, and health care sectors and law and order statements and what not. We tried to examine what has made the difference between those that have made substantial progress and those that haven't, and it really came down to some very fundamental things about the types of tools and the tools that they were providing for their people to develop these institutional things that help us develop. We only came up with a basic breakout kind of model for governance development, which is very detailed in this report.

We also, very much as Chairman Martin discovered, that we really can't look at our future through the prism of the BIA, and I would hate to have my children have to look to their futures through those types of glasses. There is a lot more that we could be doing for ourselves, and if there is a question of what is the role for the BIA, I think it's more—even in the Federal sector—it's more of a support mode rather than leading the charge or leading the pack. And what we would like to ask is that these institutions kind of get out of the way, and if we can, sideline them and allow the tribes to take the lead and just give us the resources as a support for us to develop our own visions and the technical tools, the systems in these very important sectors that we have to work in, and

develop those ourselves. Let's really go out and do some hunting and gathering in this country or maybe outside the country and find more appropriate models that we could bring home and adjust them to our own tribal experience.

When we started doing this, the tribes began to identify, well, what kind of talent do we have besides the tools because we were kind of doing this scanning exercise, and we came up just in an afternoon with about 450 or 500 names of people that are actually working within the tribes, on behalf of the tribes, all the way from the elected leadership to the volunteer Head Start mothers. Everybody is pitching in, trying to improve their community, but we really had a problem of not really synchronizing those efforts and their energy and giving them the right tools to do the right work.

So we fashioned this process and we gave it to the task force, and I'm not entirely clear what has happened with it since then, but what it has allowed us to do is to begin to work outside our traditional relationships in other areas, particularly with the private sector there in the State of Nevada.

Right now, we're implementing a communications project that involves the National Science Foundation, the U.S. West, the tribes and EPA with regards to getting on-line databases and computable boards and E-mail, a communications process within the 24 tribal governments in the State of Nevada. We are also working with the Department of Energy on some potential teleconferencing processes, and actually we are kind of exploring telemedicine because you can do diagnosis and things over these video conferencing things.

We then ask, well, what are we and we commissioned a study to actually examine the economies that tribes have and what is their impact on the tribes themselves and the communities around them?

Well, we discovered just in looking at fire traps in Western, Nevada, that there is about \$86 million worth of economic leakage that was created by these tribes. That was not only impacting our situations, but also very viably assisting the communities outside the reservation.

The most important lesson I learned in that is, well, we need to spend that money around in our economies a little bit more rather than allow it to leak out of these big holes on the reservation. So that gave us a real strong signal that we really got to start doing something rather quickly, and we have an opportunity to look at this, and in looking at our own balance sheet, and my tribal government and maybe if you could look at the Federal balance sheet and its investment in Indian country, there is a very dramatic imbalance with regards to investment in an opportunity and an investment in development. We spend a lot of times and energy and resources maintaining a very static status quo with regards to just trying to address our fundamental needs in education, and housing, and in health care. But I know from my tribe we are really looking at it, we put very attention or very little investment in the development processes to help us kind of break out of having to just rely on that one particular option of what our relationship is with regards to resource allocation with the Federal sector.

The other thing that is very clear to us was that there is almost a capital desert in the State of Nevada, and ironically it exist in the biggest capital market on the planet here in America, but we really struggle very hard to try and get the adequate resources to finance our initiatives on our plans with the traditional institutions that are available and channels that are available to us now.

We really believed that we would really need to be more determined in investing in opportunity, and now we have made it one of our priorities to get into—one of the sectors that we want to develop for our tribal community is a development banking effort, and we are looking at successful models here in this country and most of them are outside the United States of how we can get into that more effectively and then compress and consolidate that value of that \$86 million and do more for our people than let it leak off the reservation in these big holes in our economies.

The other purpose for kind of my being here today is it was our obligation to give this transfer model to the BIA and to this committee because they paid for it, and they asked us to provide this work to them. We thought it was very viable, and we have spent a lot of time explaining why we have to look at these change processes very seriously now more than ever. So a lot of the text in the document kind of explains where we are. Also if we look at the realistic scenarios that this country is going through—the NPR, the GRPA and all of these mandates—are requiring the Federal sector now to come up with 5-year strategic plans, and I would bet that no one has one really good idea yet to anticipate these, and these have to be done in 1997. So I would submit that we went ahead and did it ourselves to provide one for the Department of Interior for a few Indian affairs. Whether they follow it or not is still a question.

What I would really like to relate to the committee is something that Chief Martin touched on, and that is all we need is really the modern technologies and the tools. We have the people, they have big hearts, they care. We have an enduring culture that has survived many, many things and we are still here, and the human Indian spirit has been proven to be very hard to suppress. Why this is relevant I think—I hope it's relevant today to the committee—is if there is anything that you can do through this legislative initiative would be to mandate the Bureau of Indian Affairs to take very seriously providing the planning, support and resources to the tribes for us to do the work ourselves. And it's not a question of whether there is a BIA or not a BIA, but I think it's more of a question of whether there is all-inspiring BIA or a BIA that privatizes some of its operations to the tribes.

I think the question really about what do we do for Indian people and the tribes is much larger than just restructuring the BIA or the IHS, and I think if we stop there, all that we have really accomplished was just rearranging the deck chairs on the Titanic. There is much greater work that needs to be done, and this is a good start. I spent 4 years of my life, you know, involved in this, and I'm very proud to work with Phillip and some of these great people, and I have learned a lot. But I think this is only the beginning, and we have to go much, much further.

I hope, you know, these were kind of relevant comments and points of view, and I tried to articulate them more clearly in my written statement and particularly in the transfer document that we provided for the committee. But if I may make a couple of personal statements, and most importantly this one is directed to the chairman of the committee. I have never really had an opportunity to speak to you directly, but I wanted to thank you with regards to some work that you have done for our tribe on the HIP Program. I just want to say why, and that is for a number of years I was going before the House Appropriations Committee advocating for more resources in the HIP Program. Sadly, one of the examples that I had to use—you know, I wasn't there to embarrass myself or my tribe—was that there was an elderly gentleman who the HIP Program really helps very much, the elderly people on the reservation, that literally had to sleep with his dogs to stay warm last winter. And when the reprogramming scenario kind of hit and they were looking at HIP moneys to fulfill shortfalls in other areas, it was this committee, and Chairman McCain and Senator Reid that stuck their necks out to save the HIP program for another year. Because of that, we were able to build a home for that elderly man so that he doesn't have to sleep with his dogs anymore, and actually he was a very proud guy. And now he has a house that's full of his daughters and grandkids, and this man—I know he is going to pass on some time soon probably—hopefully not too soon—but I know because of that, he is holding his head high, and when he leaves, he is going to leave facing the future. And, on behalf of him and my tribe, I would like to say that whatever else that has been done here or whatever we are going to do in the future, you have directly made that little piece of America better for this man because of your efforts, and this committee has done the same thing.

So I just wanted to, you know, kind of get off the purpose of my testimony and the support of these honorable gentlemen here to say that because I never had an opportunity to do that.

Senator MCCAIN [resuming Chair]. Chairman Wallace, could I just say thank you for your kind remarks, and I hope that it has not gone unnoticed in Indian country that Senator Inouye played a key and vital role in restoring many of the cuts that were in the rescission package, among those programs targeted for cuts was the Indian housing program, which he was able to restore some \$100 million to that program. And I know that Senator Reid joins me in thanking you for your personal comments.

Thank you very much.

Mr. WALLACE. May I add two more things please?

The CHAIRMAN. Sure.

Mr. WALLACE. I wanted to respond—there were some direct questions, and if I could, offer, hopefully, I think direct answers. One was with relation to the BIAM. I have seen it and actually I get it in the mail in very small pieces. I'm not totally sure what to do with it because I don't really see it relevant to our operations, and quite frankly it goes into the recycled paper box.

You did ask is there any other process that exist like this, and the only one that has been related to me that I think is, like, a model similar to this is what they do in the Federal prisons and how they govern the day to day life of people.

With regards to the question is there needed legislation, I can only offer five specific points that was recommended by the task force, and this is in relation to budget reform.

One would be to add to the Appropriations Act on an annual basis to provide for a 2-year funding availability rather than the 1-year funding initiative that we were advocating was to add language to the Appropriations Act to provide each tribe the flexibility to move funds within the TPA, the Tribal Priority Allocations Scheme and the flexibility to kind of address some of our own specific creation of more appropriate line items and channels for these resources to arrive at the reservation. A third one would be to amend the Self-Determination Act to provide for semi-annual advances of funds to eliminate the unnecessary transactions to assure tribal contracts and compacts are financed on a timely basis, and actually that is part of what had happened to HIP. The FFS system is somewhat deliberate and slow, and by the time the funds are obligated, or allocated or encumbered at the reservation levels, it's almost the end of the year, and it looks like we have large unobligated balances when truly those funds are just finally starting to arrive in our contracts. So it's an artificial balance that isn't really true. So these advances are very necessary for us to get this money on the ground and start doing things on the reservation directly and cleanly. The other proposal that the task force talks about in terms of legislative initiatives would be to amend the Self-Determination Act to eliminate unnecessary approvals for equipment, subcontracts and other items of cost requiring special approval by the Bureau of Indian Affairs, which is rather redundant and wasting time. And then, finally, I think one of the proposals that we offered was to amend the Self-Determination Act by adding a new title called "Estimated Appropriations for Indians," to provide for a requirement for a budget system described in the TPS principles as articulated in our report.

But I think, in ending, what I was attempting to do here was to illuminate the significance of a portion of the report that talks about planning, and we really need to involve the people that are being planned for in the planning. And I think the best thing that the Bureau can do is to step aside and give us the resources for us to develop our own visions of where we want to be, and invest in our own people and their techniques and the technology that needs to be on the reservation. We have a lot of talent there, a lot of volunteerism going on, and a lot of very serious people that want to do a good thing, and all we're really asking is the support rather than the regulation to be able to do this.

So I thank you very, very much for this opportunity to share these thoughts with you.

[Prepared statement of Mr. Wallace appears in appendix.]

Senator INOUE [assuming Chair]. Thank you very much, Chairman Wallace, and now may I call on President Thomas?

STATEMENT OF EDWARD THOMAS, PRESIDENT, CENTRAL COUNCIL, TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA, JUNEAU, AK

Mr. THOMAS. Thank you very much, Mr. Chairman.

My name is Ed Thomas. I'm the President of the Tlingit and Haida Indian Tribes of Alaska. I want to thank you very much or the organizers of this agenda for saving the best for last.

I provided some written testimony, and I won't be reading that testimony. I focused quite a bit on tribal consultation in my written testimony, and I did make a mistake in the dates and would like to correct it for the record. I put down 1988 and I meant to put down 1990—I'm trying to save time.

One key principle that I wanted to focus on besides the need for making the BIA more efficient and more effective is that of transferring resources from the central and area offices to the tribe agency level. I know often times we are referring to this particular activity as dealing with savings in the report, and we all know that if we keep using the word "savings," then it will be looked at by the budget designers to take of those dollars and put them back into the treasury.

So even though I will be using "savings" in my testimony and it is in the report, I'm sure we all understand that there is really no savings in the process. It's a matter of transferring the resources from one level to the other for the benefit of the Native American people.

I also want to state that the idea of transferring resources sounds very simple, and we know that it isn't. And unless we design a good system and we look at some of the recommendations that will allow the transfer of resources down to the tribes in a proper, fair and equitable manner, we will be pitting tribe against tribe. I think we have already seen some of that in the negotiations of self-governance compacts.

Now in my area we have a lot of tribes that are very small, and I think I need to articulate the many of the tribes in my area think of a process of transferring resources from a government agency to a tribe of making the rich richer and the poor poorer, and I want to advise you or let you know that the task force did consider this in the process of the budget reform. It's covered in the report under "Managing Savings." Part of this particular part of the report talks about small tribe minimum funding initiatives. I am very interested in that particular provision, and I think that this initiative needs to be fully funded either through appropriations or from savings, from downsizing and streamlining of area and central offices collectively. I say that collectively because if we confine the resources to the small tribes only from those areas that are already poor or have less than what we would call fair shares, they will remain poor and they will continue to have less than their fair share.

Now we know that in our area there are some tribes that are so small that if we use the formula as traditionally used to divide funds within a particular program, these tribes will be lacking resources necessary to perform some very basic governmental functions, let alone do a good job on managing programs. So, therefore, I think it's very important that we look very closely at this small tribe minimum funding initiative.

One question was asked a little earlier, what do we do about some of these tribes that are too small to manage their own programs? In Alaska prior to compacting we had identified 12 regions. These regions formed consortiums to contract for BIA programs on

behalf of all of the small tribes in their particular region. I think this model can be used elsewhere in the country where consortiums of small tribes could manage the contracts as an alternative to continued management by the BIA.

One very important issue that needs to be looked at very directly and aggressively by Congress is the issue of residuals. A little bit of discussion was brought forth on that earlier today in previous testimony, and I think that this needs to be done at all levels. I don't think you can do one in isolation of the other. Let me give you an example:

In the area of realty, prior to getting involved in the National Performance Review, we had a realty office at the agency level who overlooked all of the tribal contracts that were managing realty functions. All of the reports went to the area director whose realty officer transferred them to the central office, who then reviewed them and then they were filed with BLM.

I think that's far too many levels. Not only does it create an unwieldy bureaucracy where things get lost and bogged down, but it creates a question of who's really in charge. If the area director cannot make a decision on realty issues, then he needs to defer that either to the agency or else the central office. I don't think we can have an expert at all levels reviewing everything to make sure nobody makes a mistake. As we do that, the big mistake is that we have had pending realty applications in the coffers since the 1920's, and in our State, the majority of them since the 1940's. And that's because we just have far too many levels of review and comment on a very simple process.

To compare that with what is happening in the other world when they decided to build the Trans-Alaska pipeline, all of those lands were transferred to Alaska within 2 years. So I know the work can be done but it can't be done in Indian country because we keep setting up more and more bureaucracies to review and to stifle the movement of these efforts.

Now on the issue of residuals, on the one hand, the BIA says, yes, we need to move the resources from the central government and put it in the hands of the tribe agency; and, on the other hand, we continue to set high, unreasonable levels of residuals at the central office and area offices. Let me give you one more example:

Last year as part of our self-governance negotiation, the central office identified that it had a residual of approximately 92 percent; this year they set it at 95 percent—it appears we're going in the wrong direction. As we become more effective, now they are saying, well, we need more of those monies to stay here. And then when a tribe disagrees or states that we are going in the wrong direction, they come up with the answer, well, if you can't agree and you don't agree with what we are saying, we will negotiate later, and tribes really can't afford to negotiate later. They need to get that done now, and they need to move forward because it takes a lot of time to get their work done and to get their compacts in order.

In response to the question of whether or not we need legislation, I am a strong believer that we do need legislation not because 11 out of 12 are struggling in reorganization, but I think because there is a lot of inconsistency in reorganization plans. You look at the Portland model, and you look at the level of consultation that

has happened within the Portland area. The task force did look at it and they said, OK, the rest of you areas need to use that as a model. Go out and start consulting with your tribes. I think that the total effort was ignored in our area. It's only recently that we started even talking about it at the area level in consultation with tribes, and the method by which it is brought forth is saying, well, here's my plan. You can approve it; if you approve it, we will send it forth to the assistant secretary but if you don't approve it, I'm going to send it forth anyway. If you have a descending point of view, we will send that under separate cover.

The point is I think that as we reorganize, we want the Bureau to be more responsive to all the tribes in the country, recognizing the differences of the tribes, recognizing the difference of capacity of the tribes, and even the differences in capacity of the various areas. I think there needs to be much more consistency so that tribes that do not have area directors as committed as Mr. Speaks was in this process, are not injured. They are not hurt in the process of not getting either their fair share of the resources or else their rights respected as sovereign governments.

Once again, thank you very much, Mr. Chairman, for your perseverance in this process, listening to my testimony, and I too want to share a personal note and thank you and, of course, Chairman McCain, for assisting Senator Mikulski and reinstating my tribe back on the list of Federally recognized tribes last year.

Thank you very much.

[Prepared statement of Mr. Thomas appears in appendix.]

Senator INOUE. I thank you very much, Mr. President. I very much agree with the observation of Chairman Wallace that in discussing this measure before us, we should focus not upon the BIA but upon the Indians. However, over the last 6 decades Indian nations have been required to deal with the United States Government through the Bureau of Indian Affairs. At times it has been frustrating and at times insulting. It has only recently that chiefs, and presidents and chairmen have been able to meet with the President of the United States. Up until now, the dealings have had to be with an assistant secretary.

As a result, for some the Bureau has become a symbol or representation of America's commitment to the concept of trust responsibility, and whenever one speaks with tribal leaders, somewhere in the discussion the concepts of government to government relationships would emerge or trust relationship would emerge.

How do you respond to those tribes who say that if this process that is set forth in this measure is carried to its fullest, the Bureau would eventually be wiped out, and, accordingly, we might—the Congress might respond by saying now comes the end of our trust responsibility, Indian nations you are on your own, we wish you the best?

I believe Chief Martin has expressed in this testimony some concern on trust responsibility. I would like to get your thoughts on that.

Mr. MARTIN. Well, my position on trust responsibility is more like somebody is looking over your property or something of value for you, and that's good because I don't have a problem with trust responsibility per se. It's problems with a relationship, in this case,

with the Bureau of Indian Affairs or the government, and I think I related some of those already. Also the tribes get nervous when they make money, when they are able to do things that are expected of them, and this idea of breaking the trust responsibility and the relationship with the government comes into play. And that's what needs to be addressed and also one other thing that needs to be addressed is this relationship. How long—it ought to be continued, so somebody needs to say that in government. If we are going to be penalized because we are going to make progress or we are going to put people to work and develop our community, and then later on they will say, oh, you are doing good, you don't need us anymore and cut it off, that's should not be the route to go. So as long as the tribes are here and as long as the United States Government is here, I expect that tribal relationship and I expect that if they have land—in this case, it's held in trust by the United States—then they have to do that as well so that there's no way out for them.

Senator INOUE. Mr. Wallace.

Mr. WALLACE. I actually had a prepared statement on that. I have two answers to that. What I hopefully was not saying was that the Federal sector foreclose on its trust liability—

Senator INOUE. I brought this up because, as you know, ever since I have been here there has always been legislation proposed—some seriously, some not—to either diminish or to wipe out this government to government relationship, and these bills come in several forms. One, a very serious attempt to take away from Indian tribes their right to carry on gaming activities, which for some—I suppose for many—is a source of income, and this afternoon the Chairman and I will be meeting with representatives of tribes, the National Indian Gaming Association and others, to look into the Gaming Act. There are attempts every year in cutting the budget. Even in administrations that are supposed to be enlightened, the lowest priority is given to Indian nations. In the downsizing of agencies throughout this administration, you will find that the largest reduction will be taken by Indian programs, whether it is in the BIA or in the Indian Health Service.

As some would see it, if you further downgrade the BIA, this symbol of the government to government relationship would be so diminished that it would give further credibility to those who wish to sever these relations.

Do you think that is a valid concern?

Mr. WALLACE. Very valid, and from our perspective it's very dangerous and very saddening, and it really is very hurtful to me as an Indian person and everybody that came before me that put out a lot of blood, sweat and tears for me to be here. I'm very aware there are hostile and adverse elements in this Congress that would like nothing more than to see the abrogation of the trust responsibility and homogenizing and developing a monochromatic world for Indians and everybody else. I see the tool of money has been kind of used to do this.

With regards to what President Thomas was talking about, about budget, there has to be kept in mind some very serious thresholds that need not be crossed with regards to the protection of the trust, and in my mind—to kind of amplify what Chief Martin said—to me

it's the protection of our resources, and the land its heritage, which is us living on the land. But by no means should it imply the removal of the obligation of the United States and how it finances that obligation in an essential way of protecting those trust resources and assets. All I was suggesting was actually a rethinking and maybe a reconfiguration of the Federal-Tribal relationship in the government to government context to address these more modern times and opportunities that present themselves to the tribes. I'm very scared of the discussion that goes on in here around means testing, and it's not just with Indians, it actually means testing the America population in some ways too.

There is a very thin line to have to walk, and sometimes it might seem duplicitous where we sit here and say we want independence but we still want to have some assurance and guarantees, but I think that the trust responsibility in my mind deals with the heritage of the relationship, and the land and the people. There isn't a trust restriction on my imagination, or our spirit or our ingenuity, and that's what we need to have freed is give us the ability to develop ourselves and that the Federal sector play a support role in doing that rather than in a dominant forefront role of regulation, most particularly with small tribes that President Thomas talked about and particularly in the discussion of compacting the 638 contracts. There's this whole issue about privatizing the Bureau to the tribes, but there are some essential things that might be categorized as discretionary funding that do not profit from that label, and some of them are those essential trust obligations.

So I think more than anything where it highlights itself is in the appropriations and in the budget discussion that deals with the resources and where they reside, and I would hope that maybe in this piece of legislation that the committee would take into consideration—or the Congress needs to recognize the Federal funds for tribal trust management and for the operation of tribal governments through self-governance compacts or self-determination contracts not be treated simply as discretionary entitlement funding, which puts us in a dangerous part of the jungle.

I will yield the balance of my time to Chief Martin.

Senator INOUE. Let President Thomas——

Mr. THOMAS. Unfortunately, what you're saying is true. So often we confuse the relationship of sovereign nations—meaning Indian tribes—with the government in terms of dollars or the number of regulations that are put upon us. I think that this can only change through broader education that the people that comprise the Indian tribes do have a relationship that is much different from other minority groups in this country, and I think that's happening.

I also believe that it comes from stronger leadership within the BIA and the Department of Interior advocating on our behalf rather than fighting against us. I think that too often when we find ourselves fighting amongst one another instead of enhancing one another's rights, that's where the problem begins, and I think that's where the problem is now. We need to make sure that if our sovereign rights are respected, that we need to put that as a joint voice not only with the tribes but with the BIA strongly behind our initiatives.

So I think that unfortunately what you are saying is partially true. I think that if this government is going to be committed to the relationship, the trust relationship with Indian tribes, it needs to reconsider its way in dealing with Indian land. It's almost impossible for some of us to put some of our sacred lands back into trust once they were taken out by some erroneous act in the 1930's and 1940's, and I think that's wrong. We need to give tribes the right and the ability to put lands back into trust so that they will be preserved over time.

Senator INOUE. Thank you very much, Mr. President. You just touched upon an important aspect of our relationship. In the few short years I have had the privilege of serving on this committee, I found that on many occasions measures that are important to Indian country have been either defeated or frustrated because of opposition by other members of Indian country. But whenever Native Americans have stood together, we have found that as a general rule, they would prevail. Recently, there was a decision, the *Duro* decision, which meant a lot to all Indians, and when they stood together and spoke in one voice, notwithstanding the Supreme Court, it passed the Congress of the United States.

