



# Trust Reform, Natural Resources & Land

## *A Special Report Prepared by:*

*Democratic Policy Committee*

*Democratic Steering and Coordination Committee*

*Office of Senate Democratic Leader Tom Daschle*

## *Trust Reform*

The United States government has a broad trust responsibility to Indian tribes and individual Indians that has been shaped by formal treaties and agreements and precedent between the United States and Indian nations. This trust relationship obligates the federal government to protect tribal self-government, provide certain services to Indian communities, and exercise the highest degree of fiduciary responsibility toward Indian lands and resources. The United States holds legal title to lands held in trust for individual Indians as well as Indian tribal governments. The revenues from trust lands are also held in trust by the United States for the benefit of individual Indians and Tribal governments.

**Indian Trust Litigation.** For many years, there have been allegations that the federal government has been unable to account for billions of dollars it holds in trust for Indian tribes and individual Indians. Ultimately, individual Indian money account holders filed a class action lawsuit (*Cobell v. Norton*) to seek an accounting of funds held in trust by the United States. As part of the litigation, the Secretary of the Interior submitted a plan to the District Court proposing a reorganization of the Department's trust fund management structure, including the duties of the Office of Special Trustee and the Bureau of Indian Affairs. The Secretary's proposal was widely opposed by Indian country, primarily on the grounds that the Secretary had failed to consult with tribal governments prior to submitting the plan to the court as required by an Executive Order imposing a mandate on tribal consultation for federal agencies.

In response to tribal opposition, the Secretary agreed to establish a joint Interior-Tribal Task Force on Trust Reform, and for over a year, discussions and negotiations were conducted between tribal leaders and high-level officials at the Department of the Interior. The Task Force process broke down when Department representatives indicated that the government was not willing to discuss the establishment of legally enforceable statutory standards that would serve to guide the administration of the United States' trust responsibility for Indian lands and resources.

**Trust Standards.** In March 2003, the U.S. Supreme Court issued its ruling in *Navajo Nation v. United States*, stating that unless a statute specifically details the nature and extent of the federal government's trust responsibilities in a given area, and unless a statute also provides for a legally enforceable remedy for breach of the government's trust responsibility, a tribal government has no recourse against the United States.

Tribal government leaders have urged Congress to address the Supreme Court's ruling in the *Navajo Nation* case by adopting statutory standards for the administration of the government's trust responsibility—notwithstanding strong opposition in the Executive branch. In testimony before the Senate last year, the Bush Administration proposed that in lieu of the overarching trust responsibility, the government enter into a "trust instrument" with each tribal government that would spell out the respective legal rights and responsibilities of the contracting parties.

In the same testimony, the Bush Administration also argued that the authority of Congress to legislate in the field of Indian affairs under the Indian Commerce Clause is no longer plenary in nature, but rather is constrained by the regulatory criteria that are applied to petitioning tribal groups in the federal acknowledgment process. In other words, if a federally recognized tribe cannot satisfy each of the seven criteria that are applied to petitioning tribal groups, Congress lacks the constitutional authority to enact legislation for the benefit of that tribe.

**Bush Administration Efforts To Redefine U.S. Trust Obligations.** Tribal leaders and scholars believe that certain new policies advanced by the Bush administration will have a corrosive effect on the trust relationship, diminish the federal trust responsibility, and possibly lead to tribal termination. These observers cite the Administration's proposals to "privatize" the provision of health care services to Indians, "outsource" the administration of schools now operated by the Bureau of Indian Affairs, and "waive sovereign immunity" in business transactions with energy development on Indian lands. These moves are viewed in combination with the Administration's opposition to the establishment of trust standards and their reluctance to follow established procedures relating to the federal government's trust responsibilities.

**Congressional Trust Reform Efforts.** The Daschle, Johnson, McCain-trust reform bill, *American Indian Trust Fund Management Reform Act Amendments Act of 2003* (S. 1459) introduced in the 108th Congress reflects tribal concerns about the current Bureau of Indian Affairs (BIA)/Office of Special Trustee reorganization initiatives. Representatives Mark Udall (D-CO) and Nick Rahall (D-WV) introduced a companion version in the House. Last year, the House Appropriations Committee tried unsuccessfully to legislatively force settlement of the *Cobell v. Norton* litigation. This effort sent a strong signal to authorizing committees to step up their efforts to find alternative ways to settle the case.

Senator Daschle introduced the *Indian Trust Pay Equity Act of 2004* (S. 1540) to prepare for settlement of tribal trust assets in anticipation of mediation. The Campbell-Inouye bill, the *Indian Money Account Claim Satisfaction Act of 2003* (S.1770), which would establish a settlement tribunal, was not well received by Indian Country or the Administration. In the end, the Interior Appropriations conference passed a controversial, and potentially unconstitutional, midnight rider that undermined the *Cobell* case by delaying for one year any action in favor of the plaintiffs. Mediation discussions have begun between the National Congress of American Indians(NCAI), the *Cobell* plaintiffs' lawyers, and the Interior and Justice Departments.

Senators Daschle and Johnson, in the spirit of good government-to-government relations, introduced a bill (S. 2523) in support of a Great Plains Tribal Chairman's Association and Rocky Mountain regional proposal to halt the BIA /Office of the Special Trustee reorganization for one year so that the tribes within those regions can submit agency specific plans that better addresses their needs. Serious allegations were raised this past spring when Alan Balaran resigned as the court-appointed Special Master in the *Cobell* case. These disturbing allegations prompted the introduction of the *American Indian Commission on Trust Holdings Act* (S. 2770) by Senator Daschle. This bill would establish a commission with Native American representation independent of the Executive and Legislative branches to investigate the Balaran charges.