This afternoon, for example, in a few short minutes we will be observing a very important event, the recognition of the Jena Band of the Choctaw Indians of Louisiana. They have had to wait many years, and in a way they have had to wait because of opposition among their fellow Indians. If you know anything about the Jena Tribe, you will know that they were really abused and mistreated. So I would hope that if it is the intent on the part of Indian country to finally come forth with the much needed reorganization of the BIA, that they be able to speak in one voice. This morning I think all of you have demonstrated that you are not quite ready to speak in one voice. Some are suggesting certain alternatives, and even if this is the recommendation of the joint task force, I sort of gather from listening to you that you have other thoughts in mind. I hope that all of you will get together and come forth with a unified position on how you want this committee to proceed because if we find a dozen different voices telling us the path to follow, I can almost guarantee you that the path will lead to defeat once again.

So I think it will require extraordinary leadership among those who are honored to serve as leaders to bring this about, and I wish all of you the very best.

We will have to conclude this hearing at this stage because this room will be taken over by the Jena Band of the Choctaw Indians. So with that, on behalf of Chairman McCain and the committee, I wish to thank all of you for your wisdom this morning, and I can assure you that we will give this matter the most serious consideration. And if we may—I know that the chairman and I would like to submit to you questions in some detail for your response.

Thank you very much.

[Whereupon, at 12:17 p.m., the committee adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO

Thank you Mr. Chairman. I would like to make just a few brief observations on the subject of today's hearing, the reorganization of the Bureau of Indian Affairs and testimony we will hear on the Bureau of Indian Affairs Reorganization Act.

From the time I was elected to Congress in 1986, I have come to know many tribal leaders and have listened to many tribal leaders discuss their frustrations and problems they have had and continue have with the BIA. And I have also read, unfortunately, many news stories over the years about the inefficiencies of the BIA.

And importantly, I have kept an open ear to the views of tribal and community leaders and have been involved in many legislative initiatives to stimulate positive working relationships between the BIA and tribal governments, that empowers tribes.

The initiative that began the process of BIA reorganization was the establishment of the Joint Tribal/BIA/DOI Reorganization Task Force, chartered in 1990. I believe the recommendations released by the Task Force in August of last year, provide a blueprint for the direction the Bureau should be taking.

While, I commend the National Performance Review/Reinventing Government initiative of Vice President Gore, because it has provided tangible results, it has become apparent that the NPR mandates have collided with the recommendations of the Joint Task Force. Letters I have received from tribal representatives with regard to bureau recommendations on restructuring, clearly reflect dismay in the direction the bureau is pursuing.

It is my hope Department of the Interior officials will be cognizant of the goals of the Joint Task Force recommendations in its' overall discussion of also complying with National Performance Review mandates.

However, I also support the intent of the BIA Reorganization Act as it embodies recommendations made by the Joint Reorganization Task Force. I view this legislation as a blueprint, derived from full tribal participation in the reorganization process, that establishes the mechanics of reorganization at the agency level, the area office level, and the BIA central office.

This initiative is certainly a step in the right direction. While today's hearing is just a beginning in reaching a next step, I look forward to the listening to the testimony that will be provided this morning.

Thank you.

PREPARED STATEMENT OF HON. PAUL WELLSTONE, U.S. SENATOR FROM MINNESOTA

Mr. Chairman, I want to take this opportunity to commend you on your leadership in convening this hearing, and to welcome your introduction of the "Bureau of Indian Affairs Reorganization Act of 1995."

As I was reviewing this legislation and what it is intended to accomplish, I found myself reflecting about the history of the federal Indian relationship and the past policies of Congress that have guided this relationship. I must say that the more I reflected, the more dismayed I became when I thought about the struggle our First Americans have had to endure just to survive.

Mr. Chairman, as you well know, to say that Congressional Indian policy from colonial times to the present has been inconsistent would be an understatement. These policies have run the gamut from outright annihilation; to removal; to reservations; to assimilation; to termination; to the present, and more realistic and viable policies of self-determination and self governance.

This bill is an effort to implement the policies of self-determination and self governance. I support the intent of this legislation because it holds the promise of a true federal-tribal partnership. I have forwarded copies of this legislation to the Tribes in my state for their review and I look forward to hearing from them. We need to ensure a reorganization of the BIA, not as others would reorganize it, but in the way the Indians themselves determine best meets their needs.

Mr. Chairman, I would also like to inject a cautionary note into these proceedings, and I am sure you and Vice Chairman will agree with me on this point.

There is a growing disquiet among the Indian tribes. This disquiet centers around the fear of a return to the policies of termination of the 1950's. Genuine efforts by the friends of Indians to downsize the BIA and to enhance the power of Indian tribes to control their own destinies were taken as an excuse by some to eliminate the BIA and to terminate the federal Indian trust relationship.

I know that it is the intent of the Chairman, as it is mine, to reduce the BIA bureaucracy and waste, and to increase tribal self-determination by this bill. But we must assure the tribes that this effort will not become the vehicle for those who wish to return to the era of termination. We, as well as the Indian Tribes themselves, must be vigilant that this does not occur.

Mr. Chairman, I look forward to working with you, the Vice Chairman, and the tribal leaders and membership in my state to craft a measure that can fulfill the promise of this legislation, and to ensure that the special trust relationship between the United States and the Indian tribes will endure into the next millennium.

Thank you Mr. Chairman, I would ask that my written statement be made part of the record.

**STATEMENT OF
EDDIE F. BROWN
BEFORE THE UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS
ON RECOMMENDATIONS OF THE JOINT TRIBAL/BIA/DOI ADVISORY TASK FORCE
MAY 18, 1995**

Mr. Chairman and Members of the Committee, I want to thank you for the opportunity to discuss the efforts and recommendations (previously reported to the Administration and to the Congress) of the Joint Tribal/Bureau of Indian Affairs/ Department of Interior Advisory Task Force on Reorganization of the Bureau Of Indian Affairs. I am Eddie F. Brown, formerly Assistant Secretary of Indian Affairs (1989-1993), and currently Executive Director of the Department of Human Services for the Tohono O'odham Nation. From December 1990 to June of 1993, I served as Co-Chair of the Joint Reorganization Task Force along side the Honorable Wendell Chino, President, Mescalero Apache Tribe.

I am honored to be here today to support the efforts and recommendations of the Joint Advisory Task Force. As Co-Chair of the Reorganization Task Force, I had the opportunity and privilege to preside over eighteen of the past twenty-two task force meetings.

In my testimony today, I wish to highlight three points that make the efforts of the Joint Advisory Task Force unique in the history of Federal/Indian relationships and the reasons it is critical that this Congress enact legislation to ensure the implementation of the proposed recommendations.

In September of 1990, as Assistant Secretary of Indian Affairs, I presented a proposal for the restructuring of the Bureau of Indian Affairs (BIA) Central and Area Offices at a National Tribal Leaders Conference in Albuquerque, New Mexico. The proposal was rejected by the over 1,200 tribal leaders present. The reason voiced for rejection of the proposal was that it was not developed with the participation and input of tribal governments. Tribal representatives clearly stated that any actions taken by the Department of Interior which impacts the lives of Indian people should be done with the participation and input of those tribal entities. This is in concurrence with a Federal/Tribal government-to-government relationship. As a result, and with the support of then Secretary of Interior Manuel Lujan, I immediately met with tribal leaders at a National Congress of American Indians Conference and there jointly drafted an agreement that created a Tribal/Federal participatory process whereby tribes would jointly assist in the development of a new proposal for the reorganization of the BIA. On December 20, 1990, the Joint Tribal/BIA/DOI Advisory Task Force was officially established by charter. This charter was later further supported by Congress in the 1991 Appropriations Report which prohibited the use of federal dollars for BIA reorganization unless it was recommended by the Task Force.

POINT ONE: The formal appointment of the Joint Tribal/BIA/DOI Task Force marked a new era in Tribal/Federal relations. This was the first time in the history of relations between the United States and Tribal Governments that a partnership was formed in which, " tribes actively participated in Federal decision-making, as decisions were being made - not after the fact." The appointment of a forty-three member task force: 36 tribal representatives (three from each Area location); five BIA administrators; and, two DOI appointees, with reporting requirements to all tribes at the local level,

put in place the most extensive tribal consultation and participation network to date. As a result tribes have been full partners in the development and presentation of the Task Force recommendations.

The Joint Advisory Task Force, at its very first meeting, agreed given the legislative changes and increased operations of tribal governments within the last two decades that: 1) the BIA's current structure and operations are outdated and obsolete, and 2) any substantive reorganization of the BIA would have to include more than just adding, eliminating or shifting organizational boxes and functions. It was further agreed upon, that a more comprehensive approach would be necessary. This approach would include not only structural changes but substantial changes in the budget development process, and in the internal operating systems and internal processes of the Bureau. Based on these three broad agreements, a new BIA mission statement was developed along with a set of guiding principles to ensure that any proposed changes in the Bureau met a specific level or standard of expectation. Major areas of discussion includes the five (5) following recommendations: 1) streamlining of Central and Area Offices with financial savings being passed down to the Tribe/Agency level; 2) providing flexibility for the negotiation of "Designer" Areas and agencies to meet the specific needs of the local tribes; 3) continuing the development of the Tribal Budget System which would lead to the eventual tribal control of 95% of Tribe/Agency dollars; 4) strengthening the Office of Indian Education by fully implementing P.L. 95-561; and, 5) establishing a Regulatory Reform Team to review the BIAM and 25 CFR and implement needed policy changes.

An understanding of the comprehensive approach taken by the Joint Advisory Task Force as well as corresponding recommendations is depicted in the attached, "Overview - Reorganization Task Force."

POINT TWO: For the first time in the history of the Bureau of Indian Affairs a joint, comprehensive review of all aspects of the Bureau's organizational structure, operational processes, and regulatory policies has been completed. Realistically prescribed recommendations have been jointly presented. These recommendations address the necessary BIA organizational, regulatory, educational and budgetary reforms needed to achieve greater accountability and more effective use of limited federal resources.

When the announcement of a task force to restructure the BIA was made, the reaction from most federal and tribal members was, "Well here we go again, another study and report to put on the shelf to collect dust like all the many other reports and recommendations to reorganize the Bureau". It was also the feeling of many, that an attempt to bring together both tribal and federal representatives to jointly develop a restructuring proposal would only end in disagreement and in further frustration. The results would be either no report being submitted or both the tribes and the DOI submitting individual reports to the Administration and the Congress with eventually little to no administrative or legislative actions being taken since there would be no general agreement between the participating parties. Others complained that the process would take too long and that when recommendations would be proposed, they would not be timely or relevant.

The results of the Joint Advisory Task Force, however, have proven to be very successful, productive and timely.

POINT THREE: The efforts to develop a comprehensive reorganization proposal has taken: over four years, 22 joint Tribal/Federal Task Force meetings, numerous work group sessions, thousands of tribal and federal person-hours, and an estimated 4.4 million tax payers' dollars spent across two administrations. This process produced a final report which was submitted to Congress. This report included realistic prescribed recommendations and timelines. These efforts and recommendations deserve to be put before the American people in the form of proposed legislation for review, comment – and hopefully eventual legislative action. Special efforts should actively be taken to ensure thorough explanation of proposed legislation to Tribal members and to provide ample opportunities for discussion and input.

In conclusion, as an enrolled tribal member, citizen and tax payer, I am a believer in the statement that: "The government which governs best is that government closest to the people." That is, strong local governments with flexible Federal Regulations and as little Federal control as possible. I am also a believer in strong communities and families. Such as: communities with the resources to offer employment opportunities to parents so they can raise their children with the same opportunities as other Americans; locally controlled and administered school systems; and, community family support systems which seek to strengthen family ties and values. In other words, many of the same concepts and values being supported by today's Congress. However, I am also painfully aware that Tribal Governments and communities continue to be deprived of the resources and the flexible policies needed to ensure access to these rights and privileges of our members.

At a time when Congress is forging a "New Contract" with America, Congressional members must not forget the "Original and Historical Contracts" and promises founded in the United States Constitution and guaranteed through treaties, acts of Congress, judicial decisions, and Presidential directives. It is imperative that these legal and moral obligations be recognized and upheld. Efforts must be continually made to ensure direct Federal/Indian government-to-government relationship be maintained, enhanced, and be addressed in any new Congressional initiatives.

This concludes my prepared statement. I will be pleased to answer any questions that you may have.

SENATE COMMITTEE ON INDIAN AFFAIRS

TESTIMONY ON IMPLEMENTATION OF TRIBAL/BIA/INTERIOR

REORGANIZATION TASK FORCE REPORT

SUBMITTED BY:

PRESIDENT WENDELL CHINO

MESCALERO APACHE TRIBE

NEW MEXICO

May 18, 1995

**TESTIMONY ON IMPLEMENTATION OF TRIBAL/BIA/INTERIOR
REORGANIZATION TASK FORCE REPORT**

INTRODUCTION

MR. CHAIRMAN AND MEMBERS OF THE UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS COMMITTEE. WE APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY AND ADDRESS THE MOST CRITICIZED, MOST POORLY RATED, CONDEMNED AND QUESTIONED FEDERAL AGENCY NAMELY THE BUREAU OF INDIAN AFFAIRS AND THE NEED FOR RE-ORGANIZING THIS BUREAU.

I SERVED AS THE TRIBAL CO-CHAIR OF THE TASK FORCE WHICH WAS INITIATED AND CHARTERED UNDER THE FORMER SECRETARY OF INTERIOR, MR. MANUAL LUJAN, JR. AND UNDER THE SECRETARY OF INTERIOR, MR. BRUCE BABBITT AFTER HE RE-CHARTERED THE TASK FORCE UNDER THE PRESENT ADMINISTRATION.

I. SUMMARY OF TASK FORCE REPORT AND RECOMMENDATIONS

The Joint Tribal/BIA/DOI advisory Task Force on Reorganization of the Bureau of Indian Affairs (Task Force) was chartered on December 20, 1990 by the Secretary of the Interior. The charter was to develop baseline goals and plans for reorganization to strengthen the BIA's Administration of Indian Programs. The creation of the Task Force was based on a congressional mandate in response to Tribal concerns that the Department of the Interior was planning to move forward with a

reorganization of the Bureau of Indian Affairs (BIA) prior to appropriate participation and consultation with Indian Tribes. The initial Task Force charter was for two years and was extended an additional two years by the Secretary of the Interior on November 18, 1992.

In order to ensure that the Task Force efforts were Tribally driven, yet at the same time, a joint partnership effort, 36 of the 43 members of the Task Force were Tribal members, five were BIA employees and two were DOI employees. The 36 members consisted of three representatives from each of the Bureau's 12 Area locations who were nominated by the Tribes and appointed by the Secretary. The Task Force was led by co-chairpersons representing the Tribal and Federal partnership, the Assistant Secretary-Indian Affairs was named the Federal Co-chair by the Secretary, and the Tribal representatives elected Wendell Chino, Chairman of the Mescalero Apache Tribe, the Tribal Co-chair.

The Task Force held its first of 22 meetings on January 22-24, 1991, in Crystal City, Virginia. During the four years of its charter, every effort was made to conduct its meetings in different administrative areas to allow as many local Tribes to participate as possible. To further ensure that this effort was Tribally driven, several steps were taken: 1) Time was set aside in each meeting to listen to the concerns and comments of the Tribal leaders. 2) Tribal Task Force members were made responsible and held accountable for meeting with their respective Tribes. 3) Each BIA Area appointed Federal coordinators to facilitate ongoing consultative sessions with Tribes. 4) All Tribes were invited to submit written comments for Task Force consideration.

As a result of this participatory consultation process, Tribes have been full partners in the

recommendations presented.

II. SUMMARY OF TASK FORCE REPORT AND RECOMMENDATIONS

Formally institutionalize through legislation the partnership process for bringing about and managing changes, which includes full participatory and consultation with Tribes on all issues.

Require continued oversight and attention to the development and implementation of the Task Force's recommendations by identifying and empowering oversight committees or groups, made up of Tribal and BIA officials most familiar with budget, education, BIAM/CFR/USC processes and reorganization recommendations.

Mandate adoption of the recommended mission statement for the BIA.

Mandate that all reorganizations of the BIA follow the Task Force's guiding principles and be consistent with the Task Force's long-term vision for the BIA and Tribes.

Eliminate or revise, as necessary, any provisions of manuals, regulations and laws which restrict implementation of the reorganization in keeping with Task Force principles or otherwise impede Self-Determination.

Mandate the BIA to continue the development and implementation of the Tribal Budget System components. Amend the Indian Self-Determination Act to provide a new Title which sets out the

requirements for the three components

Mandate other actions regarding budget, which include:

- * Direct use of savings from Area and Agency streamlining in accordance with the wishes of the Tribes in those respective Areas and Agencies.
- * Establish a formal policy and system for the appropriate administration of Contract Support.
- * Continue efforts to provide minimum base funding for small Tribes, without reducing services to other Tribes.
- * Ensure that all resources saved due to decentralization or streamlining of Central Office or Central Office West remain with the Bureau to provide additional services to Tribes in accordance with Tribal priorities.

Provide the staff support required to implement and manage the ongoing efforts and systems recommended by the Task Force, including key staff to coordinate the Tribal Budget System components.

Provide a response and annual report to the Tribes on the status of implementation of the task force recommendations

III. IMPLEMENTATION

In January, 1993, Secretary Babbitt had the opportunity to disassociate himself from the Task Force and promulgate his own approach to BIA reorganization. It should have been clear to him, and he was so advised, that if he did not do so he would be seen as embracing the Task Force - co-chaired by his own Assistant Secretary for Indian Affairs - and would be identified with its conclusions and recommendations. The worst thing he could do would be to continue the Department's involvement with the Task Force and then ignore its recommendations.

For some unfathomable reason, the Interior Department has taken the worst possible route. The Assistant Secretary continued to co-chair the Task Force right up to the final meeting; she and the Secretary have expressed - to this Committee and the tribes - support for the Task Force Report and Recommendations. Yet at the same time, the Department and the Bureau of Indian Affairs have offered numerous reorganization proposals to Congress, to the tribes, and to the Vice President's National Performance Review, all of which have been developed with no meaningful tribal consultation and with no apparent reference to the work of the Task Force. It sometimes appears to us that no one in the Interior Department has even read the Report other than the BIA employees assigned to provide staff support to the Task Force. I am told that at a recent hearing before this Committee, it was quite obvious that the Secretary himself had not read the Report and was unfamiliar with its findings.

Mr. Chairman, the Indian tribes of this country are as baffled by the Interior Department

on this matter as the Committee appears to be. If the Department would reject the Task Force Report and give us their reasons, we would know what to work on. But when they accept it in theory and ignore it in practice, I am led reluctantly to the conclusion that they are reacting negatively to the tribal involvement in the Task Force process, not the substance of the Report and its conclusions and recommendations. The fact that this Report has created the expectation on the part of the Indian tribal governments that they will be intimately involved in all such decisions that affect their lives seems to pose a greater threat to the Department than the recommendations of the Task Force.

Congress is often accused of micromanagement in Indian affairs, and indeed, a certain amount of unnecessarily detailed legislation has been enacted in the past 25 years. But the record is replete with unfulfilled promises from the Bureau of Indian Affairs and the Department of the Interior, promising a new initiative, a cure for a persistent management problem, an implementation plan for new legislation, and a host of other executive actions just around the corner - but they never turn the corner. The Indian tribes of this country share the frustration of this Committee with the Department and its indolence. The question for us today, then, is: what is the best action that can be taken to ensure that all this Task Force work does not end up on the shelf as so many other reports have? How can Congress legislate an attitude?

People in this city often seem unaware that we tribal leaders run governments, too. We knew from the beginning that the Task Force exercise was a process, not an event. That is, we could work for years with the Department and the Bureau on studies and recommendations, but we would also need to be involved as the recommendations are put

into practice, as they are finally shaped into the forms, guidelines, budgets, action plans and redelegations of authority that would be necessary to implement the Task Force Report. We knew from the outset that our Final Report was just the beginning of a much longer process, but we thought it was an excellent first step and one which had the essential element of tribal involvement in the federal Executive process. That is why those of us who stayed with the Task Force to the end did so.

We would like to see the general recommendations of the Task Force adopted and put into practice, and if it takes legislation to accomplish that end, then we will support such legislation. We would also like to be involved with the Executive branch in the process, and no matter how detailed the legislation is, there will be a process of implementation. The problem is, how does the Congress legislate an appropriate role for the Indian tribes in the Executive process, especially in a situation where the Administration does not seem to want our involvement?

We have only recently received a copy of the DISCUSSION DRAFT of your proposed "Bureau of Indian Affairs Reorganization Act of 1995". It appears at first reading to be an excellent attempt to force the Department of Interior to address the Task Force Report and to include Indian tribes in the process. Let me address a few considerations concerning this proposed legislation, reserving the right to make further comments after I have had the chance to review it in greater detail and to discuss it with my own tribal council, with other Indian tribes and with Indian organizations having an expertise in federal Indian policy.

IV. RECOMMENDATIONS

First, we want the Task Force Report to be the basic reference document that guides Departmental and BIA reorganization efforts. That only makes sense in light of the enormous tribal and Federal effort that went into the Task Force. By this I do not mean that the Task Force Report should be enacted word for word, but that it be recognized as the framework it was intended to be. The proposed legislation, while it does not mention the Task Force Report specifically, appears to force the Department to address the issues contained in our Report and for that reason we generally support it.

Second, we want Indian tribal governments and their representatives to be meaningfully involved in reorganization efforts. We understand that some Federal decisions must be made on a short schedule that does not allow for consultation with nearly 600 federally recognized Indian tribal governments. The proposed legislation appears to require the maximum feasible involvement in the form of the processes referred to as the Agency, Area and Central Office compacting processes.

We suggest that there be added a national advisory group composed of tribal representatives - with provisions for their own staff capability - to consult and serve as a watchdog at the national level, not only over the Central Office compacting process but to ensure that the Area and Agency processes are conducted in the spirit of the legislation. The problem with consultation only at the agency and area levels is that it leaves enormous discretion in the hands of the Department and the Bureau to interpret the meaning of these consultation

processes in the light most favorable to their own interests. It may be suggested that in this recommendation we are trying to prolong the life of the Task Force. We do not recommend anything as elaborate as the Task Force that was recently concluded. It seems clear, however, that left to its own devices the Interior Department will see the Task Force Report and all the work that was done during that time go to waste. We are not willing to let that happen.

Third, we would suggest that the process for reviewing the Code of Federal Regulations and for reviewing the Bureau of Indian Affairs Manual be combined. We do not take the position that the BIA Manual should be abolished: every federal agency needs a set of guidelines to aid its employees in the conduct of their duties, and these guidelines need not be so formal as to be a part of the Code of Federal Regulations. If the Manual is abolished, something very much like it will soon take its place under another name.

The problem with the present Manual is not only that it is out of date, but also that Bureau offices at all levels do not have up-to-date copies due to the incompetence and territoriality of the Central Office employees responsible for its maintenance and promulgation. Further, it is the essence of Due Process of Law that the Indian tribes, whose affairs are governed in part by the BIA Manual, also have access to this document. Historically, tribes have not been able to secure copies of the Manual, yet the Manual is too often used negatively as an excuse for the Bureau to refuse to perform a service for a tribe or an eligible individual Indian or to allow a tribe to take a certain action, based on an interpretation of the Manual (to which the affected tribe does not have access). There will always be guidelines - we simply want to know what they are. Those who have been trying to implement the CFR and

Manual recommendations of the Task Force Report have found tenacious resistance to this effort on the part of some BIA staff members, who have been quoted to us as saying that the tribes should not have access to the Manual.

The Task Force identified outdated provisions in both the Manual and the CFR. In addition, there are CFR provisions which should probably be a part of the Manual, and BIA Manual provisions which should probably be promulgated as formal regulations in the CFR. The review process should be consolidated so that provisions can be directed to the proper places in the hierarchy of Federal rules and regulations. We understand the basic principle of law that requires that the final determination of guidelines and regulations is essentially a Federal, not a tribal, action. But we take the administration seriously in its adherence to the customer-oriented goals of the NPR process, however, and as the Bureau's customers we want to be included in the process of review and revision of the regulations and guidelines.

Fourth, the Committee should address, either in this legislation or in a series of hearings followed by subsequent legislation, the fundamental role of the BIA in terms of policy and programming. We know of many instances in which BIA has been criticized for not developing program initiatives or for not properly coordinating with other federal agencies in developing programming strategies to serve Indian tribes, such as in the implementation of the Congress' latest (anti-)crime legislation. BIA does not have a clear mandate in this regard, particularly in light of the general policy of tribal self-determination, and as a result Indian tribes are often left out of the benefits of government-wide policy initiatives.

Fifth, one of the major considerations that always seems to be missing in BIA reorganization plans is that relating to the BIA's potential role in interagency coordination within the federal government - a role as to which it seems oblivious. We do not want the Central Office to be robbed of this potential, and at the same time we do not want to give them the resources if they are not willing and able to perform the task. We would recommend, then, that the Committee consider requiring a special effort within the Executive Branch National Performance Review process which would look at the status of Indian tribes and the nature of the federal-tribal relationship, including the issues of:

- the unique nature of the federal-tribal relationship, which obviates any possibility of the federal responsibility to Indian tribes and individuals being administered through state government;
- tribal eligibility for Federal programs, grants and services;
- government-wide recognition of tribal regulatory authority;
- the status of tribal governments as governments within the federal system, including grants and contracts management, eligibility for surplus property other areas where the status of tribes as governments has not been uniformly recognized;
- interagency coordination to ensure that tribal governments are not excluded from federal programs and policies from which they should be entitled to benefit, and that individual Indian people both on and off reservations are not excluded from general

program benefits for which they are otherwise eligible simply because it is assumed by federal agencies (and state agencies administering federal funds) that their needs are being served by BIA, IHS or the tribes.

And finally, we call the Committee's attention to the fact that in the mid-1970's, when the Indian Self-Determination Act was under consideration, the Indian tribes were repeatedly assured by the Congress and the Executive branch that Self-Determination Contracts (638) and the subsequent Self-Governance Compacts were options to be considered by the tribes and would never be forced upon unwilling tribes. We think that some explicit language in this legislation reaffirming that promise would be timely. We have heard disturbing rumors from the Bureau that tribes will be increasing forced into 638 contracts or Self-Governance Compacts to enable the Department to create the appearance of complying with the most general goals of the National Performance Review and departmental streamlining goals.

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Mr. Chairman and members of the Committee: I am Bernie Teba from the Pueblo of Santa Clara which is located in northern New Mexico. I am employed by the Pueblo of Santa Clara as an economic development specialist. I also serve as the School Board Chairman for the Santa Fe Indian School located in Santa Fe, New Mexico.

I served on the Joint Tribal/BIA/DOI Advisory Task Force as a representative of the 19 Pueblos, the two Apache Tribes, the Ramah-Navajo Chapter of the Navajo Nation all of New Mexico, the two Ute Tribes of southern Colorado and Ysleta del Sur Tribe located near El Paso, Texas. Instead of consuming a lot of the Committee's time discussing the history of the Task Force I have included a copy of the Task Force Report to my written statement, which I would like included in the record.

I would like to quote briefly, from the Executive Summary of the report, to provide you a basic understanding how the Task Force was established and what it was intended to accomplish.

"The Joint BIA/DOI Advisory Task Force on Reorganization of the Bureau of Indian Affairs (Task Force) was chartered on December 20, 1990 by the Secretary of the Interior. The charter was to develop baseline goals and plans for reorganization to strengthen the BIA's administration of Indian programs. The creation of the Task Force was based on a Congressional mandate in response to Tribal concerns that the Department of the Interior was planning to move forward with a reorganization of the Bureau of Indian Affairs (BIA) prior to appropriate participation and consultation with Indian Tribes. The initial Task Force charter was for two years and was extended an additional two years by the Secretary of the Interior on November 18, 1992.

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In order to ensure that the Task Force efforts were tribal driven, yet at the same time, a joint partnership effort, 36 of the 43 members of the Task Force were Tribal members, five were BIA employees and two were DOI employees. The 36 Tribal members consisted of three representatives from each of the Bureau's 12 Area locations who were nominated by the Tribes and appointed by the Secretary. The Task Force was led by two co-chairpersons representing the Tribal and Federal partnership; the Assistant Secretary-Indian Affairs was named the Federal Co-chair by the Secretary, and the Tribal Representatives elected Wendell Chino, Chairman of the Mescalero Apache Tribe, the Tribal Co-chair.

The Task Force held it's first of 22 meetings on January 22-24, 1991, in Crystal City Virginia. During the four years of its charter, every effort was made to conduct its meeting in different administrative areas to allow as many local Tribes to participate as possible.

To further ensure that this effort was Tribal driven, several steps were taken:

- 1) Time was set aside in each meeting to listen to the concerns and comments of the Tribal leaders.*
- 2) Tribal Task Force members were made responsible and held accountable for meeting with their respective Tribes.*

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3) *Each BIA Area appointed Federal coordinators to facilitate ongoing consultative sessions with Tribes.*

4) *All Tribes were invited to submit written comments for Task Force consideration. Tribes decided that simply changing the BIA organization would not result in significant improvements in the service delivery at the Tribe/Agency level. All aspects of the BIA needed to be evaluated. The Task Force decided to focused its evaluation efforts on a customer service oriented approach.*

The evaluation and recommendation process followed four fundamental themes:

1) *Organizational Reform: Clearly define the appropriate roles of the organizational levels using customer service delivery at the Tribe/Agency/School as the primary consideration.*

2) *Regulatory Reform: Identify the laws, regulations, and internal BIA policies that needed to change to place the decision making authorities closest customer/client.*

3) *Education Reform: The importance of education was a paramount concern of the Task Force. It was felt that measures were available to reform the service aspect of Indian Education. What was missing was a comprehensive plan developed by the BIA and the Tribal organization that could ensure the maximum efficiency and effectiveness of the service delivery process.*

4) *Budget Reform: Throughout the first 20 years of implementation of Self-Determination policy, Tribal participation in decisions regarding the designs of programs and priorities for funding had actually diminished.*

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It was essential that a new system of planning, budgeting and needs assessment based on the Federal policies of Indian Self-Determination and dealing with Tribes on a government-to-government basis. "

I have spent a great deal of my time working on the Organizational Reform initiatives of the Task Force, especially with the Tribes I was chosen to represent. The Tribes, serviced by the BIA Albuquerque Area Office, took the initiative and offer to serve as a Pilot Project for the organizational reform of the BIA service delivery methodology.

A Project Team, of BIA and Tribal employees, was put together and a process was formulated that produced an organizational structure in response to Tribal Decisions. The Albuquerque Process was adopted as a Pilot Project by the Task Force. The Project began with the BIA Albuquerque Area Office, in 1992, and was expanded to include the BIA Central Office and Central Office West functions in 1993, BIA Anadarko Area in 1993 and the BIA Muskogee Area in 1994.

I am convinced, based on my four year experience with the Task Force, that the Albuquerque Project as a process is representative of what many Tribal Leaders envision as real consultation. The project, as a process, is a very important consideration when reviewing the work of the Task Force or the Task Force Report.

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I will attempt to provide you a general and brief overview of the Albuquerque Project as a process.

The Process involved five steps.

Step 1 : Resources-Services Profile

The employees of the Albuquerque Area Office were asked four fundamental questions.

What do you do?

How do you do what you do?

Who benefits from what you do?

Why do you have to do what you do?

The answers to these basic questions were collected and compiled into a Resources-Services Profile. I am enclosing the Resources-Services Profile for the BIA Albuquerque Area Office for your information.

I am also submitting a copy of the Operational Guideline that was a product of the "Why do you have to do what you do". The Guideline is being validated by the Modoc Tribe of Oklahoma through an agreement with the American Indian Law Center located at the University of New Mexico in Albuquerque.

The Profile information was discussed with the responsible BIA managers. Any modifications suggested by the managers was verified with the employees. The final document was formatted as a functional presentation including the financial and employee position information for fiscal year 1993.

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The presentation was divided into three disciplines Executive Direction, Administrative Services and Program Services.

The functional descriptions were provided by the employee position descriptions, organizational functional statements and employee/manager interpretations of what they really do. The customer/client information was provided by the employees and verified by the managers. The financial information was compiled from the BIA Financial System and verified by the BIA Budget Office representatives, the employee information was verified against the BIA Personnel roster and included only permanent employees.

The Resources-Services Profile identified the customer/client that was served by each of the functions within the Albuquerque Area Office. The services provided by the Area Office administrative functions was determined to be 25% to the Tribes and 75% to Other.

Step 2 Resources-Services Profile Validation - Agency Level

The Resources-Services Profile was taken to the Agency Office level where the information was validated. Differences between the Area Office perception of services provided and that of the Agency Offices were resolved through discussions held with the Agency Superintendents and the Area Office management.

Once both organizations were in agreement that the information was truly representative of what the BIA does, how it does what it does and who benefits from activity the Resources-Services Profile was complete.

Bernie Teba Statement Page 7 of 12**Step 3 Task Force Presentations to the Tribal Leadership**

A meeting with the Tribal Leaders was called by the Albuquerque Task Force Representatives where the Resources-Services Profile was presented and explained. The Task Force Representatives responded to every request for meetings with individual Tribes and Tribal leaders. This was the first time that the Tribes Leaders were provided this type of information.

Step 4 Tribe/Agency Decision Profile

Each Tribe was asked to decide how they would prefer the BIA deliver services as defined by the Resources-Services Profile. The Tribal decisions were submitted to the Agency Superintendents who held meetings with the Tribes to ensure the Tribes and the Agency were working in tandem toward mutual goals. The Task Force representatives working with the Tribes and the Agency Superintendents collected the completed decisions. The Decision Profile information was ratified through Tribal Resolutions passed by each of the Tribal Governments. Each of the Agency Superintendents were required to signed off on the Decision Profile information.

The Task Force Representatives working with the Tribal Leaders and the Agency Superintendents agreed that the Tribe/Agency Decision Profile submissions would be broken down into three phases.

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Phase I - The Agency would assume the authority and responsibility for a particular function without additional resources (funds/staff).

Phase II - The Area authorities, responsibilities and resources would be made available to the Agencies to the extent the resources are available.

Phase III - The Tribes would utilize the budget process to identify additional resource needs.

Each of the Tribes completed their Decision Profiles without any knowledge of what the other Tribes and Agencies were submitting.

Step 5 Tribal Leaders Decisions on Area-wide Issues

The Task Force Representatives held meeting with the Tribal Leaders where hard decisions were addressed concerning the limitation on the Area Office Program resources. The Tribal Leaders were informed that the Area Office Administrative Resources were adequate to implement each of the Agency level needs. While the Program Resources were inadequate in response to the decisions submitted by each Agency.

The Tribal Leaders demonstrated that they understood the problem and formulated the following decisions:

Their primary goal is Agency Office Self-sufficiency.

Agency Self-sufficiency will provide the Tribes a viable basis for considering future decisions concerning Self-determination contracts or Self-Governance compacts.

Eliminate all Line Management authority at the Area Director level by delegating the authorities to the Agency Superintendent.

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Move all Area Office administrative authorities, responsibilities and resources to the respective Agencies.

Establish a Technical Support Center that would provide program services to all Agencies and Tribes until such time as additional resources could be justified by the Tribes through the Agency Office level Budget Process.

Conduct a Resources-Services Profile analysis of the BIA Central Office organizations, in Washington and Albuquerque, to determine if there are functions that are being duplicated and could be consolidated to free up resources in support of the Tribal/Agency level initiatives.

The Albuquerque Task Force Representatives took the Albuquerque Tribal Leaders decisions to the Task Force. The Task Force concurred with decisions and instructed the Organizational Reform Work Group to conduct an analysis of the BIA Central Office organizations.

The Central Office analysis concluded that BIA Central Office organizations had a redundancy or duplication of responsibilities involving 380 positions and \$28,476 million that could be used to support the Tribes reforming the service delivery processes at the Tribe/Agency level. The Task Force referred to the Central Office resources as the Tribe/Agency Pool and recommended that resources be distributed on a 1/14 share basis. One share would be issued to each of the 12 Area Offices to be used as the Tribal Leadership deemed appropriate, one share would go toward the support of the small Tribes initiatives and a share would be used to increase Tribal administration and contract support costs.

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The Tribes were encouraged by the Assistant Secretary - Indian Affairs to submit plans as to how each of the BIA Areas Offices would be restructured taking into consideration the Albuquerque and Portland Area Models and their 1/14 share of the Tribe/Agency Pool.

To date the BIA Albuquerque Area Director has not taken the first step to implement the Tribe/Agency decisions or comply with any of the Task Force 44 recommendations.

The Secretary Babbitt and Assistant Secretary Deer have decided to use the National Performance Review (NPR) as justification for not implementing the Task Force recommendations.

The BIA Deputy Commissioner has established an NPR Implementation Team for the purpose of reorganizing the BIA Central Office.

Mr. Chairman I submit to you that the Task Force complied with the principles represented by NPR as far back as three years ago and that the Task Force Report is Indian Country's NPR. Indian Country's NPR complies with all the principles of the Clinton Administration's NPR. The Congress created the Task Force and it fulfilled its responsibility to you.

The Task Force Report has been supported time after time by the Tribal Leadership. If the Interior Secretary and the Assistant Secretary - Indian Affairs would accept the Task Force Report as the Indian Country version of NPR and commit the resources to implementing the report recommendations as they are committing to using NPR as a reason to ignore the report the BIA could begin to streamline itself with the Tribal Leadership as a willing partner.

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Mr. Chairman I know why the Secretary and the Assistant Secretary are reluctant to bring the Tribal Leaders to the decision making table as a fully accredited partner. The Bureaucrats can not perceive a BIA where the Tribes are customers and as customers they have all the power of customers. General Motors spends millions on wooing the customer to buy and believe in their products. But Interior and the BIA bureaucrats can not conceive a situation where the Tribes are the customers, real customers, just like those that buy Pontiac automobiles.

The Task Force complied with the mandates of the Congress. It took us four years to accomplish the job, but what we were attempting to accomplish was new to the Tribal Leaders. It took a lot of time and commitment to gain their confidence, establish a basis for meaningful dialogue, formulate processes that permitted genuine decision making and demonstrate that as Task Force members we were truly representing them and not ourselves as individuals.

The Albuquerque Task Force Representatives endured a process where many of the Pueblos have new and different Governors each January. I am not attempting to tout my performance as a Task Force member. What I am attempting to do convince you that a decision process that can endure a complete change in the government four times in four years has got to have merit.

Mr. Chairman and members of the Committee you provided the Tribes an opportunity to reorganize their Bureau of Indian Affairs and they worked very hard to do a responsible job and I believe they did just that. As one of the three Task Force representatives appointed by the Albuquerque Tribal Leaders I submit to you that they deserve a chance to implement the BIA they have designed.

Bernie Teba Testimony Page 12 of 12

Mr. Chairman I am not suggesting that you to enact the Task Force Report into law, that is an awesome thought. What I am suggesting is that the Report become the NPR for Indian Country and that you enact the provisions that can make this concept a reality.

Mr. Chairman and members of the Committee I want you to know that the Task Force Report is not opposed to Self-Determination contracting or Self-Governance compacts or is it an either or type alternative.

The Report represents a process that links Agency Self-sufficiency, Self-determination contracting and Self-governance compacts as a tools the Tribal Leaders have to carry out the monumental responsibilities that come with a government-to-government relationship with the United States Government.

I want to thank you for your time and patience and I will be more than willing to answer any questions.

**SANTA CLARA
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June 27, 1995

The Honorable John McCain, Chairman
United States Senate
Committee On Indian Affairs
Washington, D.C. 20510-6450

ATTENTION: Steven J.W. Heeley, Majority Staff Director

Dear Senator McCain:

Enclosed herein are the responses to supplemental questions as a result of the May 18, 1995 hearing on Bureau of Indian Affairs Reorganization.

I again want to reiterate my support for introduction and passage of S.814 - The Bureau of Indian Affairs Reorganization Act of 1995. Without this legislation I am still convinced that the Bureau of Indian Affairs and the Department of Interior will not begin (and have not initiated) implementation of the Albuquerque Area Office reorganization. The provisions in S. 814 provide the impetus for mandating BIA reorganization with Tribal participation and involvement.

Your support and attention on this matter is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bernie Teba".

Bernie Teba

Senator McCain Questions

Version: 6-26

1) Hasn't the BIA manual outlived its usefulness and now merely serves as the basis for the BIA to block tribal initiatives?

The purpose of the Bureau of Indian Affairs Manual (BIAM) originally was to provide consistency throughout the BIA with regard to practices and procedures as a significant portion of the BIA personnel were working in field locations carrying out their duties in remote locations. The BIAM is outdated and that presents problems. It has evolved into a single source for documenting the way the Bureau has been doing business, since who knows how long. Many of the procedures contained in the BIAM are meaningless and can't be justified by policy or regulation. They are procedures that have been passed down from bureaucrat to bureaucrat over the years.

It is because the BIAM is so antiquated and considering how it has evolved that the tribes believe the BIA is using the manual to formulate programmatic and administrative obstacles. The observations of tribes are valid, to an extent. If the manual was current and the bureaucratic redundancies were deleted many of the obstacles attributed to the BIAM would not exist. Many tribal leaders and Bureau employees have expressed their belief that a complete BIAM does not exist.

The Bureau and the Tribes both need an updated, readily available, Bureau of Indian Affairs manual. The manual is essential as a guideline that provides operational consistency across organizational jurisdictions.

An example is 41 BIAM (volume 41), Supplement 4, Aug 93, Administrative Control of Funds.

"This manual establishes the Bureau of Indian Affairs' (hereafter referred to as the Bureau) Administrative Control of Funds policies and identifies the responsibilities of Bureau officials in the control and distribution of obligational authority and expenditure of funds."

BIAM concerns brought to the attention of the Task Force:

- o The manual in most cases is virtually useless because it is so outdated.
- o There is only one known "updated" copy in existence which is guarded closely by the BIA's Directives Officer, in Washington, DC (Diana Loper).
- o Historically, the BIA position has been that the Tribes are not entitled to access the BIAM.
- o The BIAM serves as a defensive measure protecting the BIA from being held accountable by the Tribes.

1) Does your tribe have a complete up to date copy of the BIA manual?

No, Santa Clara Pueblo has been unsuccessful in its attempt to obtain copy of the BIAM. In fact, the responsible BIA Agency, Northern Pueblos, does not have an updated copy. Interviews, by the Task Force technical staff, revealed that Albuquerque Area staff and the staffs of the other eight Agencies have never seen a complete copy of the BIAM.

1) In your experience how many Area and Agency offices of the BIA have up to date copies of the BIA manual?

The Task Force technical staff conducted studies for Anadarko and Muskogee Area Offices, in addition to Albuquerque Area offices and found that the BIAM did not exist at any of the offices studied.

1) In your view, should the BIA manual be promulgated in a public process with full participation of Indian tribes?

Yes, after it has been updated and condensed into a responsive, workable document. The manual should be revised, by an independent party, with tribal participation. The BIA should offer training on the purpose and application of the BIAM. The training should be mandatory for Bureau employees and available, at BIA expense, to tribal leaders and staff.

2) Given your experience in developing the Albuquerque Area reorganization plan, what problems have you experienced in your efforts to implement the Albuquerque Area reorganization plan?

The greatest obstacle to implementing any plan that attempts to reorganize a bureaucracy is the bureaucracy itself. In Albuquerque the primary problem has been the Area Director and the Area Office Branch level managers refusal to recognize the Albuquerque tribes have decided that they would be better served if the service delivery was concentrated at the Agency level. The Area Office management staff has demonstrated their lack of respect for the capabilities of the Agency Offices and more so that of the Tribal Governments.

The Albuquerque Area Director, there has been three since the Albuquerque Area tribes formulated their reorganization plan, has refused to implement the Albuquerque Plan.

The Assistant Secretary, Ada Deer, and the Deputy Assistant Secretary for Indian Affairs, Mike Anderson personally approved the Albuquerque Project at the Albuquerque Tribal Leaders January 28 meeting in Albuquerque. The Interior Department NPR Team Manager, Jody Kusck, endorsed the Assistant Secretary's approval of the Albuquerque Plan and informed the tribal leaders that their plan did not conflict with NPR.

-3-

The Deputy Assistant Secretary for Indian Affairs instructed the acting Area Director, Joe Little, to proceed with developing a project budget, human resources support requirements and implementation schedule for the implementation of the Albuquerque Project Plan. The acting Area Director (Joe Little) assured the tribal leaders of his commitment to implement their plan. The Albuquerque tribes were commended, by the Assistant Secretary, Ada Deer, and the Interior Department representatives, Jody Kusek and Theresa Trujeque, "for their innovation, unity, and commitment to making the Government-to-Government initiative a reality."

Yet to this day nothing has happened. In my opinion, the Albuquerque Area Project clearly proved that the BIA is incapable of reorganizing itself.

3) Do you think the Albuquerque Area plan can be fully implemented in the absence of legislation?

In my opinion that it is not likely. Albuquerque has a new Area Director, Pat Hayes. In all fairness he should be given an opportunity to review the Albuquerque Project Plan and provide the tribal leaders an implementation process schedule.

The Albuquerque tribal leaders have expressed, to their Task Force Representatives, their belief that if they are ever going to have a voice in the reorganization of the Albuquerque Area Office it will be through statutory measures resulting from legislation.

3) If there is legislation, what should be included as part of the legislation to fully implement the Albuquerque Area plan?

Congressional micro-management of a BIA program has historically proven to have had an adverse impact on the service delivery programs at the tribal level. An example of adverse congressional micro-management is the BIA's Facility Management Program. The end result has been the tribes and their school boards have lost all control over an integral part of the local educational service delivery program.

To implement any BIA reorganization through legislation, at a minimum, it must identify who is going to do what and when it will happen. There must be language in the legislation to provide sanctions should the legislation instructions not be carried out or unnecessarily delayed.

The Albuquerque tribal leaders plan is based on agreements made between the tribes and the Agency. The concept of "reorganization compacts", as presented by S814, is supportive of the Albuquerque Plan.

The time frames contained within the "draft" legislation are very important. What needs to be included are the non-compliance sanctions and how the sanctions will be exercised. The role of tribal governments in the sanction enforcement process is critical.

3) *What types of authorities would be needed to fully implement the tribal reorganization plan?*

Comprehensive legislation can't transform the BIA into a customer service oriented organization unless the tribal leaders are placed in a position where their decisions are meaningful and require the BIA to act. This is not to suggest that the tribal leaders should be empowered to an extent that the BIA could be forced to ignore the inherent Government responsibilities or required that any law be violated.

o The tribal leaders should be given authority over the formulation of strategic plans, accomplishment milestones, and the monitoring of accomplishments.

o The BIA would then be responsible for tactical planning, financial determinations, and staffing to ensure the decisions of the tribal leaders are implemented responsibly and effectively.

o The tribal leaders should have the authority to initiate the enforcement of penalties of non-compliance with Reorganization Compacts.

4) *How do you propose we overcome this resistance in fully implementing BIA reorganization?*

The concerns pertaining to bureaucratic resistance are certainly genuine. As previously stated the Albuquerque Area Project clearly demonstrates the extent of the resistance. Overcoming the resistance to change and inherent paternalism that exist will be difficult, if not impossible, under the current Area Director system without specific legislation.

The bureaucracy at the Department level can be as detrimental to tribal government initiatives as the Area Director system except that it impacts primarily on financial and staff resources. The Interior Secretary, the Assistant Secretary for Indian Affairs, the Area Directors and the Agency Superintendents need to be held accountable as line managers. Strict and timely enforcement of performance milestones that have been negotiated with the tribal governments. Severe consequences for bureaucratic business as usually need to be enforced.

One answer to bureaucratic resistance is the empowerment of the tribes through the establishment of a tribal leaders oversight and planning organization and/or Secretary/Tribal Leaders agreements that both the Interior and BIA bureaucrats can not ignore.

The tribal representative group proposed by S814 should be expanded to include DOI/BIA compliance with the Reorganization Compacts, in addition to the revision of the regulations.

5) In your view what are some of the problems with the BIA streamlining proposal under the National Review?

The BIA streamlining initiatives under NPR have taken the tribal leaders out of the decision making loop. NPR is being used as a higher authority that justifies not consulting with the tribes and/or responding to tribal decisions. This new NPR Project initiative has created a state of general confusion among the tribal leaders.

The new emphasis on NPR is in response to the proposed budget cuts as announced by the House of Representatives. Anytime the Interior Department is faced with budget cuts they assume heavy handed control of the BIA and move the decision making behind close doors.

The new BIA NPR Project Manager, George Gover, has assumed control of the BIA's reorganization project. Neither the Assistant Secretary for BIA or the Deputy Commissioner has ever issued any signed authorization granting him authority to develop a NPR plan, implement such a plan or to rescind such decisions as those made at the January 28, 1995 meeting in Albuquerque. Mr. Gover has publicly announce that the 1 year moratorium on reorganization and the Assistant Secretary for Indian Affairs commitments and/or decisions pertaining to the Task Force and the Task Force Report are rescinded.

5) What is the current status of the NPR reductions in the Albuquerque Area?

The BIA NPR proposal has stopped all work on the Albuquerque Area reorganization effort. We do not know the extent of the reductions or increases slated for the Area Office, the Agencies or the schools.

The new emphasis appears to focus on "Tribal Shares", which the tribes do not totally understand. The NPR Project Manager, Gover, has decided that tribal shares will be offered to those tribes that opt for Self-governance compacts or PL 93-638 contracts. Those tribes that support Agency Self-sufficiency will not be entitled to their tribal shares. This approach does not consider the trust responsibility and fiduciary duty of the United States Government or the assurances provided the tribes that they will never be forced, by the Government, into contracting or compacting.

6) *Could you explain what that figure represents and provide the Committee with a breakdown of what percentage of funding supports local services and what percentage reflects administrative costs of the Area Office?*

The results of the Albuquerque and Oklahoma studies:

Area Office	Functions	Tribal Govts	Individual Indians	BIA/DOI Orgs	Other
Albuquerque	Admn	25 %	-	65 %	10%
Anadarko	Admn	12 %	15 %	62 %	11 %
	Prog	23 %	12 %	51 %	14 %
Muskogee	Admn/Prog	9 %	5 %	54 %	37 %

Restating the position, in different terms; tribes directly benefit from the BIA area offices only 25% of all tasks, duties, responsibilities, and other activities that lead to the production of work. This percentage determination includes financial and human resources and the results of direct services to tribal governments. The balance of the percentage represents financial and human resources utilized for servicing the BIA, other government agencies, states and local units of government, and private sector interest that have business with the BIA. Information that distinguishes between the Area Office and other BIA offices is not available.

The Albuquerque tribes decided the Area Office administrative functions would be moved to the Agency Offices. The Area Office would be transformed into a Technical Support Center and the Programs would be moved to the Agencies as resources became available.

The information was a product of the Task Force Pilot Project that was designed to provide the tribal leaders with information concerning the Area Office. The intent information collected was in answer to the following questions concerning the Area Office:

- o What does the office cost?
- o How many people work in the office?
- o What do these people do?
- o Why do they have to do what they do?
- o Who benefits from what they do?

The information was collected, analyzed and formatted as a Tribe(s)/Agency Decision Profile that was presented to each of the tribal leaders. The profile was used by the tribal leaders to review the financial and human resources associated with the office and the work responsibilities and the services provided. Each tribe recorded their decisions as to how they felt the financial and human resources could better be utilized to accomplish the work and improve services at the local level.

The Albuquerque Pilot Project process and the results of the Tribe(s)/Agency Decisions were presented to the Task Force. The two Oklahoma Area Offices requested that Albuquerque Project be followed to evaluate the Anadarko and Muskogee Area Offices. The Task Force approved the Anadarko and Muskogee request and the Task Force staff conducted a study of the two Area Offices using the Albuquerque process.

The Anadarko tribes decided to abolish the Area Office and move the resources to the Agency Offices.

The Muskogee tribes were unique in the sense that three of the Five Tribes, Cherokee, Muscogee (Creek) and Chickasaw, had enter Self-governance compacts and the Choctaw had contracted for most of the Agency program through PL 93-638. The tribal initiative in the Muskogee Area was Agency self-sufficiency as a prerequisite to Self-governance.

It was the agenda determined by the tribes that dictated whether the Task Force studies made the distinction between administration and programs.

STATEMENT OF STANLEY M. SPEAKS, AREA DIRECTOR, PORTLAND OFFICE, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, AT THE OVERSIGHT HEARING BEFORE THE COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON THE "RECOMMENDATIONS OF THE JOINT DOI/BIA/TRIBAL TASK FORCE ON REORGANIZATION OF THE BUREAU OF INDIAN AFFAIRS".

MAY 18, 1995

Good morning Mr. Chairman and Members of the Committee. As a charter member of the Joint Tribal/BIA/DOI Task Force on Reorganization of the Bureau of Indian Affairs, and as the Portland Area Director for the Bureau of Indian Affairs (BIA), I am honored to appear before this Committee to report on the efforts taken by the Portland Area to implement the Task Force recommendations.

In the Portland Area, more than 80 percent of the total funding has been contracted or compacted by the Tribes. Ten Northwest Tribes, representing more than one third of the Self-Governance Tribes nation-wide, have entered into Self-Governance compacts. In Fiscal Year (FY) 1996, we expect at least six more Northwest Tribes out of an expected twenty new tribes throughout the United States to enter into Self-Governance compacts.

With this background it was natural that the Northwest Tribes would join with the BIA in creating the Portland Area Plan which is based on identifying a "Tribal Share" of our annual budget. In response to Pub. L. 93-638, as amended, and the National Performance Review (NPR), all program functions were examined to define which would be retained when all programs were contracted to Tribes. The Portland Area restructuring plan, which was developed with and approved by the Tribes, develops an area office that is streamlined and capable of shrinking further as more Tribes contract their share. When all tribal shares are contracted, only a residual staff will be retained to carry out the inherent Federal functions of the trust. All other functions or services will be administered by Tribes through Pub. L. 93-638 contracts.

The Portland Area Plan I am describing today is the cumulative

result of three and one-half years of joint Tribal/BIA efforts. The intensity of our efforts picked up in May of 1993 when the Portland Area Task Force representatives recommended that the Affiliated Tribes of Northwest Indians (ATNI) facilitate the Portland Area reorganization effort. As a result of that recommendation, a Joint BIA/ATNI Cooperative Agreement was established to ensure that Tribes were involved and that increased levels of communication and participation between Portland Area Tribes and the BIA staff would exist.

The Cooperative agreement with ATNI put Northwest Tribal leaders, Tribal staff people, and BIA personnel face to face in often intense work group sessions and consultation meetings. As a result, we received immediate Tribal input and response to specific Joint Task Force/BIA reorganization strategies and we created a forum to provide for the exchange of information between the national reorganization efforts and the efforts of the Portland Area BIA and Tribes.

In all, more than 270 individuals representing 41 of the 42 recognized Portland Area Tribes and all 12 Portland Area Agencies contributed to or participated in some or all of the Portland effort since May of 1993. Jointly, the Northwest Tribes and BIA employees defined inherent Federal functions for each area program. "Inherent Federal function" was defined as the residual trust responsibility to be maintained when all program services are contracted to all Area Tribes. We also finalized an appropriate formula for use in the distribution of program funds to the Tribes, and, finally, we agreed upon the percentages to use in computing those formulae. We then made Area functions and funding available to Tribes based on their desire to contract for those services. Eleven Tribes then elected to enter into Pub. L. 93-638 agreements to assume their share of contractible area functions and responsibilities.

As a consequence, approximately \$400,000 of previously non-contractible funding was added to existing Tribal bases and Pub. L. 93-638 contracts in FY 1995. At current projections, nearly \$1,200,000 of area funding will be added to existing Tribal contracts in FY 1996. Our experience using the Pub. L. 93-638 process as the vehicle to downsize the BIA has resulted in a real, immediate, and dramatic impact on BIA operations in the Portland Area, effectively shifting resources to Tribes and downsizing Federal operations.

As part of the identification of Tribal Shares, we have made FY 1996 base transfers to restructure our Area "Office Operations" (Area Direct) and Area "Field" programs (Tribal Priority Allocations). In FY 1996 our Area "Office Operations" program will contain only that funding necessary to fulfill our inherent Federal functions associated with residual trust responsibility in a fully contracted setting. Likewise, our Area "Field" program will consist of appropriated funds which have been identified by program and by dollar amount and which are contractible to Tribes. Both programs will be utilized to support BIA functions until all Tribes take their share of Area Field.

We have initiated other efforts in the Portland Area in support of the Task Force recommendations. For example, I am pleased to report that, with some exceptions, all of my operating authorities have been delegated to the Agency Superintendents in the field. We accomplished this with no increase in funding by simply designating that the Area Office staff provide support to the Agency Superintendents to carry out those authorities. The unknown in this effort is whether such a delegation will require us to maintain existing staff to support Agencies at the regional level. We believe that we maintained economies of scale and avoided costly reductions in force and employee relocations.

As a result of implementing the "Tribal Shares" concept the Area Office has had to redesign its organizational structure. The new structure when completed will reflect the NPR objective of increasing spans of control by instituting a team-matrix design. This structure replaces the traditional hierarchial BIA organization with a project management oriented approach, allowing for sharing of resources with concentration on measurable results and outcomes. In this type of matrix, organization employees join interdisciplinary teams rather than work within the confines of traditional branches. The "residual" staffing level left to fulfill inherent Federal functions (65 FTE) is approximately one-third of the previous number of employees in the Portland Area Office. Out of necessity the reorganization has forced us to make better use of the technical staff and to respond to the "ecosystem" management requirement used in other efforts such as the President's Forest Plan. We are optimistic that this reorganization will allow for the orderly transition to an ultimate residual level which will require the staff to do more with less.

As we develop the Portland Area Plan we find, particularly at the Agency level, a need to design the organization to meet the varied and individual needs of the Tribes to be served. There is no question on the diversity of Indian tribes, and certainly for the Northwest tribes, there is no satisfactory "one size fits all" approach. For example, of the 42 Tribes in our area ten Tribes have entered into Self-Governance agreements. In addition, the Colville Tribe chose a cooperative agreement by which the BIA and tribal resources are pooled to achieve tribal goals. The Grand Ronde Tribe has opted for and negotiated an "Indian Self-Determination Accord" that essentially designates the Area Office as the primary source for performance of the Federal official role in the delivery of trust services. We expect that similar unique agreements will be developed for the Makah, Coquille and other Northwest Tribes. It is clear that the Portland Plan will be

designed at both the Agency and Area level to allow Tribes the greatest flexibility to do business with the Federal Government in the manner best suited to their needs.

In all the actions we have taken in the Portland Area we have maintained a good faith effort to comply with Pub. L. 93-638, as amended. Over the course of our effort we learned that because of the multitude of issues that permeate the Tribal Shares determination process we need to develop a more orderly structured process that addresses, to the extent practicable, all issues.

In summary, the essence of the Portland Plan is that the BIA and Tribes created a relationship which led to a working partnership to define the future of the BIA. Through this process everyone developed an understanding of the government-to-government relationship and provided the means to clearly identify the limits of existing resources within which the BIA and the Tribes can work jointly to achieve mutual goals.

This concludes my prepared statement. I will gladly respond to any questions the Committee may have.

Thank you, Mr. Chairman. My name is Phillip Martin, and I am the elected Chief of the Mississippi Band of Choctaw Indians, a federally-recognized tribe of 8,000 members, most of them living on 21,000 acres of reservation lands in east central Mississippi. It was also my privilege to serve as one of the three members representing the Eastern Area on the Joint Tribal/DOI/BIA Task Force on BIA Reorganization.

I need to preface my remarks by stating that, with over 35 years' experience in tribal government relations with the Bureau, I am not hopeful about the possibility of truly reforming it. Over the years, I have participated in many exercises besides the Task Force, in which tribes have told the Bureau how to reorganize itself; and all have resulted in frustration and a cosmetically-changed Bureau. As time has gone on, the BIA has got smarter about defending itself. We may have reached a point at which the Bureau has discovered that its best defense is the very thing it has for so long feared -- tribal consultation. The Bureau is now able to use the apparent conflicts among the views of different tribes as an irrefutable reason for inaction.

The federal government should not be stamped by claims of consultation into forgetting that federal Indian policy is its own responsibility, not the responsibility of the tribes. Put simply, tribes cannot reform the federal government from the outside; the people on the inside have to do that. And the major problem that we all have with the Bureau is that those people on the inside, especially Secretary Babbitt and President Clinton, have not endeavored to craft an Indian policy that looks ten or 20 years down the road. Absent an executive branch inclination to develop specific Indian policy plans for the future, it may be necessary for this Committee to develop such plans statutorily.

I need secondly to say that I am sure that you could have invited the leaders of many other progressive tribes here to testify today, who would be glad to tell you how horrible the Bureau is and to assert to you that they do not need the Bureau at all, except for the fact that they know such sentiments in the past have led directly to federal decisions to shift Indian policy to termination for tribes tied to downsizing the Bureau.

My participation on the Reorganization Task Force was a long and oftentimes grueling process, in part because it was staffed by the very people who were themselves going to be reorganized, and in part because each tribe has a different idea of how the BIA can be transformed in order to better serve that particular tribe. There was universal agreement, however, that decision-making should be delegated insofar as possible to the tribe/agency level.

I believe that we Task Force members can be proud of the results that we obtained in two subject areas especially: budget reform, and regulatory reform. The budget working group did a superb job of making the budgetary process more locally responsive, and developed nearly all of the materials necessary to implement the new budget system. The working groups that looked at 25 CFR and the BIAM, while they were not able to conclude their work and produce specific language for reforming these documents, did point to these items as major causes of tribal difficulties in overcoming obstacles to self-determination. I believe, as well, that these working groups pointed the way to the de-emphasis on regulations which you, Senator, fleshed out in the Self-Determination Amendments enacted last year.

I would add at this point that I and many other tribal leaders would support continuing efforts to divorce tribal contracts from any direct or indirect influence from the BIA Manual,

and to further simplify 25 CFR, to give it an orientation toward tribal self-government rather than toward federal administration.

I believe that there were two major problems that faced the Task Force which it was, in the end, unable to overcome, and which still remain to be addressed in any consideration of BIA restructuring. The first of these was arriving at a general definition of "trust responsibility" and a tabulation of which subject areas are included in it, and which areas are not.

Tribes are very concerned that their resources be protected from depredations of various sorts. But less and less do tribes feel that their resources need to be protected from tribal members themselves. In fact, the idea that such resources need to be protected *from the trustee* is getting more widespread. The ability of tribes to protect their own resources is unquestionably greater than it used to be.

On the other hand, if the trust responsibility were to be considered as something wider than the natural resource question, it becomes more problematic. For example, Choctaws have a series of ratified treaties which include guarantees for education. To my mind, that means that education is a trust responsibility, at least for Choctaws.

But trust responsibility is becoming ever more important to those whose aim is reduction of the federal bureaucracy, and to that bureaucracy in response to such proposed reductions. That is, the trust is the floor upon which the "reductionists" stand when they maintain that staffing should be reduced to trust functions in the narrowest sense. By the same token, the BIA staff, facing monetary cutbacks and/or FTE reductions, retreat to trust responsibility arguments as ways to justify why other governmental assistance cannot be rendered by them to tribes and tribal members.

I tend to believe that the trust concern is somewhat of a red herring. At this point in our history, the salient relationship is no longer the trust relationship but the government-to-government relationship -- the duty of one self-governing sovereign to support the democratic institutions of other sovereigns existing within its system. I urge the Senate Committee to continue its strong support of the government-to-government relationship, and to aid tribes in guarding against a narrow interpretation of the trust responsibility that would reinforce those who would use dependence on the narrow interpretation to mandate withdrawal of federal resources from American Indian people.

The other major problem that confronted the Reorganization Task Force, that was not successfully solved, was the ambiguous attitudes of all of the participants to the BIA area offices as institutions. These questions arose almost immediately in the Task Force's deliberations, at the first and second meetings, and produced the "designer area" concept, which was never again challenged during the rest of the life of the Task Force. While it would be nice to have an area office that would meet the need of each individual tribe and agency, obviously such is not affordable in our current fiscal situation.

While I personally believe that area offices, in our age of instant communications, and with the increasing institutional sophistication of tribes, have outlived their usefulness; I can also see the point of some western tribes in seeking to bring decision-making closer to home. The Central Office West idea springs from similar motives. I cannot help but feel that Bureau enthusiasm for this idea is really just a bone they are throwing to the western tribes.

United South and Eastern Tribes, Inc., which consists of the Mississippi Band of Choctaw Indians and 20 other federally-recognized tribes, has established a working committee to explore the feasibility of contracting for BIA Eastern Area Office operations. The eastern tribes contract for approximately 95 percent of all agency-level services, and have established the committee for several reasons. First, the committee will assure that tribes are directly involved in budget reductions and re-organizations within the area office. More importantly, USET contracting of the office would facilitate tribal involvement in the control of area office staff and the development of improved technical support for tribes in the area. The committee has been asked to explore the possibility of combining BIA and IHS support services and establishing a one-stop-shopping concept for tribes in the eastern area. The committee met with central and area staff on May 4-5, 1995 to establish expectations for the group and to be briefed on central office plans for reorganization of the BIA. A second committee meeting is being held both yesterday and today in Arlington, and the committee will share preliminary findings with USET tribes at the next USET meeting on May 30, 1995. The committee is only just now beginning its exploration of options for re-organization of the area, but hopefully something concrete will come of it.

Clearly, efforts to re-organize central and area offices were greatly accelerated by the passage of the 1994 Indian Self-Determination Amendments. The BIA is currently finalizing its quantification of trusts or residual responsibilities and is identifying the portion of BIA funding that will be made available to tribal contractors. This process will surely result in major reductions in central and area office operations and will make tribal contractors the determining factor in the shape and size of area offices. With the determination of tribal shares for all non-residual area functions, a tribal contractor will be able to shop for its technical support either at an area office or elsewhere.

The overall question that has arisen in the contracting discussions is this: If one takes the necessarily federal functions out (the negotiators are maintaining that approval of contracts is one), what is left? For Eastern, it increasingly appears that all that would be left are trust responsibilities and technical assistance. Under the narrow concept of trust responsibilities, Bureau staff are maintaining that those are not contractible, either.

I believe this demonstrates that 1) the viability of area offices in general when conducting business with progressive tribes is dubious, and 2) the questionable efficacy of the concept of "designer areas," in illustrating how the Bureau decision-makers will use the "trust" and other arguments to uproot functions, declare them uncontractible, and place them elsewhere before considering tribes' designs. At the same time, OPM procedures assure that these relocated functions would be performed by the dinosaurs of the bureaucracy, rather than those with less tenure, but more ideas.

Considering that federal policy is a federal responsibility, and that many reform efforts in the past have ended up as tribal termination efforts, it is difficult for me to suggest any overall strategies toward reform, but I will put forward two immediate solutions we need for two specific problems.

The first, which I have advocated for a number of years, is the establishment of a centralized contracting office in Washington that would be charged with the approval or disapproval of all 638 contracts nationwide. (I suppose that a second could be established at Albuquerque for the tribes out there.) This contracting function could be combined in Washington with budget development and legislative liaison responsibilities to create a relatively small central staff, which would be adequate to maintain a voice for tribes within the

federal structure. In my opinion, this office, along with a second office overseeing all trust responsibility functions, the Office of Indian Education Programs, and an Office of Construction would be about all the bureaucracy that would be necessary. By an Office of Construction, I mean a centralized center to both handle construction contracts and control funding for education, detention, roads and irrigation construction, and for O&M.

The second would be a legislative suspension of the ordinary federal personnel regulations with respect to the performance of residual federal functions after tribal contracting. If we are to respect the government-to-government relationship, tribes need input into the selection of individuals who will remain to administer federal functions, to the end that such persons are both supportive of self-determination and able and willing to hold up the federal end of the government-to-government relationship in a respectful manner.

Thank you.

MISSISSIPPI BAND OF CHOCTAW INDIANS



TRIBAL OFFICE BUILDING
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July 31, 1995

The Honorable John McCain, Chairman
Committee on Indian Affairs
United States Senate
Room SH-838 Senate Hart Office Building
Washington DC 20510-6450

Dear Mr. Chairman:

I very much appreciate the opportunity to comment further on my testimony on S. 814, given May 18, which you solicited in a letter received May 30. I would have been more prompt in my response, but we had a tribal election going on down here which needed my complete attention.

You requested my further views on the BIA Manual, progress made by USET in contracting the BIA Eastern Area Office, and the use of the "trust responsibility" by the Administration.

The BIA Manual, whatever its usefulness or lack thereof for federal employees who run BIA programs at the reservation level, has indeed outlived all usefulness for tribes contracting those programs, in that it prescribes restrictions, not creative approaches to the problems the programs were designed to address. The Manual is a convenient talisman for contracting officers — refer to the Manual in the contract as a basis for contract monitoring, and one needn't worry about developing indicators oriented to measuring program results.

The current Chairman of the Choctaw Gaming Commission is a former employee of the Assistant Secretary — Indian Affairs' office. It is his view that the only time in recent history the BIA Manual has been pulled together in one place was when he compiled one for the Special Committee on Investigations of the (then) Senate Select Committee on Indian Affairs. Even then, there was no guarantee that all parts were included, nor was there any assurance that all parts were current. Since this copy was submitted to the Special Committee, we can assume that the Bureau still does not have a complete Manual! Ever since enactment of the Self-Determination Act in 1975, this tribe has made repeated requests for copies of relevant sections of the Manual to aid in the development of contract applications, and has never received a complete, updated copy of the needed chapter. Eventually, we gave up asking, and entered into contracts that required us to follow something that we had not seen.

I would agree wholeheartedly with the provision in S. 814 that mandates abolishment of all portions of the Manual which cannot appropriately be made a part of 25 CFR — which, I might add, I am sure will represent over 99 per cent of the current Manual.

As of now, we understand that the proposed 638 contract for operation of the Eastern Area Office by United South and Eastern Tribes, Inc., is being debated and negotiated by the

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USET tribes themselves, especially as regards how this Bureau contracting can fit in with a possible contract for the IHS Nashville Area Office. Although a 638 contract for the Area Office is not directly related to the concept of Self-Governance, the budget decisions that will need to be made have become inextricably linked with the concept of tribal shares, as the USET tribes seek ways to address the needs of both the Self-Governance member-tribes and those tribes that feel they need continued technical assistance from an area office.

One curve ball that has recently been thrown by the Bureau was a reduction in force (r.i.f.) of all but a few of the Eastern Area Office employees. We do not know whether this was a part of the reinventing government or national performance review initiatives, an initial result of the preliminary proposal by USET to contract the office, or a wish to withdraw personnel dollars from the office prior to its contracting. At any rate, it appears that the r.i.f. may have been called off last week.

I must state that the Mississippi Band of Choctaw Indians is perhaps more cautious about contracting the area offices as other member-tribes of USET are. While we completely support the concept that tribal administration of BIA administrative functions will result in increased efficiency, effectiveness, and responsiveness; we remain uncertain about the more basic question of the viability of area offices as institutions in the modern age. As long as the Bureau is going to have area offices, we advocate wholeheartedly USET contracting of the Eastern one, but tribal governments are now sufficiently sophisticated and self-directed to be able to get their business done at the Central Office level (assuming, of course, that there is some responsiveness there.)

The "Trust Responsibility" question is a sensitive one, involving complex legal and political issues. The United States' "Trust Responsibility" to the Indian tribes arises from the United States' "Trust Relationship" with the Indian Tribes. The Trust Relationship is in turn grounded in principles of international law which arose from the interactions of European powers with the indigenous peoples of the Americas. See, enclosed excerpts on "Law of Nations: General Discussion of Vattel, Marshall and Jefferson" (pp. 99-112), from the Report on Trust Responsibilities and the Federal-Indian Relationship: Including Treaty Review, Final Report to the American Indian Policy Review Commission, Congress of the United States (Committee Print, 1976). Also, see enclosed excerpts from the same Final Report which further explore the historical-legal-political and international law roots of the Trust Relationship. The two additional Final Report excerpts on this issue are "Peoples and Property in the Arena of Trust," discussing a report written at the request of the U.S. Department of State in 1919 by Alpheus Henry Snow entitled "The Question of Aborigines in the Law and Practice of Nations" (pp. 53-56 of Final Report), and a brief review of the Law of the Indies as relates to the question of Pueblo Indian land titles which well illustrates the intersection of these old legal principles from the 1500s with 19th Century disputes regarding Indian land titles (pp. 116-136 of Final Report); also see, the index entries on "Trust Relation" and "Tribal Sovereignty" in Felix S. Cohen's Handbook of Federal Indian Law (Michie 1982 Ed.).

Out of this unique relationship arose the "plenary power" doctrine regarding the Congressional authority over Indian affairs, and the counterbalancing doctrine of the United

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States' fiduciary duties and trust responsibility to the tribes and, in some circumstances, to judicially enforceable trust obligations of the United States and the recognition that Congressional authority over Indian tribes remain constrained by the U.S. Constitution.

Some key decisions in the evolution of the trust relationship as it is currently recognized include:

- Cherokee Nation v. Georgia, 30 U.S. (S. Pet) 1, 16, 19-20 (1831) (holding that the Cherokee Nation was a "distinct political society," but was neither a state of the United States nor a foreign state, hence had no authority to bring a direct action in the U.S. Supreme Court. The court also concluded that Indian tribes "may, more correctly, perhaps, be denominated domestic dependent nations...in a state of pupilage" and that "their relation to the United States resembles that of a ward to his guardian.")
- United States v. Kagama, 118 U.S. 375, 384-385 (1886): The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell. It must exist in that government, because it never has existed anywhere else, because the theater of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its laws on all the tribes.
- United States v. Creek Nation, 295 U.S. 103, 110 (1935): The tribe was a dependent Indian community under the guardianship of the United States, and therefore its property and affairs were subject to the control and management of that government. But this power to control and manage was not absolute. While extending to all appropriate measures for protecting and advancing the tribe, it was subject to limitations inhering in such a guardianship and to pertinent constitutional restrictions.
- Chippewa Indians v. United States, 301 U.S. 358, 375-376 (1937): Our decisions, while recognizing that the government has power to control and manage the property and affairs of its Indian wards in good faith for their welfare, show that this power is subject to constitutional limitations and does not enable the government to give the lands of one tribe or band to another, or to deal with them as its own.
- Morton v. Mancari, 417 U.S. 535, 555 (1974), where the court suggested that the Congress' authority to legislate with respect to Indians

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is limited by the following doctrine: "As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed."

- United States v. Mitchell, 463 U.S. 206, 225-227 (1983): Moreover, a fiduciary relationship necessarily arises when the Government assumes such elaborate control over forests and property belong to Indians. All of the necessary elements of a common-law trust are present: a trustee (the United States), a beneficiary (the Indian allottees), and a trust corpus (Indian timber, lands, and funds). '[W]here the Federal Government takes on or has control or supervision over tribal monies or properties, the fiduciary relationship normally exists with respect to such monies or properties (unless Congress has provided otherwise) even though nothing is said expressly in the authorization or underlying statute (or other fundamental document) about a trust fund, or a trust or fiduciary connection.' (citations omitted)

Our construction of these statutes and regulations is reinforced by the undisputed existence of a general trust relationship between the United States and the Indian people. This Court has previously emphasized 'the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people.' (citation omitted) This principle has long dominated the Government's dealings with Indians. (citations omitted)

Because the statutes and regulations at issue in this case clearly establish fiduciary obligations of the Government in the management and operation of Indian lands and resources, they can fairly be interpreted as mandating compensation by the Federal Government for damages sustained. Given the existence of a trust relationship, it naturally follows that the Government should be liable in damages for the breach of its fiduciary duties. It is well established that a trustee is accountable in damages for breaches of trust. (citations omitted) This Court and several other federal courts have consistently recognized that the existence of a trust relationship between the United States and an Indian or Indian tribe includes as a fundamental incident the right of an injured beneficiary to sue the trustee for damages resulting from a breach of the trust.

The recognition of a damages remedy also furthers the purposes of the statutes and regulations, which clearly require that the Secretary manage Indian resources so as to generate proceeds for

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the Indians. It would be anomalous to conclude that these enactments create a right to the value of certain resources when the Secretary lives up to his duties, but no right to the value of the resources if the Secretary's duties are not performed. 'Absent a retrospective damages remedy, there would be little to deter federal officials from violating their trust duties, at least until the allottees managed to obtain a judicial decree against future breaches of trust.' (citations omitted)

These references should be sufficient to make clear the complexity of the Trust Responsibility doctrine and the Trust Relationship when viewed in their proper legal-historical-political context. This relationship reposes enormous power in the Congress over Indian affairs and a corresponding obligation to exercise that power to facilitate the long term betterment and survival of the Indian tribes as distinct peoples.

Obviously, in light of the many historic abuses of the federal government's authority regarding Indian tribes, some sort of balance needs to be achieved between federal authority and tribal autonomy, but I would be loath to agree that a single statutory definition of the trust responsibility would be productive where the needs of individual tribes are concerned. The act of defining something automatically limits it; and, the trust responsibility is so pervasive that its application differs greatly from case to case. Were the federal government to promulgate a single definition of its responsibilities, it would be too ready an opportunity for the federal government to opt out of most of those responsibilities. In view of these considerations, and the clear fiduciary duties recognized in United States v. Mitchell, *supra*, where the government has assumed actual control over tribal resources, we feel that any attempt to further define the trust relationship or the trust responsibility through legislation would be inappropriate.

As I stated in the written testimony, at this point the government-to-government relationship is probably of as great an importance to tribes as is the trust relationship. Perhaps some thought should be given to a statutory definition of the government-to-government relationship, since the federal government as a whole falls shorter in this area than it does in the trust responsibility area. Such a statutory definition could assist when measures are pending (such as welfare reform) under which tribes should be treated as states, but are not. For a recent administrative attempt at defining the government-to-government relationship with Indian tribes and also addressing the Justice Department's somewhat restricted views on the trust responsibility, I enclose a "Department of Justice Policy Statement on Indian Sovereignty and Government-to-Government Relations with Indian Tribes" issued by Attorney General Reno on June 1, 1995.

That document would be a useful starting point for any legislation the Committee might wish to consider regarding the government-to-government relationship.

Thanks to the Indian Reorganization Act's codifying tribes' status as governments we have over the past 50 years been able to make unprecedented progress away from poverty and BIA agency control, and toward comprehensive economic and social development. I believe that we can build on this momentum, and see the details of the structure of the Bureau become

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less and less relevant, to tribes on a day-to-day basis, if we concentrate on the government-to-government relationship, and the respect that sovereigns deserve from each other.

Thank you for giving me the opportunity to comment further on my testimony.

Sincerely,


Phillip Martin
Chief

cc: Keller George
Tim Martin



Office of the Attorney General
Washington, D. C. 20530

DEPARTMENT OF JUSTICE POLICY ON INDIAN SOVEREIGNTY
AND GOVERNMENT-TO-GOVERNMENT RELATIONS WITH INDIAN TRIBES

PURPOSE: To reaffirm the Department's recognition of the sovereign status of federally recognized Indian tribes as domestic dependent nations and to reaffirm adherence to the principles of government-to-government relations; to inform Department personnel, other federal agencies, federally recognized Indian tribes, and the public of the Department's working relationships with federally recognized Indian tribes; and to guide the Department in its work in the field of Indian affairs.

I. INTRODUCTION

From its earliest days, the United States has recognized the sovereign status of Indian tribes as "domestic dependent nations." Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831). Our Constitution recognizes Indian sovereignty by classing Indian treaties among the "supreme Law of the land," and establishes Indian affairs as a unique area of federal concern. In early Indian treaties, the United States pledged to "protect" Indian tribes, thereby establishing one of the bases for the federal trust responsibility in our government-to-government relations with Indian tribes. These principles continue to guide our national policy towards Indian tribes.

A. THE EXECUTIVE MEMORANDUM ON GOVERNMENT-TO-GOVERNMENT
RELATIONS BETWEEN THE UNITED STATES AND INDIAN TRIBES

On April 29, 1994, at a historic meeting with the heads of tribal governments, President Clinton reaffirmed the United States' "unique legal relationship with Native American tribal governments" and issued a directive to all executive departments and agencies of the Federal Government that:

As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty.

President Clinton's directive requires that in all activities relating to or affecting the government or treaty rights of Indian tribes, the executive branch shall:

- 1) operate within a government-to-government relationship with federally recognized Indian tribes;
- 2) consult, to the greatest extent practicable and permitted by law, with Indian tribal governments before taking actions

that affect federally recognized Indian tribes;

- 3) assess the impact of agency activities on tribal trust resources and assure that tribal interests are considered before the activities are undertaken;
- 4) remove procedural impediments to working directly with tribal governments on activities that affect trust property or governmental rights of the tribes; and
- 5) work cooperatively with other agencies to accomplish these goals established by the President.

The Department of Justice is reviewing programs and procedures to ensure that we adhere to principles of respect for Indian tribal governments and honor our Nation's trust responsibility to Indian tribes. Within the Department, the Office of Tribal Justice has been formed to coordinate policy towards Indian tribes both within the Department and with other agencies of the Federal Government, and to assist Indian tribes as domestic dependent nations within the federal system.

. B. FEDERAL INDIAN SELF-DETERMINATION POLICY

President Clinton's executive memorandum builds on the firmly established federal policy of self-determination for Indian tribes. Working together with Congress, previous Presidents affirmed the fundamental policy of federal respect for tribal self-government. President Johnson recognized "the right of the first Americans . . . to freedom of choice and self-determination." President Nixon strongly encouraged "self-determination" among the Indian people. President Reagan pledged "to pursue the policy of self-government" for Indian tribes and reaffirmed "the government-to-government basis" for dealing with Indian tribes. President Bush recognized that the Federal Government's "efforts to increase tribal self-governance have brought a renewed sense of pride and empowerment to this country's native peoples."

II. PRINCIPLES OF INDIAN SOVEREIGNTY AND THE TRUST RESPONSIBILITY

Though generalizations are difficult, a few basic principles provide important guidance in the field of Indian affairs: 1) the Constitution vests Congress with plenary power over Indian affairs; 2) Indian tribes retain important sovereign powers over "their members and their territory," subject to the plenary power of Congress; and 3) the United States has a trust responsibility to Indian tribes, which guides and limits the Federal Government in dealings with Indian tribes. Thus, federal and tribal law generally have primacy over Indian affairs in Indian country, except where Congress has provided otherwise.

III. DEPARTMENT OF JUSTICE RECOGNITION OF INDIAN SOVEREIGNTY AND THE FEDERAL TRUST RESPONSIBILITY

The Department resolves that the following principles will guide its interactions with the Indian tribes.

A. THE SOVEREIGNTY OF INDIAN TRIBES

The Department recognizes that Indian tribes as domestic dependent nations retain sovereign powers, except as divested by the United States, and further recognizes that the United States has the authority to restore federal recognition of Indian sovereignty in order to strengthen tribal self-governance.

The Department shall be guided by principles of respect for Indian tribes and their sovereign authority and the United States' trust responsibility in the many ways in which the Department takes action on matters affecting Indian tribes. For example, the Department reviews proposed legislation, administers funds that are available to tribes to build their capacity to address crime and crime-related problems in Indian country, and in conjunction with the Bureau of Indian Affairs and tribal police, provides essential law enforcement in Indian country. The Department represents the United States, in coordination with other federal agencies, in litigation brought for the benefit of Indian tribes and individuals, as well as in litigation by Indian tribes or individuals against the United States or its agencies. In litigation as in other matters, the Department may take actions and positions affecting Indian tribes with which one or more tribes may disagree. In all situations, the Department will carry out its responsibilities consistent with the law and this policy statement.

B. GOVERNMENT-TO-GOVERNMENT RELATIONSHIPS WITH INDIAN TRIBES

In accord with the status of Indian tribes as domestic dependent nations, the Department is committed to operating on the basis of government-to-government relations with Indian tribes.

Consistent with federal law and other Departmental duties, the Department will consult with tribal leaders in its decisions that relate to or affect the sovereignty, rights, resources or lands of Indian tribes. Each component will conduct such consultation in light of its mission. In addition, the Department has initiated national and regional listening conferences and has created the Office of Tribal Justice to improve communications with Indian tribes. In the Offices of the United States Attorneys with substantial areas of Indian country within their purview, the Department encourages designation of Assistant U.S. Attorneys to serve as tribal liaisons.

In order to fulfill its mission, the Department of Justice endeavors to forge strong partnerships between the Indian tribal governments and the Department. These partnerships will enable the Department to better serve the needs of Indian tribes, Indian people, and the public at large.

C. SELF-DETERMINATION AND SELF-GOVERNANCE

The Department is committed to strengthening and assisting Indian tribal governments in their development and to promoting Indian self-governance. Consistent with federal law and Departmental responsibilities, the Department will consult with tribal governments concerning law enforcement priorities in Indian country, support duly recognized tribal governments, defend the lawful exercise of tribal governmental powers in coordination with the Department of the Interior and other federal agencies, investigate government corruption when necessary, and support and assist Indian tribes in the development of their law enforcement systems, tribal courts, and traditional justice systems.

D. TRUST RESPONSIBILITY

The Department acknowledges the federal trust responsibility arising from Indian treaties, statutes, executive orders, and the historical relations between the United States and Indian tribes. In a broad sense, the trust responsibility relates to the United States' unique legal and political relationship with Indian tribes. Congress, with plenary power over Indian affairs, plays a primary role in defining the trust responsibility, and Congress recently declared that the trust responsibility "includes the protection of the sovereignty of each tribal government." 25 U.S.C. § 3601.

The term "trust responsibility" is also used in a narrower sense to define the precise legal duties of the United States in managing property and resources of Indian tribes and, at times, of individual Indians.

The trust responsibility, in both senses, will guide the Department in litigation, enforcement, policymaking and proposals for legislation affecting Indian country, when appropriate to the circumstances. As used in its narrower sense, the federal trust responsibility may be justiciable in some circumstances, while in its broader sense the definition and implementation of the trust responsibility is committed to Congress and the Executive Branch.

E. PROTECTION OF CIVIL RIGHTS

Federal law prohibits discrimination based on race or national origin by the federal, state and local governments, or individuals against American Indians in such areas as voting,

education, housing, credit, public accommodations and facilities, employment, and in certain federally funded programs and facilities. Various federal criminal civil rights statutes also preserve personal liberties and safety. The existence of the federal trust responsibility towards Indian tribes does not diminish the obligation of state and local governments to respect the civil rights of Indian people.

Through the Indian Civil Rights Act, Congress selectively has derived essential civil rights protections from the Bill of Rights and applied them to Indian tribes. 25 U.S.C. § 1301. The Indian Civil Rights Act is to be interpreted with respect for Indian sovereignty. The primary responsibility for enforcement of the Act is invested in the tribal courts and other tribal fora. In the criminal law context, federal courts have authority to decide habeas corpus petitions after tribal remedies are exhausted.

The Department of Justice is fully committed to safeguarding the constitutional and statutory rights of American Indians, as well as all other Americans.

F. PROTECTION OF TRIBAL RELIGION AND CULTURE

The mandate to protect religious liberty is deeply rooted in this Nation's constitutional heritage. The Department seeks to ensure that American Indians are protected in the observance of their faiths. Decisions regarding the activities of the Department that have the potential to substantially interfere with the exercise of Indian religions will be guided by the First Amendment of the United States Constitution, as well as by statutes which protect the exercise of religion such as the Religious Freedom Restoration Act, the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act, and the National Historic Preservation Act.

The Department also recognizes the significant federal interest in aiding tribes in the preservation of their tribal customs and traditions. In performing its duties in Indian country, the Department will respect and seek to preserve tribal cultures.

IV. DIRECTIVE TO ALL COMPONENTS OF THE DEPARTMENT OF JUSTICE

The principles set out here must be interpreted by each component of the Department of Justice in light of its respective mission. Therefore, each component head shall make all reasonable efforts to ensure that the component's activities are consistent with the above sovereignty and trust principles. The component heads shall circulate this policy to all attorneys in the Department to inform them of their responsibilities. Where the activities and internal procedures of the components can be

referred to ensure greater consistency with this Policy, the component head shall undertake to do so. If tensions arise between these principles and other principles which guide the component in carrying out its mission, components will develop, as necessary, a mechanism for resolving such tensions to ensure that tribal interests are given due consideration. Finally, component heads will appoint a contact person to work with the Office of Tribal Justice in addressing Indian issues within the component.

V. DISCLAIMER

This policy is intended only to improve the internal management of the Department and is not intended to create any right enforceable in any cause of action by any party against the United States, its agencies, officers, or any person.



 Janet Reno
 Attorney General

Date: June 1, 1995



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CENTRAL COUNCIL
 Tlingit and Haida Indian Tribes of Alaska
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OVERSIGHT HEARING
 OF THE
 SENATE COMMITTEE ON INDIAN AFFAIRS

"REORGANIZATION OF THE BUREAU OF INDIAN AFFAIRS"

TESTIMONY OF
 EDWARD K. THOMAS, PRESIDENT
 CENTRAL COUNCIL OF THE TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA
 May 18, 1995

Greetings from Alaska! My name is Edward K. Thomas. I am the elected President of the Central Council of the Tlingit and Haida Indian Tribes of Alaska, a federally recognized Tribe from Southeast Alaska. My Tribe has membership of over 21,000 enrolled members. My Tribe was among the second group of Tribes to enter into Self-Governance Compacts.

I am very pleased that the United States Senate is taking its valuable time to look deeper into the efforts of the Bureau of Indian Affairs (BIA) to reorganize itself. Your involvement in this effort on behalf of the Tribes provides it the level of importance necessary to keep the Department of the Interior from ignoring Tribal input. I am honored to be here to share with you my experiences and views on this very important topic.

Involvement

I was at the meeting between the DOI, the National Congress of American Indians (NCAI), and other Tribal leaders, at Albuquerque, New Mexico, in 1988, when a plan to reorganize the BIA was officially unveiled by Secretary Manuel Lujan and Assistant Secretary Eddie Brown. I was at this meeting, not only as an elected official on behalf of my own Tribe, but also as the elected Juneau Area Vice-President of the NCAI.

I was invited by the Juneau Area Director of the BIA to participate in the first meeting of the BIA Reorganization Task Force as one of the three Juneau Area representatives, but was unable to attend due to a conflict with Tribal business. I was not a member of the Task Force for the first 2 years. I provided however, testimony at several of its meetings. When the Task Force was reauthorized after the first 2 years, I was appointed by the Area Director and served until it completed its mission last August. I served as a Tribal technical advisor to the BIA Budget Reform Work Group of the Task Force for a year before being appointed to the Task Force and continued membership on this Work

Group until it finished its work last fall.

Tribal Concerns

Tribal leaders unanimously objected to the way this reorganization plan came about: **without consultation with Tribes!** They also objected to the proposed fragmentation of the BIA by moving the Education Department out of the DOI and the creation of a separate "Trust Department." Tribal representatives also expressed concerns that past BIA reorganization efforts resulted in the escalation of non-productive bureaucrats into important, decision-making positions. The most popular expression of the day was, "Past reorganization efforts of the BIA were like rotating bald, worn-out tires on a car." Another expression used was, "When the BIA reorganizes, only the 'dead wood' floats to the top."

The BIA Needs to be Reorganized

Tribes agreed then and concur now that the BIA needs to be reorganized. Some of the management systems and structure are as old as the BIA itself. Many positions service functions that no longer exist. People in key positions within the BIA have lost contact with the people they serve and there appears to be no way to change that. Civil Service laws reward complacency and protect non-productive, non-exempt positions. Even at a time when information can be transferred instantaneously from one site to another, funding and decisions of funding to Tribes are bogged down in a quagmire of bureaucratic confusion. Laws requiring the BIA to notify Tribes on important BIA budget information in a timely fashion are virtually ignored. Budget requests put forth by the BIA do not reflect the wishes or needs of the Tribes.

Tribal/BIA/DOI Partnership

Tribal leaders have maintained from the beginning that a BIA reorganization plan put forth from either the BIA, the DOI, or the Tribes without involvement of the other would create more problems than it would solve. We know that we are all in this together. After the meeting in Albuquerque, Tribal representatives met with members and committees of Congress and BIA/DOI officials suggesting that a BIA Reorganization Task Force be set up comprised of representatives from the BIA, DOI, Congress and Tribes. This resulted in a task force comprised of members from Tribes, the BIA and the DOI.

Tribal representatives also knew that our decisions would not always be appealing to the BIA. We knew from experience that if you ask an agency like the BIA to do things differently than the way they want to do it, you'll face resistance. Resistance from Bureau officials came in many forms: negative debate, not providing information, not providing accurate or full information in a timely manner, not following up on recommendations, misinterpretation of federal rules and regulations, and as new reorganization plans put together by the BIA/DOI without Tribal input or involvement. Notwithstanding, we continued the partnership for four (4) years and came up with

reasonable recommendations.

New Reorganization Plans

The presentation by the BIA to Task Force meetings of new reorganization plans put together by BIA staff members without Tribal consultation had to be the most frustrating issue to deal with during my two years of service as a member. These maneuvers made it clear that Bureau officials did not put much value on decisions made jointly at our meetings, did not take the mandate of Congress seriously nor were they listening to us. Of all the plans put forth, the last one put forth just days after the last meeting of the Task Force was the most inappropriate. Although some of the principles were agreed to in the final report of the Joint Task Force, it also ignored many. The Bureau's plans to reduce the number of Area Offices from 12 to 7 were never brought up as an option at any of the Task Force meetings I attended. There just may be a need for and some value to this recommendation, however if this were the case, it should have been put forth very early in the process so that it could have had the benefit of public debate!

Tribal Consultation

The government-to-government relationship between the individual Tribes and the United States must be preserved and strengthened through proper consultation on key issues that impact them. Tribal representatives on the Task Force made it very clear from the beginning that three representatives from each of the 12 Area Office jurisdictions does not constitute Tribal consultation. Tribal consultation on this issue would exist only when all of the plan is discussed at the offices of each Tribe. We all know that this is not humanly possible to do within two (or even four) years. The Task Force, throughout its three and a half years of existence, attempted to have its meetings at diverse locations throughout Indian Country to give most Tribes an opportunity to attend its meetings.

The opportunity for Tribes to participate in the reorganization process was greatly increased by holding the various meetings close to their Tribal headquarters. Many Tribal leaders and Tribal members did attend the meetings and many testified at the times set aside on each agenda for hearing testimony. Witnesses either spoke on the business of the day or on the reorganization plan and the reorganization planning process. Their testimony helped Task Force members in their decision-making. We were better able to understand how they felt on many very important reorganization issues. Their testimony did make a difference in our final product. That is why Tribal consultation is important. Tribes, more than anyone else, know what is best for them. They know better than anyone what policies would be bad for them.

Two glaring weaknesses in the entire reorganization process are: 1) the inconsistent way in which consultation was done in each of the 12 Area Offices, and 2) the absence of follow-up on the part of the BIA on the recommendations of the Task Force relative to Tribal consultation.

The Portland Area took every opportunity available to them to consult with Tribes in their Area not only the national BIA reorganization, but on its own plans to reorganize. They appeared to take the reorganization effort seriously. They held special meetings on this issue; they attended meetings of the Affiliated Tribes of the Northwest Indians; they answered questions on this issue at meetings on other BIA issues; and went over these plans during Portland Area Budget meetings while also discussing the proposed BIA Budget Reform.

The Juneau Area held no special meetings on this issue. There seemed to be an attitude that "If we can't afford to consult with each and every Tribe, we will consult with none." The standard answer to questions as to why consultation was not being carried out was, "There's not enough money available to consult with everybody. If we consult with some and not others, someone will be angry." Information provided at other BIA meetings was incomplete and not enough time was provided to do the job justice. In short, consultation just did not happen in our Area.

Tribal representatives on the Task Force recognized this inconsistency and recommended that the BIA use the Portland Area plan and its planning process as a model for Area Offices who were confused on what they should be doing in this issue. Ada Deer's office did send out a notice to Area Directors advising them of this decision. Even after this notice, very little happened to increase consultation with Tribes in the Juneau Area.

Approximately two and one-half years ago, the Juneau Area Director put forth a reorganization plan to downsize his office. It took about two years to get the Assistant Secretary to approve this plan. Once the plan was approved, \$350,000 of savings from this plan was turned back to the United States Treasury. During this same period of time, Tribal contractors for BIA programs were granted only 80% of the indirect costs authorized by DOI Inspector General audits. This plan was not only done in complete isolation of Tribal input, the \$350,000 should have gone to the Tribes for much needed programs or to cover the short-fall in their indirect costs. Both of these results are completely contrary to the key principles identified in the final recommendations of the BIA Reorganization plan put forth by the Task Force.

Conclusion

In conclusion, Mr. Chairman, I am in complete agreement with your suggestion that the final report of the Joint Tribal/BIA/DOI Task Force be the basic document from which the reorganization of the BIA should begin. The plan put forth in this report has had the most exposure to Tribal leadership and I believe that there are options available in the plan so that minor changes can be made without totally changing the intent of its key principles. It is critical that functions and dollars supporting these functions be transferred from Central and Area Offices to the Tribe/Agency level.

Thank you very much for the opportunity to share my views with you on this topic and your kind attention to my testimony. It is my hope that your efforts will result in a closer working relationship between Tribes and the Administration in the creation of a

reorganized BIA that is more responsive to the needs of Tribes and their citizens.

Testimony of Ken Smith, Tribal Member
The Confederated Tribes of the Warm Springs Reservation of Oregon
before the
Senate Indian Affairs Committee Oversight Hearing
on the Report and Recommendations of the
Joint Tribal/BIA/DOI Advisory Task Force on
Reorganization of the Bureau of Indian Affairs

May 18, 1995

Mr. Chairman, I am Ken Smith, a member of the Confederated Tribes of the Warm Springs Reservation of Oregon. I serve in the capacity of a senior advisor to the Tribe, and just earlier this month stepped down from the Secretary/Treasurer's post on the Tribal Council. I served as a Portland Area Tribal representative on the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization for four years, and also co-chaired the Budget Reform Work Group of the Task Force. With me today from the Warm Springs Tribal Council are Chief Nelson Wallulatum and Chief Delvis Heath.

It is a pleasure to be here today to comment on the Task Force and BIA reorganization. I was pleased to be able to serve on the Joint Task Force for its four year life and am proud to have been a part of its recommendations to reorganize and streamline the Bureau. It was the first time that tribes have ever been directly involved in such an effort.

Mr. Chairman, you are already aware of the activities of the Department and the BIA since the Task Force completed its report. I won't comment on these, except to say that I felt we had an excellent partnership with BIA during the Task Force effort. It is clear given the events since the Task Force report that BIA is not calling the shots. Hopefully, the next time there is such a task force effort, those persons in the Department who seem to know what is best for Indians will participate with Tribes and learn the impact of their decisions. Since we have no control over those persons I would suggest;

- **Any plan to reorganize the BIA must begin first with the Task Force recommendations.**
- **It appears that legislation is needed to ensure that the key themes and principles are not left to the discretion of the Department.**

I will address my comments to three particular parts of the reorganization effort. The first is the Portland Area Reorganization Plan. The second is the Budget Reform effort. The third is the Central Office downsizing.

Portland Area Reorganization Plan

The Tribes in the Portland Area embraced the concepts of the Task Force and recognized that the whole purpose of the reorganization effort was to make the BIA better able to carry out its mission and result in improving the lives of Indian people. The three leading themes of the Task Force provided a framework to guide the efforts in Portland. They were;

- Downsize Central Office and delegate maximum funding and authority to the Tribe/Agency level, while leaving the design of the Area and Agency Offices to their respective Tribes.
- Eliminate unnecessary laws, regulations and procedures in an effort to provide the necessary flexibility and authority to line managers and, where appropriate, to the Tribes.
- Ensure maximum control, flexibility and authority over the program services funds made available to the Tribal level.

In the Portland Area the reorganization effort was a process that brought together the Tribes in a partnership with the BIA in order to apply the Task Force themes in the development of an area plan.

There were a number of impediments to the efforts in Portland.

Lack of budget stability: In this time of budget constraints, we were constantly working with a nebulous level of resources. For example, the 1995 budget contained a number of surprises, such as unilateral elimination of Area Offices and major reductions to a number of Agencies (3 in the Portland Area). It also contained arbitrary reductions and movement of Area personnel management funds to a central pool. Tribes were forced to turn their attention to Congress to correct these arbitrary actions. Personnel management funds are still not back in the Area budget. Today we are in a major multi-year transition, some tribes have taken their area resources... others haven't. Annual changes in the budget are making it difficult to maintain any fairness and stability in the process. Congress can help in this issue.

Differing needs of 42 sovereign Tribes: It is very clear that all 42 Tribes served by the Portland Area find themselves in very different circumstances. Each exercises its unique government-to-government relationship with the United States. Attempting to develop an approach and process which engaged all Tribes in the design of the future Portland Area was difficult. BIA had no resources with which to keep all 42 Tribes informed and engaged in the process. The idea that consensus would be reached on all of the important issues didn't seem feasible.

To overcome this, there was agreement reached that the process would ensure ample opportunity for all Tribes to actively engage and participate, but that the Area Director, in his fiduciary capacity, was expected to make final decisions regarding the plan. The Affiliated Tribes of Northwest Indians, with support from the BIA, did an excellent job of facilitating the joint efforts to arrive at the plan, and ensuring that all Tribes were kept informed and advised of opportunities to provide input.

Laws, regulations and procedures: The Area Director has delegated all authorities that could be delegated to the Agency level, based on the input and desires of the Superintendents and their respective Tribes. Work should continue to identify and delegate authorities from Central Office to the Area level. There are a number of antiquated approval processes that are required by law, such as the approval of attorney contracts. The lack of delegation from Central Office and unnecessary reviews and approvals make it very difficult to cut the workload and to speed up decision making processes. Regulatory and legislative reforms are needed to fully implement the plan.

Mr. Chairman, I believe that the process we have been through in Portland can result in an improved BIA, which is what the whole process was about. There are some key items that need Congressional attention to make it fully successful.

Recommendation:

- **Separate BIA Budget into two parts:**

It must be recognized that the Portland Area "Direct" budget now reflects only the "residual" amounts needed to carry out inherent federal functions. All other funds have already been transferred to the Portland Area "field" budget within the Tribal Priority Allocations, or in the case of about half the Tribes, to their own Tribal Priority Allocations budget. Any reduction of the Portland Area Office Operations Budget will reduce the ability of the Area to carry out its fiduciary role. Any reduction in the Area "field" budget will fall unfairly to only those Tribes who have yet to take their "shares" of the resources.

Two separate budgets are needed. It is time to separate the funding for "services" within the BIA budget from the funding provided to carry out "inherent federal functions". This would require an effort at Central and all Area Offices similar to that carried out at Portland, and must involve Tribes appropriately in the dialogue. Legislative language could require separate budgets.

- **Eliminate unnecessary laws and regulations**

Ensure that all unnecessary laws and regulations requiring BIA reviews and approvals of inherent Tribal decisions are eliminated. At the same time, ensure that all unnecessary laws and regulations which tie the hands of BIA officials are also eliminated so that they can do their job.

Budget Reform:

Mr. Chairman, one of my primary roles in the Task Force was related to the budget reform effort. As Co-chair of the Budget Reform Work Group, I was very fortunate to be joined by Tribal Leaders, Tribal Technical Staff and many BIA employees in the long overdue effort of bringing the budget practices in line with the evolving Self-Determination policy. This effort was truly a partnership and included voluntary efforts of literally hundreds of people. I would like to comment on the chief components of budget reform as they were proposed within the **Tribal Budget System**.

There were three primary components recommended for the system:

- **Planning and Evaluation:** A partnership would be in place to ensure that BIA planning supported the efforts of Tribes and that evaluation processes would be for the purpose of learning how to do things better for both partners.

An information management partnership would ensure that information reporting systems yielded the information needed by Congress, the Administration and the Tribes. Picture an annual Tribal profile containing all pertinent information on each Tribe.

- **Standard Assessment Methodology:** A comprehensive needs assessment system would be in place which would report on the needs of Tribes across all broad program areas. This would enable Tribes and the Congress to assess the appropriate needs for investments and to target resources to tribes most in need.
- **Budget Formulation and Execution:** Each Tribe would enjoy a stable recurring funding base which would be flexible as to use, allowing the Tribe to obtain the highest and best use of all available resources. This system would complement the evolving Self-Determination policy.

Each of these components was addressed in principles adopted for the Tribal Budget System and the subject of efforts by subcommittees of the Budget Reform Work Group over the past four years. The findings and recommendations are summarized in an attachment at the end of my testimony.

One of the most important themes of this effort was to ensure maximum possible Tribal control and decision making over program funding. A target was set early in the effort for 95% of the BIA budget to be identified with stable recurring program funding bases of Tribes and not subject to bureaucratic tampering. At that time (1991) the Tribes had little discretion and control. They only had input into about 25% of the budget. Today they are much more informed about and have input in the overall budget. As more programs move to local control they will control an ever increasing portion of the budget. Based on the 1996 budget, nearly half of the Operation of Indian Programs (OIP) will be identified within the Tribal Priority Allocations and under the local control of Tribes.

As the sun set on the Task Force, many of our budget reform recommendations had been implemented. In all, Congress and the Administration had approved or implemented 46 of 65 recommendations. However, many have no basis in law or regulation, and can therefore be forgotten or discarded in the future. We think that the partnership forged in the Task Force was productive. Our final report therefore recommended that there be appropriate legislation to ensure that the systems would be fully implemented and an appropriate partnership would be required in the future.

Mr. Chairman, the 1994 Self-Determination Amendments embodied a number of our earlier recommendations and we were delighted with the progress made in the Self-Determination process. We are very grateful for the work of this Committee and particularly to yourself for championing this effort.

Legislative Recommendations:

- **Facilitate a partnership in planning, evaluation and information management to ensure that all efforts are aimed at assisting the success of Tribal Governments in bringing about their visions for their respective Tribes.**
- **Insist on a needs assessment process which accurately measures and reports to Congress on the funding needs of Tribes as they relate to broad BIA program categories.**
- **Ensure the transition from "program specific" to "Tribal specific" funding and lock down the concepts of stable base funding, Tribal control and flexibility, and full and meaningful participation of the Tribes in budget development.**

Central Office:

Mr. Chairman, the Task Force clearly recommended that the Central Office be downsized, streamlined and that decentralization occur. By our estimate, nearly 50%

of the manpower and resources could be moved to the field or saved. To date, all we hear about is budget reductions. Very little has been moved to the field. The current plan the Department is pushing appears aimed at cutting Central Office by 73%. It appears to be based solely on the Federal FTE and budget reduction priorities. The FTE and Budget reduction requirements appear out of proportion to the balance of the Federal agencies. Why is BIA asked to do more than everyone else?

The residuals estimates don't appear based on the BIA mission. In fact, on first glance one might get the idea that the Department might be trying to get rid of the BIA. That is not what the Task Force intended or recommended. The residual must be built on the BIA's mission and its responsibility. Tribes must be involved in the determination of the amounts.

Central Office must not be viewed as an island. Careful analysis and planning must assure that an appropriately designed network of Central, Area and Agency account for all of the functions and resources necessary to carry out the mission of the BIA.

Decentralization of authority and responsibility must occur first. The funds and people needed to carry out those authorities in the field will not be available if they are simply divided into "Tribal shares". Streamlining should result in savings... and those savings should go into services at the Tribal level.

It should be noted that the growth of Central Office over the years has not come from new money. It has come at the expense of the services to Tribes, which have not kept pace with inflation or the increases that the balance of Interior has enjoyed. Savings due to streamlining rightfully belong in services to Tribes.

Legislative Recommendation:

- Ensure that the determination of the organization and funding required for the Central Office is based on the mission and obligations of the Agency, and that Tribal leadership is fully engaged in the process of making the determination.
- Ensure that funding and personnel (FTE's) related to decentralization are identified and transferred to the field appropriately, as opposed to being just carved up for Tribal "shares".
- While the determination of the organization is underway, ensure that the need to provide Tribal "shares" under Title 1 and Title IV are balanced against the need for the Agency to carry out its primary obligation. There must be a method to phase these resources into Self-Determination/Self-Governance agreements in such a way that the Agency is not dismantled at the expense of vital obligations to Tribes.

Testimony of Ken Smith
Before the Senate Indian Affairs Committee
May 18, 1995

ATTACHMENT 1

Summary of Budget Reform Efforts:

Planning and Evaluation:

For many years the planning of the BIA has largely been a reaction to Departmental initiatives, thrust upon the BIA and then, when Tribes complained, stopped by Congress. One cannot begin to count the federal and Tribal man hours expended on inappropriate initiatives. Likewise, the evaluation process of the BIA and in many cases the Inspector General has been to find a weakness in the Tribes or the Bureau and then sensationalize and exploit it, with little attention paid to success, progress or opportunities. Tribes deserve a better system!

Today, there is no comprehensive planning effort in the BIA. Efforts underway are directly related to the National Performance Review and budget reduction. BIA has no comprehensive view of where Tribes are going.

In principle, planning should be a joint process in which the BIA involves itself in learning what the Tribes are planning and where they need help, then developing plans for the BIA to complement them. Likewise, evaluation should be a joint process, aimed at learning to do things better, sharing technology and focusing on what is going good and right in Indian Country and in the BIA. That is the essence of the planning and evaluation component of the Tribal Budget System recommended by the Task Force.

Needs Assessment:

Its easy to read about the few Tribes who have successful gaming operations and a small membership and think that the needs of Indian Country are taken care of. In reality, that is not the case. One of the key messages that the Task Force heard from Tribes was that they felt that their needs were not being adequately expressed to Congress. In fact, many felt that the bureaucracy intentionally understates their needs to Congress. There seemed to be no way to measure the Tribes needs in any comprehensive way. The issue of funding

equity, or targeting additional resources to most needy Tribes was expressed a great deal during the process. Congress also expressed a desire for a better way of doing business through the 1988 Self-Determination Amendments and the reports accompanying the FY 1991 BIA budget.

Today, the BIA has needs assessment methods for only a very few of the programs it operates. Road Maintenance and Facilities Operations are examples. The Housing inventory is another. None can be considered adequate, but it is doubtful that Congress sees the full picture described even by these methods.

The Task Force developed a special report to address the needs of small Tribes and was pleased that Congress added funds to the 1995 budget to begin to address minimum funding.

In principle, there should be a comprehensive needs assessment process which would provide benchmarks and standards to which services should be delivered by tribal government (or BIA on their behalf) and a reasonable method for estimating the cost of providing the services. That is what was recommended by the Task Force in describing the Standard Assessment Methodology. The Task Force recognized that this would be a large job. It undertook a pilot study to determine the approaches to developing the models. Members of the technical team which supported the Work Group are just now finishing a report of what was learned to help the BIA in this effort.

Tribal participation and control of budgeting:

Very early in the Task Force process changes were recommended and implemented to change the way budgeting was done:

- Today the Tribes are enjoying much more input, control and stability in the BIA budget processes for local base funding. Soon most programs will be part of a stable, recurring, Tribally controlled funding base.
- Several programs were moved in the 1995 budget and more are anticipated in 1996. Housing Improvement, Johnson O'Malley, Roads Maintenance, Welfare Assistance and Contract Support are the major programs in transition. Indian Child Welfare and many smaller earmarked amounts have also been made available. The process is underway to consult with the Tribes on their movement to local control. We are a little concerned that the BIA ensure adequate consultation on these programs. But a process was outlined by the Appropriations Committees in response to the Task Force and we'll be expecting BIA to follow them.

- Next week, the Assistant Secretary and Deputy Commissioner will hold a budget planning hearing in Washington D.C. to hear tribal representatives from all Areas recommendations and concerns regarding the FY 1997 budget. This is the fourth year that this hearing will be held, marking progress in participation by Tribes at the local, regional and national level.

Information Management:

No one can lay their hands on a comprehensive report to obtain a total view of Indian Country. At most locations tribal leaders have difficulty in getting a good handle on the conditions in their own community or measuring their progress. BIA's information systems are not designed with the proper perspective in mind, despite the fact that millions are spent each year on them.

In principle, there should be an annual report to give Congress, the Administration and the Tribes a comprehensive view of Indian Country and Individual Tribal conditions.

The Task Force recommended adoption of policy to ensure that an effective partnership would be created in information management. This would ensure that all of the parties who need information would be involved in deciding how to get the information and how to report it in a timely and dependable manner.

Summary of Recommendations:

During the course of the Task Force work, a tracking system was used to follow the progress of decisions and implementation of the recommendations made. The Work Group maintained a tracking report which is attached. It reflects 65 formal recommendations, of which several later recommendations are restatements or repeated from earlier ones. Of these, 46 have been approved, completed or implemented.

IMPLEMENTING RECOMMENDATIONS
FOR THE TRIBAL BUDGET SYSTEM
RECOMMENDATION TRACKING SYSTEM
AS OF MAY , 1995

	RECOMMENDATION	ACTION TO BE TAKEN	RESPONSIBILITY	STATUS
LEGISLATIVE RECOMMENDATIONS - 1991 CUMMULATIVE REPORT				
	1. Amend the Self-Determination Act by adding a new Title called "Estimated Appropriations for Indians" (See language - 1991 Cumulative Report - Page 4-19)	Refine Legislative Proposal and submit to Congress.	Task Force (Budget Work Group)	Not complete: Updated language in final report.
	2. Add the following language to the appropriations act on an annual basis: "Funds appropriated pursuant to this Act shall remain available for obligation for two full fiscal years, as provided by the Act of January 4, 1975, P.L. 93-638, Stat....."	Congressional Appropriation Bill language.	BIA	Not complete: BIA has not implemented as annual recommended language.
	3. Appropriate all Tribal Budget funds within one "activity" and obtain approval of Appropriations Committees to implement policy covering budget flexibility.	Reformat of BIA Budget	Task Force	Completed. approved by Appropriations Committee in 1993.
	4. Provide for semi-annual advances of funds for mature contracts to eliminate unnecessary transactions and ensure that Tribal contracts are financed on a timely basis. Amend the Self-Determination Act at Section 105 (b) to add the language: (See 1991 Cumulative Report page 4-20 for language)	Submit legislative proposal to Congress	Task Force	Completed: P.L. 103-413 implemented quarterly, semi-annual and annual lump sum advances at the discretion of each Tribe.
	5. Eliminate unnecessary approvals of equipment and sub-contracts. Amend Section 105 (a) of the Self-Determination Act: (See 1991 Cumulative Report page 4-20 for language).	Submit legislative package to Congress.	Task Force	Completed. P.L. 103-413 eliminated the need for additional approvals.
REGULATORY RECOMMENDATIONS - 1991 CUMMULATIVE REPORT				
	6. The Secretary establish a policy that savings in BIA operated programs or offices identified as a result of Tribal assumption of programs should be directed to the specific Tribes involved.	Inclusion in Self-Determination Regulations.	BIA	Completed: Now required under P.L. 103-413
	7. Delegate approval and execution authority for Self-Determination Contracts (except for construction contracts) to Area (Regional Managers) Directors and Superintendents.			In Progress.

IMPLEMENTING RECOMMENDATIONS
FOR THE TRIBAL BUDGET SYSTEM
RECOMMENDATION TRACKING SYSTEM
AS OF MAY , 1995

	RECOMMENDATION	ACTION TO BE TAKEN	RESPONSIBILITY	STATUS
ADMINISTRATIVE RECOMMENDATIONS - 1991 CUMMULATIVE REPORT				
	8. The Secretary propose a revised Tribal budget system to the appropriations committees which incorporates Tribal specific "Tribal Base Funding", and the features identified in the 1993 Progress Report, implementing the following budget execution policy language as appropriate. (See language 1991 Cumulative Report).	Recommended Appropriations language.	Task Force to refine language.	Completed. FY 1993 by action of Appropriations Committee.
	9. The Secretary revise program categories for FY 1993 and 94 and beyond within the President's budget.	Reformat 1994 Budget	BIA	Completed. Was accomplished in 1994 planning.
	10 The Secretary direct the BIA to consult with IHS and to implement the full contract support funding provisions of P.L. 100-472. To ensure that sufficient funds are available for new contracts, the Secretary direct the BIA to include a "Indian Self-Determination Fund" comparable to that in the IHS budget within the 1993 BIA budget. The initial amount in this fund should be \$5 million.	Action by Secretary to work with IHS. Include "ISD" fund in 1993/1994 budget.	Assistant Secretary Assistant Secretary	BIA TQM Team completed recommendations. Completed. At request of Task Force, Appropriations Committees included in 1995 budget.
	11 The Secretary permit Tribes to adjust program amounts within the Tribal funding base for the proposed budget throughout budget development.	Develop progress in BIA Planning Process.	BIA Planning Office.	Complete. Tribal planning time deferred to September. New reprogramming guidelines provides adequate flexibility, no further action required.
	12 The Secretary reduce the time lapse between Tribal priority setting for existing Tribe/Agency programs and the submission to OMB.	Delay BIA requirement for submission to July 1 of each year.	Secretary	Completed, see above.
	13 The Secretary consider the need to provide a special allocation of funds to the base of Tribes who had their base significantly reduced due to having placed priority on programs which were removed from the IPS during the past decade.	Research to determine actual impacts.	BIA	No action. Recommendation not repeated. Work Group is developing preliminary assessment of most needy tribes.

IMPLEMENTING RECOMMENDATIONS
FOR THE TRIBAL BUDGET SYSTEM
RECOMMENDATION TRACKING SYSTEM
AS OF MAY , 1995

	RECOMMENDATION	ACTION TO BE TAKEN	RESPONSIBILITY	STATUS
	14 The Secretary extend the time frame and charter of the Advisory Task Force through the implementation of the recommendations.	Authorize Task Force Charter.	Secretary	Completed. Extended to 12/31/94.
	15 The Secretary recommend a "catastrophic" and "employee relocation" fund within the 1993 and 1994 budgets as described in this report.	Include fund in budget submission.	Assistant Secretary	Not Complete. 1992 Progress Report repeats - renames catastrophic to be "contingency". Recommendation still stands.
	16 The Secretary recommend additional funding for financing a special multi-year effort to assist all Tribes in developing long range comprehensive plans aimed at increased individual and Tribal self-reliance and self-sufficiency, and in developing evaluation and reporting components for such planning systems which will enable Tribes to better measure and report progress.	Include program in budget.	BIA	No action.
	17 The Secretary evaluate the absence of Executive Direction and facilities support at many locations.	Evaluate Base Tribe/Agency Budgets.	BIA	No action.
APPROPRIATION RECOMMENDATIONS FY 1993 - SUBMITTED TO CONGRESS				
	18 Congress reformat budget.	Revise and report accompanying appropriations.	Appropriations committees	Completed
	19 Place Johnson O'Malley and Welfare Assistance in "other recurring programs"	Revise and report accompanying appropriations.	Appropriations committees	Completed
	20 Move Housing Improvement and Road Maintenance from Construction to Other Recurring Programs	Revise and report accompanying appropriations.	Appropriations committees	Completed
	21 Move Indian Child Welfare to "Tribal Priority Allocations"	Revise and report accompanying appropriations.	Appropriations committees	Completed:
	22 Tribes be afforded reprogramming flexibility	Report Language authorizing	Appropriations committees	Completed. Approved by Appropriations Committee.

IMPLEMENTING RECOMMENDATIONS FOR THE TRIBAL BUDGET SYSTEM RECOMMENDATION TRACKING SYSTEM AS OF MAY , 1995				
	RECOMMENDATION	ACTION TO BE TAKEN	RESPONSIBILITY	STATUS
BUDGET RECOMMENDATIONS - FY 1994 - 1992 PROGRESS REPORT				
	23 Tribes be provided information and have input in all parts of BIA Budget	Include in formulation process	BIA	Completed: Implemented in 1992 (FY 1994)
	24 Tribal Priorities be submitted (Rather than BIA) if disagreement existed during formulation	Include in instructions	BIA	Completed: Implemented in 1992 (FY 1994)
	25 Area Meetings to include tribes in area planning	Include in instructions	BIA	Completed: Implemented in 1992 (FY 1994)
	26 National Hearing to allow Area Director and Tribal Representatives to present to AS/IA and BIA Management	Include in instructions	BIA	Completed: Implemented in 1992 (FY 1994)
	27 Every effort be made in multi-tribe agencies to identify maximum funding possible with recurring base for each tribe.	Instructions to Superintendents	Deputy Commissioner	In Progress: Progress depends on commitment of BIA at each location.

IMPLEMENTING RECOMMENDATIONS
FOR THE TRIBAL BUDGET SYSTEM
RECOMMENDATION TRACKING SYSTEM
AS OF MAY, 1995

	RECOMMENDATION	ACTION TO BE TAKEN	RESPONSIBILITY	STATUS
1994 APPROPRIATIONS RECOMMENDATIONS - SUBMITTED TO CONGRESS				
	28 Congress approve process for movement of funds to TPA at Tribal option. (See 1992 Progress Report)	Appropriations language approving direction and method of moving funds to local level.	Appropriations Committee	Completed. Report language accompanying 1994 appropriations.
	29 Congress support completion of a preliminary assessment of most needy tribes, including base funding needs of small tribes.*	Appropriations language directing BIA to support and assist in effort.	Appropriations Committee	Completed. Report language accompanying FY 1994 appropriations.
	30 Congress direct BIA to consider implementation of an Indian Self-Determination Fund to provide contract support for new contracts/compacts, in order to stabilize funding for existing contracts.	Appropriations language directing BIA to consider.	Appropriations Committee.	Completed. Report language accompanying 1994 appropriations.
	31 Provide funds to support analysis of laws and regulations to streamline and decentralize.	Direct funding to Task Force for the effort.	Appropriations Committee	Completed. \$100,000 provided to be used by BIAM/CFR/USC Work Group.
	32 Provide additional instructions to BIA regarding the flexibility provided to tribes for reprogramming within Tribal Priority Allocations.	Provide instructions to BIA to recommend methods which would eliminate need for Contract modifications and provide Congress needed information.	Appropriations Committee	Completed. House Report provides desired direction. Budget Reform Work Group to take lead in developing recommendations.

**IMPLEMENTING RECOMMENDATIONS
FOR THE TRIBAL BUDGET SYSTEM
RECOMMENDATION TRACKING SYSTEM
AS OF MAY, 1995**

	RECOMMENDATION	ACTION TO BE TAKEN	RESPONSIBILITY	STATUS
1993 TBS DEVELOPMENT RECOMMENDATIONS - 1993 PROGRESS REPORT				
	33 Deputy Commissioner establish small Planning Staff to coordinate planning, as well as development and maintenance of Tribal Budget System.	Request Funds and Staff and establish office through DM 130.	Commissioner	In Progress. Congress funded for FY 1994, but funds used to support other purposes. Also in 1995 budget.
	34 Complete pilot SAM models for Indian Child Welfare, Forestry and BIA Administration.	BIA and Task Force develop and test pilot models.	Task Force and BIA	In Progress: Only SAM Pilot complete. BIA started work on Forestry and Admin.
	35 Complete assessments of current formulas for Road Maintenance, HIP, Facilities O&M in preparation of utilizing these need based formula for the purpose of fixing allocations and making programs available to move to local base at Tribal request.	Examine formulas, complete new HIP inventory and ensure formulas are equitable.	BIA, appropriate directorates.	HIP inventory in progress.
	36 Complete assessment of Johnson O'Malley formula for purpose of utilizing formula to fix distribution in anticipation of making available for movement, at Tribal request to local base funding.	Review JOM distribution formula and correct deficiencies.	Office of Indian Education Programs	In Progress.
	37 Complete an analysis of Welfare Assistance programs in order to enable identification of Area base funding and be able to allocate at least to Area Field operations within Tribal Priority Allocations to allow Tribes in each Area to control and plan program, in anticipation of fixing base for each Tribe, so that each Tribe can control and move to local base if desired.	Determine method to identify equitable distribution based on quantifiable needs.	Tribal Services	In Progress.
	38 Develop Planning and Evaluation Module of Tribal Budget System, to incorporate requirement for BIA to have a strategic plan.	Recommend principles and outline planning and evaluation module, recommend of initial data requirements, and clarify Planning Office functions.	Budget Reform Work Group, subcommittee on planning and evaluation.	Completed: Final Task Force Report. Report Currently being developed.
	39 BIA develop a Budget Formulation Handbook in order to ensure a common understanding of budget formulation in the TBS system, and to institutionalize the process in writing so that unilateral changes can be avoided.	Hold joint BIA tribal meeting and prepare Handbook	BIA and Budget Reform Work Group	Completed.

**IMPLEMENTING RECOMMENDATIONS
FOR THE TRIBAL BUDGET SYSTEM
RECOMMENDATION TRACKING SYSTEM
AS OF MAY, 1995**

	RECOMMENDATION	ACTION TO BE TAKEN	RESPONSIBILITY	STATUS
1995 APPROPRIATIONS RECOMMENDATIONS - SUBMITTED TO CONGRESS				
	40 Restore earmarked reductions in Area direct and TPA Budgets or distribute pro-rata.	Congressional Redirection	Appropriation Subcommittees	Completed.
	41 Move Johnson O'Malley, Housing Improvement, Facilities O&M and Roads Maintenance to Tribal Priority Allocations.	Transfer in Appropriations	Appropriations Committees	Completed.
	42 Create Indian Self-Determination Fund to provide contract support for new and expanded contracts.	Direct in Appropriations	Appropriations Committees	Completed.
	43 Restore Personnel Management to Area and Agency.	Direct in Appropriations	Appropriations Committees	Not accomplished, funds lost. However, portions anticipated for return in FY 97.
	44 Direct continued implementation of TBS beyond Task Force.	Direct in Appropriations	Appropriations Committees	Completed.
1994 TBS DEVELOPMENT RECOMMENDATIONS - FINAL TASK FORCE REPORT				
	45 Adopt formal policy to implement Planning and Evaluation systems.	DOI adopt concepts and principles of Planning and Evaluation Component of TBS which will guide efforts.	Department of Interior - BIA	Incomplete: No action.
	46 Adopt formal policy for BIA wide information management systems.	Development and procurement of internal and external information systems to include a Tribal/BIA information management partnership design.	Assistant Secretary	Incomplete: No action.
	47 Adopt Planning and Evaluation component as a re-engineering laboratory.	Ensure DOI embrace new planning system and structure.	Secretary of Interior	Incomplete: No action.
	48 Obtain professional critique of ICWA pilot model Standard Assessment Measure.	Immediately seek professional analysis.	BIA	Incomplete: Action pending.

**IMPLEMENTING RECOMMENDATIONS
FOR THE TRIBAL BUDGET SYSTEM
RECOMMENDATION TRACKING SYSTEM
AS OF MAY, 1995**

	RECOMMENDATION	ACTION TO BE TAKEN	RESPONSIBILITY	STATUS
	49 Develop Standard Assessment Measure of each BIA program as directed by Congress.	Implement the directive of the FY 1995 Appropriations Report Language. Instructions included in 1994 Final Task Force Report.	BIA	Incomplete:
	50 Continue refinement of Bureau accounting and budgeting support systems to support full implementation of TBS.	Continue development of both the FFS and TPA Budget Planning and Formulation System.	BIA in partnership with Tribes	Action Contemplated: Ongoing.
	51 Continue and improve the National Budget Hearing.	Make component of annual budget formulation process.	BIA	Action Contemplated: Ongoing.
	52 BIA utilize Congressionally approved process to implement movement of Housing Improvement, Johnson O'Malley and Roads Maintenance to TPA.	Work through a formal consultative process previously outlined by the Task Force.	BIA	In Progress:
	53 BIA consult with Tribes during FY 1995 and move Welfare Assistance and Contract Support and Facilities O&M to TPA in FY 1996.	Complete the consultation process with Tribes for these programs during FY 1995.	BIA	In Progress:
	54 Consider options of a TPA account for Education.	Examine methods to improve stability, Tribal flexibility and Tribal control over education funding.	BIA in partnership with Tribes and OIEP Representatives	Status Unknown:
	55 BIA review all other recurring and non-recurring programs and, if appropriate, move to TPA.	Continue review.	BIA	Ongoing:
	56 Assistant Secretary mandate BIA carry out movement of programs to TPA.	BIA implement these recommendations.	Assistant Secretary	Completed:
	57 BIA update analysis of base funding each year until all Small Tribes have at least the minimum base funding.	Update analysis and publish annually.	BIA	Action Pending:
	58 Set aside not less than 20% of general TPA increases and 1/14 of streamlining savings for Small Tribes minimum base funding.	Congress and ASIA ensure that funds are set aside.	ASIA and Appropriations Committees	ASIA doesn't agree.
	59 BIA not to count Contract Support and Other Recurring Programs against minimum TPA base for Small Tribes.	Ensure that annual update of available resources excludes.	BIA	Concurred in.

IMPLEMENTING RECOMMENDATIONS
FOR THE TRIBAL BUDGET SYSTEM
RECOMMENDATION TRACKING SYSTEM
AS OF MAY, 1995

	RECOMMENDATION	ACTION TO BE TAKEN	RESPONSIBILITY	STATUS
	60 BIA implement a formal policy for administration of Contract Support funds.	Address all aspects of funding provisions of Indian Self-Determination Act, as recently amended by P.L. 103-413.	BIA	Partially complete. Repeat of # 10
	61 BIA to provide an analysis of full Contract Support requirements.	Conduct analysis.	BIA	Required by law. BIA has yet to fulfill adequately.
	62 Track and report streamlining savings and their application within the annual budget submission to Congress.	BIA establish a budget tracking system for reporting actual flow of funds each year.	BIA	No Action:
	63 Secretary direct BIA to establish Planning and Change support unit (aka: Planning Office).	Prepare DM 130	Secretary	No Action: BIA has used funds for other purposes in 95.
	64 BIA recommend at least two-year availability for all appropriated funds.	Bill language in each year's budget.	BIA	No Action:
	65 Congress enact new Title to Self-Determination Act to implement TBS principles in law.	Review language offered in 1994 Final Task Force Report.	Legislative Committees	

RE-INVENTING NATIONS

Jump-Starting Indian Development

A. Brian Wallace, Chairman of the Washoe Tribe
of Nevada and California and
the Nevada Change Alliance

Summary

The Nevada Tribes are jump-starting their development by adopting what must be the world's most costly and powerful system! It is costly in the sense that, over 40 years, trillions and trillions of dollars have gone into the trial-and-error creation of a development system that actually works. And it is the most powerful in the sense that it can change not only Tribes and communities - but cities, nations, and perhaps the world.

1. LeapFrogging the US?

It is a strange, unsettling time in history. We can see the people bouncing from one extreme to another extreme - right in front of our eyes. For many years the government has been the people's facilitator of first and last resort. But now we seem to have a new era, where the people - people with real problems - are seriously turning their backs on government. It is not only Mr. Clinton and Mr. Yeltsin that are feeling frustrated and perhaps left out - the leaders of many other countries are casting around for meaningful ways forward as their populations "atomize" and the peoples' problems mount.

But there is a third position. Actually it is a far more hustling, powerful one. Around the world, some really successful communities have already learned that **for real development** they must **themselves** move to put in place all the technology, capital, people and training, banking, and systems and organizations they need to create their own success. They draw on the government for only those missing elements necessary to success - so they conclude rather than start by making demands on government. None of these communities simply pulled back into their shell. Each one did the exact opposite - they looked around the world and hustled for everything that could help them to succeed.

It is this far more dynamic pattern of development that the Nevada Tribes are putting in place, as a model for all the Indian Nations. The Nations already had many pre-conditions to make it as an extremely successful community of the 21st Century: Culture, assets, capital, skills, management, leadership, and systems thinking. Now they have already done what no agency of the US Government and few US communities have really done - scoured globally for the most powerful development model.

This is not at all a **catchup model** on regular US development patterns - very unattractive to most Indians - but a **leapfrog model** which makes its own way and gathers momentum like a large snowball. This model shows how real meaning can be put into "bottom-up development" and "customer led government" (now all the rage), and how Tribes can network themselves to pool their talents, and learning, and assets (also all the rage), and how Tribes can organize a remarkable come-back at a time when much of the world is hunting for precisely these solutions. It has the power to lead towards the "missing \$10 billion" in capital required to equal average percapita American capitalization in general.

2. Five Great Change Problems

Mr. Clinton, Mr. Yeltsin, the other national leaders, and their various populations are caught in the middle of five great forces, and their chances of figuring out at random how to escape and move on are just about zero.

Problem 1: Tough Future - The Coming Great Divide: While there are some good things coming down the pike, better drugs and so on, there are also problems to dwarf anything that we see today - huge population growth, limits to food production, more brush fire wars, and so on. The mother of all problems has to be the Great Divide, the terrible separation occurring throughout the world, seemingly between rich and poor, at the village, city, country and global levels. Roughly 2 in 3 people in the world are seeing no advance. Why? The reasons are very complex - but those who get ahead all have one thing in common, a marvelous ability to handle systems and systems change. The implications are truly enormous - ask the good folks of Oklahoma City, who just felt one result.

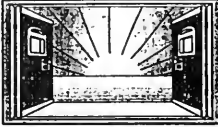
Problem 2: The Configuration of Government: Governments - the parliaments and bureaucracies - find it difficult to handle issues of rapid change. In fact, they are largely set up to take things at a deliberate pace. But much more troublesome is how they do business. They presently resemble a large device, with many "blind" tubes extending downward, and resources being poured in the top end of the tubes. Millions of people must then see how they can milk the bottom end to their own best advantage. Some resources flowing down may be capital (investment) and some may be recurrent (consumption), but nobody knows which is which! This present daft arrangement is very obstructive to development "out there" which should flow from powerful, integrated local visions, rather than the random milking of central resources from tubes for random problems.

Problem 3: Dismal State of the Change Sciences: They seem to be really struggling to make a useful contribution in an era of increasingly rapid change. Most of these sciences grew up in relatively steady-state environments, had few demands made on them, and only rarely had to address fundamental large-scale change. Traditional public administration (too descriptive and passive) is seemingly pretty dead in the water; so is traditional economics (too static, laid-back and hidden hand oriented); traditional management science (too narrow, static, and single-enterprise/quick fix oriented), and all of the related sciences. While there is a growing sense that the key resource of business is no longer capital, personnel or plant, but knowledge and information, the claimed "new" ideas often turn out to be buzz words, fads, quick fixes, and feel good illusions.

Problem 4: Dismal State of The Development Sciences: Trillions have been poured into development and change, at a rate of perhaps a trillion dollars a year. And still the world has sick cities, and industries, and countries and regions, perhaps even a sick globe, spiralling population, depletion of resources, stripped rain-forest, growing deserts, declining fisheries, more chemicals in the air and water, and so on. Many developing countries are now paying heavily for lack of good development science. Few countries know how to plan for large-scale capacity change. Structural

RE-INVENTING NATIONS

Winning And Losing In The 21st Century



**Coming Out Ahead
Will Not Be Easy - But
Chances Are Great With:**

**Strong Sectoral Visions
Successful Processes
Organizational Dynamos
And STRONG SYSTEMS...**

Coming Good News



- * **Technological: Inventions**
- * **Corporate: TQM, Time, Costs**
- * **Medical: [Most] Research**
- * **Food Growing [For Now]**
- * **Environmental Management**
- * **[Almost] Global Democracy**

Coming Bad News



- * **Population Spiral: 15 Billion?**
 - * **Food & Fish Growth Ceiling?**
 - * **Environment: Greenhouse?**
 - * **Many, Many Brush-Fire Wars**
 - * **"Flight From The Government"**
- AND [GASP!].....THE GREAT DIVIDE**

Growing Global Divide Between the Haves and the Have-Nots



**A Few Will
Make It Good
By The New
Principles of
Fast Systems
Change**

**Many More
Who Miss Out
On The
Principles
Of Fast
Systems
Change WILL
Slit, Slide Or
Sink Endlessly**

**BUT THE MIDDLE
ROAD IS GONE - FOREVER**

**Fast Development Is A Narrow, Difficult Target Rarely Hit.
Experiences Around The World Show A Precise Way Forward.
First Need: Strong Visions Of Future Sectors Bases On Global View.**

Fast Track Change Uses New Science



1. LEAPFROG OLD SCIENCES
2. THINK BOTH SHORT AND LONG TERM
3. INTEGRATE ECONOMIC AND SOCIAL
4. COMPETE - FEROCIOUSLY
5. DECIDE MAIN BACKBONE SECTORS
6. BALANCE SECTORAL LEVELS
7. PUSH STRONG ORGANIZATIONS
8. HAVE STRONG GROUPS & PROCESSES
9. FOCUS, FOCUS, AND RE-FOCUS
10. AND ABOVE ALL.....

Systems Strength!

People Use Good Systems To "Grow" Good Things



- o Quality Education
- o Fine Solid Houses
- o Reliable Vehicles
- o Good Medical Care
- o High Quality Water
- o Maintained Roads
- o Persuasive Budgets
- o Really Useful Plans
- o Preserved Culture
- o Effective Elder Care
- o Good Social Services
- o Job-Creating Sawmills
- o High Turnover Stores
- o Attractive Hotels
- o Productive Hatcheries
- o High-Skill Training

**Systems Are The Building Blocks
Of Organizations And Sectors**

Analysis Zooms In

FROM GLOBAL LEVEL
TO REGIONAL LEVEL
TO COUNTRY LEVEL
TO MULTI-SECTOR LEVEL
TO SINGLE SECTOR LEVEL
TO SINGLE ORGANIZATION LEVEL
TO SINGLE SYSTEM LEVEL



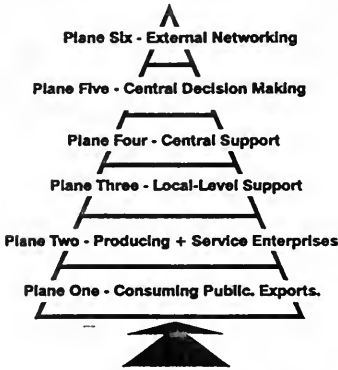
Planning Zooms Out

NOT JUST INDIVIDUAL; FAMILY!
NOT JUST FAMILY; COMMUNITY!
NOT JUST COMMUNITY; TRIBE!
NOT JUST TRIBE; ALLIANCE!
NOT JUST ALLIANCE; COUNTY/STATE!
NOT JUST COUNTY/STATE; FEDERAL!
NOT JUST FEDERAL; REGIONAL/GLOBAL!

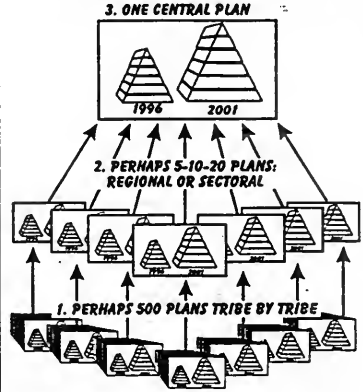


**The Sectors Must Be Planned In Terms Of Best Systems.
Then Teams Must Hunt For And Gather The Best Systems.
These Systems Might Be Brought From Anywhere In The World.**

Sector Planning Fom The Bottom-Up



BIA And Tribes Planning Together



Sample Economic Sectors And Sub-Sectors



Financial

- o Banking
- o Venture Capital
- o Stock Market
- o Etc



Land & Minerals

- o Land Use
- o Land Title
- o Mining
- o Etc



Agriculture

- o Forestry
- o Fisheries
- o Livestock
- o Crops
- o Etc



Water

- o Catchment
- o Quality
- o Distribution
- o Re-cycling
- o Etc



Enterprises

- o Retail Stores
- o Car Repair
- o House Building
- o Transport Ops
- o Etc



Infrastructure

- o Highways
- o Electricity
- o Telephones
- o Sanitation
- o Etc

Sample Social Sectors And Sub-Sectors



Education

- o Up To K-12
- o Vocational
- o University
- o Etc



Health

- o Treatment
- o Wellness
- o Mental
- o Etc



Culture

- o Crafts
- o Music
- o Ceremonies
- o Etc



Legal & Justice

- o Police
- o Justice
- o Detention
- o Etc



Social Services

- o Elder Care
- o Child Care
- o Family Support
- o Etc

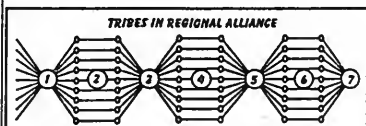


Shelter

- o Ownership
- o Construction
- o Services
- o Etc

**The More Players The Better - There Are Benefits For Everybody,
Because Strong Results Are Promised, Capital Flows. Needed:
An Institute To Build Policy, Planning, Funding and Systems Change?**

Change Programs



Phase 1 Eye-Opener: Inter-Tribal Meeting for looking at the new Change Science and deciding to move

Phase 2 Checking Things Out: Tribes and friends assess the strength of Tribal sectors and systems

Phase 3 Doing The Deal: Meeting for pooling the collected facts and agreeing to work together

Phase 4 Visioning: Tribal leaders and members do sector scenarios of possible futures [key phase]

Phase 5 Spreading It Out: Meeting of all Tribes, potential sponsors, specialists, and Government folk, to sort out all sector visions and do deals

Phase 6 Systems And Sector Change: Hunting and gathering and sector by sector change goes on

Phase 7 Sharing Experience: Via repeated meetings

Paying For It All?



**The New Change Science
Provides A Bankable Bottom Line**

**SOUND VISION +
SOUND CONCEPT +
SOUND SYSTEMS +
SOUND PROCESSES:**

BANKABILITY

**Do-able Results Are Music To The
Ears Of Sponsors & Investors**

Hunting And Gathering These Best Global Change Capacities



1. Best Global And U.S. Trends Scanning
2. Best Planning And Change Models
3. Best Sector And Organization Examples
4. Best Systems: Technical And Managerial
5. Best Culturally-Right Change Processes
6. Best Approaches To Hitting Right Markets
7. Best Staff Motivation, Training, Careers
8. Best Conferences, Seminars, Workshops
9. Best Sources Of Capital And Funding
10. Best Linkages With The Wider Community

An Indian Planning And Change Institute?

1. Central - For All Tribes

Best Systems Capability	Best Sectors Capability	Best Processes Capability
Hunting And... Consulting Training Info Exchange	Hunting And... Consulting Training Info Exchange	Hunting And... Consulting Training Info Exchange



2. Area By Area - More Focused



3. Tribe By Tribe - Very Focused



adjustment in Africa and Asia, and now in Russia and Eastern Europe, is proving a massively slow, painful, costly process. Political leaders who actually do want change often back off and do nothing, because it seems so difficult, so painful, and so politically suicidal.

Problem 5: Sorry Lessons of Development: Many mistakes were made - we only now begin to know what not to do! Don't only plan and plan alone, as in the Soviet model, with its centrally-set production targets. Don't only push for production; supporting infrastructure and the social sectors also provide essentials. Don't only give education all priority - clever people are simply not sufficient. Don't only randomly deregulate. Don't only import and consume. Don't only worry about the problems - development managers often take a problem orientation to development (oil the squeaky wheel) which creates great distortions. Don't only build up a huge government, as in the once socialist countries of Europe and Africa. Don't only free up the market - a free market also requires many support institutions to make it work well. Don't only add detail and complexity - much development management gets too complicated, without ever getting very good.

3. Re-Inventing Nations: Five Guiding Concepts

If we look anew at countries that had very fast development, we can separate out the key principles we need. Decide on the main backbone sectors - true, in the global economic horse race, Governments often lose when trying to pick precise sectoral winners, but they can at least pick broad categories, areas and fields of technologies for legislative support, and then let producers and inventors fight it out over which products win. Also, balance sectoral levels - corporations, local training and support, central research and banking and so on - and sectoral management should try to achieve a kind of balance and harmony; the organizations at each level should be strong. Create strong clusters and networks - even in hyper-competition, much can be done between corporations that otherwise want to see one another dead (IBM and APPLE). Against the rest of the world, everybody in an industry has some things in common.

Proceed with a vision. Governments in particular are inclined to forget where they are at and what they are up to, tugged and pulled by the interest they serve. Planning can be so flexible that it hardly looks like planning at all - but if daily and weekly and monthly it creates a focus, it works. And above all, create systems strength. As all models of successful development show, there is a direct correlation between the pace and assuredness of development, and the ability of a country to boost its systems strength (productivity gain) is the one single way out of the Great Divide.

From these many lessons we have extracted five guiding concepts that drive the program.

1. See That All Development Involves Building Systems Strength. How do all people, all organizations, and all communities create the results they desire? Simply by making various systems work for them - systems for building houses and bridges, for making people well and educating them, for keeping inventory, and tracking money, and so on. Systems come first. They are "primordial" in the sense that nothing logical and intended ever happens without them. No training takes place, no money is made, no government has much effect, unless the right systems are in place. Those few people, organizations and communities that are spectacular at handling such systems, and at changing them fast, will be the real success stories in the 21st century - as they always have been.

2. See That Small Systems Are Contained Within Bigger Systems. The great failures in change and development have all missed this concept. All big systems are made up of little systems. They actually contain them. The universe (system) is made up of galaxies, solar-systems, worlds, and atoms (systems). A corporation (system) competes within an industry (system), which is within an

economy (system), within a customs-area (system), and so within a global economy (system). **Good change addresses all these various change-levels.** No change at any one change-level, if it ignores those other change-levels, is going to hold up in the long run. To make change work at any single change level, the task **must involve** supporting changes at other change levels - really large change has to consist of hundreds, thousands or millions of small changes, to have the required effect.

3. See Sectors As Being Like Big Machines. Sectors, not Tribes, or organizations, or programs, are really the basic building blocks of any large change design. In any economy, a Tribal economy, or State economy, or national economy, there are dozens of sectors (eg: the automobile building industry). The parts actually fit together like a single big machine. We need a way to break down the sectors (the third systems change-level, by the way) so we can beef up their inter-organizational fit. There is in fact a simple but highly effective way. All of them can be divided up into six planes, (1) the sector market/beneficiary/end-users; (2) the producers of all goods and services; (3) the local infrastructure; (4) the national infrastructure; (5) the national sector management; and (6) global and regional networks.

4. Create Vision-led Change Processes. Traditional Indian ways of doing business, sitting together and pooling thoughts, are the new wave in management thinking! Teams are what create good systems, and the teams need a process that leads them through the creation of Tribal visions (of each of their sectors, five years out) and then the hunting and gathering around the world to come home with the best of all systems.

5. Create Indian Development Dynamos. Fast-change countries always have in place certain development institutions - four dynamos - working for them: (1) Policy-making; (2) Planning; (3) Development financing; and especially (4) Systems-change, some mechanism that really knows the business of doing fast systems change. The Indian Nations lack all of these institutions! They are really attempting to develop with one hand tied behind their collective back. The missing central-support functions (policy, planning, financing, and systems-change) are already costing the Tribes (and the US) a bundle in slowed development. If and when created, then they could move the Tribes in the direction of the "missing \$10 billion" in capital.

4. An Indian Development Institute?

Where to start? Putting in place the key dynamo is essential. The entire central support function - all the four dynamos - can probably best be arrived at by creating first an Indian Development Institute (or Planning and Systems-Change Institute, or may an Indian Development Bank). The Institute's mission can be captured in a single word: **Technique**. The Institute builds and shares technique, through information exchange, research, training, and of course, consulting.

Its purpose would flow from what we have found to be essential in the Nevada experience. It would need to be there to deliver these ten "bests" to the Indian Nations: Best global and US trends scanning, best planning and change models, best sector and organization examples, best systems, technical and managerial, best culturally right change processes, best approaches to hitting the right markets, best staff motivation, training, and careers, best conferences, seminars, and workshops, best sources of capital and funding, and best linkages with the wider community.


With such a powerhouse device to put the powerful concepts into effect, we really will be able to jump-start Indian development - and provide a lot of food for thought throughout the United States on how to really re-invent government!



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June 26, 1995

TO : Senate Indian Affairs Committee
Attention: Steven J.W. Heeley

FROM : Roger Walke
Analyst in American Indian Policy
Government Division 

SUBJECT : Bureau of Indian Affairs Reorganization: Side-by-Side
Comparison of Joint Task Force Recommendations and
S. 814 (104th Congress)

This memorandum responds to your request for a side-by-side comparison of:

- the recommendations of the Joint Tribal/BIA/DOI Task Force on Bureau of Indian Affairs Reorganization from the Joint Task Force's final report;¹ and
- the Bureau of Indian Affairs Reorganization Act of 1995, S. 814 (104th Congress), introduced May 17, 1995.

The side-by-side comparison is presented in Table 1 below. In column one the table quotes all of the Joint Task Force (JTF) recommendations; in column two it summarizes those provisions of S. 814 that address a particular recommendation.

The JTF made 44 recommendations in four areas: organization reform, regulatory reform, education reform, and budget reform. (Two recommendations were repeated under different reform sections.) Some JTF recommendations were general and some were quite specific. S. 814 does not address all of the JTF recommendations, and particularly does not make provisions for the education reform recommendations.

Please call me at 707-8641 if you have any questions regarding this request.

¹ *Report of the Joint Tribal/BIA/DOI Advisory Task Force on Reorganization of the Bureau of Indian Affairs to the Secretary of the Interior and the Appropriations Committees of the United States Congress* August 1994 [Washington, D.C. 1994]

Table 1. Side-by-Side Comparison of Recommendations by the Joint Tribal/BIA/DOI Task Force on BIA Reorganization with the Bureau of Indian Affairs Reorganization Act of 1995 (S. 814, 104th Congress)

Joint Task Force (JTF) Recommendations	Bureau of Indian Affairs Reorganization Act of 1995 (S. 814, 104th Congress, as introduced May 17, 1995)
1. Organization Reforms	
1. Continue Tribal consultation process and Tribal participation on all reorganizations of the Bureau of Indian Affairs	<p>Title I directs the Secretary of the Interior (Secretary) to negotiate compacts with Indian tribes to reorganize the BIA at the area, agency, and central office levels.</p> <p>Title II, § 201, "Sec. 502," requires the Secretary to cooperate with tribes, and ensure maximal tribal participation, in promulgating standard assessment methodologies for determinations of budget needs.</p> <p>Title III directs the Secretary to (1) review the BIA Manual, with maximal tribal participation, and (2) establish a regulatory reform task force that shall include tribal representatives from each of the 12 BIA areas.</p>
2. Redefine BIA as a "three-tier-3" organization.	<p>Title I provides for the reorganization of the BIA at three levels, agency, area, and central office.</p>
3. Decentralize authority to the Tribe/Agency level.	<p>Title I, §§ 101-103, direct the Secretary to negotiate compacts with the appropriate Indian tribes to reorganize the BIA at the area, agency, and central office levels, including the specification of functions transferred to the tribes (§§ 101(b)(1)(E)(iii), 102(b)(1)(E)(ii), 103(b)(2)(E)(iii))</p>
4. Redistribute resources as a result of Central Office decentralization and/or streamlining to the Tribe/Agency level	<p>Title I, §§ 103(b)(1)(A)(ii) and 103(b)(2)(d), requires that the central office reorganization plan provide that the Secretary determine excess funds for allocation to tribes in each area based on a formula.</p>
5. Redefine role of and reduce Central Office operations.	<p>Title I, § 103, directs the Secretary to negotiate compacts with the appropriate Indian tribes to reorganize the BIA at the central office level, including delegation of authority and reallocation of personnel and funds.</p>
6. Continue restructuring Area Offices using the "Designer Area" concept with Tribes empowered to design their respective Areas and Agencies.	<p>Title I, § 101, directs the Secretary to negotiate compacts with the appropriate Indian tribes to reorganize the BIA at the area office level.</p>
7. Approve plans developed by Tribes for redesignated Area Offices including Navajo Nation's NPR Laboratory.	<p>Title I, § 101(b)(5), directs the Secretary to negotiate a compact with the appropriate tribe to reorganize the tribe's area office.</p>

CBS-4

Table 1. Side-by-Side Comparison of Joint Task Force Recommendations with S. 814 (104th Congress — Continued

Joint Task Force (JTF) Recommendations	Bureau of Indian Affairs Reorganization Act of 1995 (S. 814, 104th Congress, as introduced May 17, 1995)
8. Consolidate administrative support functions into two administrative support centers to serve Education and the balance of the Bureau with the understanding that there will be some shared services.	<i>No corresponding provision.</i>
9. Establish an Associate Commissioner structure for Central Office West organizations outside Washington, D.C., reporting to a single position.	<i>No corresponding provision.</i>
10. Move Facilities Construction management to the Office of Indian Education [Programs] [OIEP].	<i>No corresponding provision.</i>
11. Move Congressional and Legislative Affairs Staff and Public Information Staff organizations to Office of the Assistant Secretary. Combine and add Inter-governmental Relations function to create new staff organization.	<i>No corresponding provision.</i>
12. Require continued oversight by Tribal Governments to ensure implementation of Task Force Recommendations.	<i>No corresponding provision.</i>

Table 1. Side-by-Side Comparison of Joint Task Force Recommendations with S. 814 (104th Congress — Continued)

Joint Task Force (JTF) Recommendations	Bureau of Indian Affairs Reorganization Act of 1995 (S. 814, 104th Congress, as introduced May 17, 1995)
II. Regulatory Reforms	
1. Implement a new process for rule-making and directives management for the BIA.	No corresponding provision.
2. Establish a Regulatory Reform Team reporting to the Assistant Secretary—Indian Affairs to implement regulatory reform.	Title III, § 302, directs the Secretary to establish a regulatory reform task force, with tribal representatives from each of the 12 BIA areas, to review title 25 of the Code of Federal Regulations, make recommendations for revisions, and report to the Secretary, Congress, and each tribe.
3. Establish a number of technical groups under the guidance of the Regulatory Reform Team to review and revise specific sections of the CFR (Code of Federal Regulations) and BIAM (BIA Manual).	Title III directs the Secretary to (1) review the BIA Manual and (2) establish a related regulatory reform task force with tribal representatives from each of the 12 BIA areas, and requires maximal tribal participation in BIAM review (§ 301(b)) and allows the task force to procure temporary services (§ 302(d)(3)(B)).
4. Engage a consultant or consultants to work with the Regulatory Reform Team and the technical groups.	Title III directs the Secretary to establish a regulatory reform task force and allows the task force to procure temporary services (§ 302(d)(3)(B)).
5. Change existing procedure for reviewing and publishing directives.	No corresponding provision.
6. Create directives storage and retrieval system using CD-ROM technology.	No corresponding provision.
7. Revise currently out-of-date directives distribution list.	No corresponding provision.
8. Publish the delegations of authority required to transfer authority from the Deputy Commissioner of Indian Affairs and the Director, Office of Indian Education Programs, to the Agency Superintendents and Education Line Officers, including the authority to approve P.L. 93-638 contracts.	Title I, § 102, directs the Secretary to negotiate compacts with the appropriate Indian tribes to reorganize the BIA at the agency level, including the delegation of authority to the agency superintendent (§ 102(b)(1)(C)).

CRS-6

Table 1. Side-by-Side Comparison of Joint Task Force Recommendations with S. 814 (104th Congress — Continued

Joint Task Force (JTF) Recommendations	Bureau of Indian Affairs Reorganization Act of 1995 (S. 814, 104th Congress, as Introduced May 17, 1995)
III. Education Reforms	
1. Fully implement P.L. 95-561, as amended.	<i>No corresponding provision.</i>
2. Operate the Central Office and Education Line Office structure of the Office of Indian Education Programs (OIEP) in a combined, coordinated manner in support of Tribes and schools, with authorities decentralized to the Tribe/school level.	<i>No corresponding provision.</i>
3. Consolidate administrative support functions into two Administrative Support Centers to serve Education and the balance of the Bureau with the understanding that some services will be shared. <i>Same as Organization Reform recommendation #8.</i>	<i>No corresponding provision.</i>
4. Move the Facilities Management and Construction Center (FMCC) to OIEP. <i>Same as Organization Reform recommendation #10.</i>	<i>No corresponding provision.</i>
5. Authorize and implement on-site encoding of obligations directly into the Federal Finance System (FFS) at OIEP Education Line Offices and larger schools including post-secondary institutions.	<i>No corresponding provision.</i>

Table 1. Side-by-Side Comparison of Joint Task Force Recommendations with S. 814 (104th Congress — Continued

Joint Task Force (JTF) Recommendations	Bureau of Indian Affairs Reorganization Act of 1995 (S. 814, 104th Congress, as introduced May 17, 1995)
IV. Budget Reforms	
1. Adopt formal policy to implement Planning and Evaluation systems.	Title II, § 201, amends the Indian Self-Determination Act by adding a new "Sec. 501" that directs the Secretaries of the Interior and Health and Human Services (HHS) to establish programs of tribal participation in BIA and Indian Health Service (IHS) budget requests, including information collection for planning and evaluation ("Subsections. 501(c)(1)(C), 501(c)(2)(A), 501(c)(2)(D), 501(c)(3)").
2. Adopt formal policy for BIA-wide information management systems (IMS).	Title II, § 201, "Sec. 501," requires that the tribal budget participation programs to be established by the Interior and HHS Secretaries should include information collection for planning and evaluation ("Secs. 501(c)(1)(C), 501(c)(3)").
3. Adopt Planning and Evaluation component as a re-engineering laboratory.	No corresponding provision.
4. Obtain professional critique of ICWA [Indian Child Welfare Act] pilot model Standard Assessment Measure.	No corresponding provision.
5. Develop Standard Assessment Measure (SAM) of each BIA program as directed by Congress.	Title II, § 201, "Sec. 502," requires the Secretary to cooperate with tribes, ensure maximal tribal participation, and use negotiated rulemaking, in promulgating standard assessment methodologies for determinations of budget needs for each program area.
6. Continue refinement of Bureau accounting and budgeting support systems to support full implementation of TBS [Tribal Budget System].	Title II, § 201, amends the Indian Self-Determination Act by adding a new "Sec. 501" that directs the Interior and HHS Secretaries to establish programs of tribal participation in BIA and IHS budget requests.
7. Continue and improve the Annual National Budget Hearings.	No corresponding provision.
8. BIA utilize Congressionally approved process to implement movement of Housing Improvement, Johnson-O'Malley and Roads Maintenance to TPA [Tribal Priority Allocations].	No corresponding provision.
9. BIA consult with Tribes during FY 1995 and move Welfare Assistance and Contract Support and Facilities O&M (Operation and Maintenance) to TPA in FY 1996.	Note: Housing Improvement, Johnson-O'Malley and Roads Maintenance were transferred to TPA in the BIA's FY 1995 budget. No corresponding provision.
	Note: The President's proposed budget BIA budget for FY 1996 transfers Welfare Assistance and Contract Support into TPA.

Table 1. Side-by-Side Comparison of Joint Task Force Recommendations with S. 814 (104th Congress — Continued)

Joint Task Force (JTF) Recommendations	Bureau of Indian Affairs Reorganization Act of 1995 (S. 814, 104th Congress, as introduced May 17, 1995)
10. Consider options of a TPA account for Education.	No corresponding provision.
11. BIA review all other recurring and non-recurring programs and, if appropriate, move to TPA.	Title II, § 201, amends the Indian Self-Determination Act by adding a new "Sec. 501" that directs the Secretary to establish a program of tribal participation in BIA budget requests, and requires that this budget program provide for tribal priority-setting and flexibility in Federal and tribal program design.
12. Assistant Secretary mandate BIA carry out movement of programs to TPA.	Title II, § 201, amends the Indian Self-Determination Act by adding a new "Sec. 501" that directs the Secretary to establish a program of tribal participation in BIA budget requests, and requires that this budget program provide for tribal priority-setting and flexibility in Federal and tribal program design.
13. BIA update analysis of base funding each year until all Small Tribes have at least the minimum base funding.	Title II, § 201, "Sec. 501" and "Sec. 503," which directs the Secretary to establish a program of tribal participation in BIA budget requests, requires the Secretary to support stable recurring base funding for each tribe ("Sec. 501(c)(2)"), and requires annual reports to Congress ("Sec. 503").
14. Set aside not less than 20% of general TPA increases and 1/4 of streamlining savings for Small Tribes minimum base funding.	Title I, § 109 suspends the implementation of any BIA changes associated with reinventing government, national performance review, or other downsizing initiatives (such as streamlining) for two years.
15. BIA not to count Contract Support and Other Recurring Programs against minimum TPA base for Small Tribes.	No corresponding provision.
16. BIA implement a formal policy for administration of Contract Support funds.	No corresponding provision.
17. BIA to provide an analysis of full Contract Support requirements.	No corresponding provision.
18. Track and report streamlining savings and their application within the annual budget submission to Congress.	No corresponding provision.
19. Secretary direct BIA to establish Planning and Change System organization.	No corresponding provision.

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Table 1. Side-by-Side Comparison of Joint Task Force Recommendations with S. 814 (104th Congress — Continued)

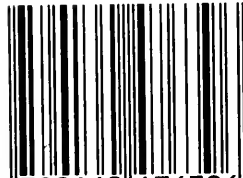
Joint Task Force (JTF) Recommendations	Bureau of Indian Affairs Reorganization Act of 1995 (S. 814, 104th Congress, as introduced May 17, 1995)
20. BIA recommend at least two-year availability for all appropriated funds.	<i>No corresponding provision.</i>
21. Congress enact new Title to Self-Determination Act to implement TBS principles in law.	Title II amends the Indian Self-Determination Act, as amended by the Tribal Self-Governance Act of 1994, by adding a new "Title V" to (1) direct the Secretary to establish a program of tribal participation in BIA budget requests; and (2) direct the Secretary of HHS to establish a similar program for the IHS.

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