The American Indian Lands Title Report Commission was established in the 106<sup>th</sup> Congress to address the land title status reports pertaining to ownership and activity on individual allotments and tribal trust lands. The House and Senate have appointed Commissioners but the Bush Administration has not. The Commission cannot begin its work until all Commissioners have been appointed.

The Senate passed the *American Indian Probate Reform Act of 2003* S. 1721, a bill to make amendments to the *Indian Land Consolidation Act of 2000*. Sponsored by Senators Campbell, Inouye and Daschle, this bill addresses land fractionation on Indian lands, which is a key component of trust reform.

## ***Natural Resources***

**Indian Energy and Natural Resource Development.** Household energy bills are a significant burden for many Native Americans. Native American households spend, on average, 4 percent of their family income on electricity, with the poorest households paying nearly 20 percent. Also, 14.2 percent of households located on reservations are without electricity altogether—compared to 1.4 percent of all U.S. households. High energy costs often result from poor construction, poor insulation and high occupancy, common features in the homes of the poorest tribal families.

At the same time, much of Indian country has tremendous energy potential. For example, the Great Plains contain enough wind energy potential to power the entire East Coast. The development and use of these resources, especially those that are renewable and culturally appropriate, must be encouraged throughout Indian country.

On July 31, 2003, the Senate passed the *Energy Policy Act of 2002*, which was written by Democrats that, among other things, would establish a comprehensive Indian energy program at the Department of Energy to assist tribes in developing their resources, build energy infrastructure on Indian lands, and assist with energy production and transmission, which is one of the biggest obstacles facing tribal energy development. The Democratic legislation also contains tax incentives for renewable energy that will benefit tribes. Alternatively, the Republicans proposed an energy bill that would be highly problematic for tribes. It would discriminate against tribes in hydroelectric re-licensing proceedings by not allowing them to appeal conditions intended to protect Indian lands, Indian treaty rights, and natural resources in proceedings before federal regulators. The legislation would essentially allow only industry to notice such appeals. In addition, the Republican bill would not allow tribes to participate on an equal basis with industry in a new process to set alternative mandatory conditions and fishway prescriptions for hydroelectric licenses. Instead, the hydropower industry would be permitted to write alternative conditions and fishway prescriptions that must be included in hydroelectric licenses if threshold standards are met. The net effect of these provisions would create a process where the license applicant is given preferential treatment to the detriment of tribes, their treaty rights, and the general public. Senate Democrats believe this is the wrong set of priorities and will not force Native American tribes to choose between Indian Energy projects and traditional tribal sovereignty protections.

**Rural Water in Indian Country.** The *Water Resources Development Act* is scheduled for reauthorization during this Congress. However, the Administration is currently making concerted efforts to reduce or eliminate funding for rural water projects. These targeted reductions are reflected in the President's *Fiscal Year 2005 budget*. Water and sewage assistance in the Rural Community Advancement Program of the Department of Agriculture would receive a cut of \$11 million (46 percent) for *Fiscal Year 2005*. This program provides loans and grants for drinking water and waste disposal systems for Tribes. A similar program for Alaska rural and Native villages would be cut by \$16.2 million, or 58 percent. The Indian Land and Water Claims Settlements would receive a \$25.8 million, or 43 percent, cut in *Fiscal Year 2005*. Senate Democrats believe that everyone should have clean, quality drinking water that is affordable.

**Drought and Disaster Assistance.** This is the third year in a row farmers and ranchers across Indian Country face devastating drought conditions. Over the last several years, predominately in the western United States, many counties with large native populations have experienced production losses of 30 to 95 percent. Two years ago, many states were designated federal disaster areas, and many of these same Indian farmers and ranchers continue to suffer from this extreme weather. Senate Democrats have consistently called upon the Administration and Congress to support funding for the American Indian Livestock Feed and Assistance Program, which would do much to assist tribal farmers and ranchers who are experiencing severe economic losses due to the prolonged drought.

**Country-Of-Origin Labeling (COOL).** Two years ago, Congress overwhelmingly approved country-of-origin labeling. Consumers around the world want to know more than ever where their food comes from and that it is safe. COOL is good for American Indian ranchers and farmers in Indian Country, because it will encourage consumers to purchase Indian-produced goods. Currently, USDA offers voluntary labeling. However, a mandatory program should have been implemented by September 2004. In 2003, the House of Representatives included a provision in its *Agriculture Appropriations bill* barring the Secretary of Agriculture from implementing the mandatory COOL program. Senate Democrats are leading the effort to reinstate COOL.

**Bovine Spongiform Encephalopathy (BSE- Mad Cow Disease).** Last year, Canada announced a confirmed case of BSE. Accordingly, USDA halted all cattle, beef, sheep and goat imports from Canada until further notice. Secretary Veneman has since announced that USDA will no longer prohibit the importation of hunter-harvested wild ruminant products intended for personal use, and will begin to accept applications for import permits for certain products from Canada. Senate Democrats have urged the Secretary not to lift the ban until she can ensure that it is lifted in a manner that does not adversely impact domestic cattle markets, including tribal producers.

## *Land*

**Fee To Trust.** Tribally owned land can be put into trust, that is, held by the federal government for a particular tribe and, therefore, taken off the local tax rolls. Land purchased by a tribe is not automatically put into trust. A tribe must apply with the BIA to enter land into trust. For a brief step-by-step description of the established process to enter land into trust, known as a “Fee-to-Trust Acquisition,” please see “Indian Trust Land: Fee to Trust/Payment in Lieu of Taxes” on page 33. The process varies slightly depending on whether the acquisition was mandated by Congress or whether the land lies within or outside of reservation boundaries.



# Health Care

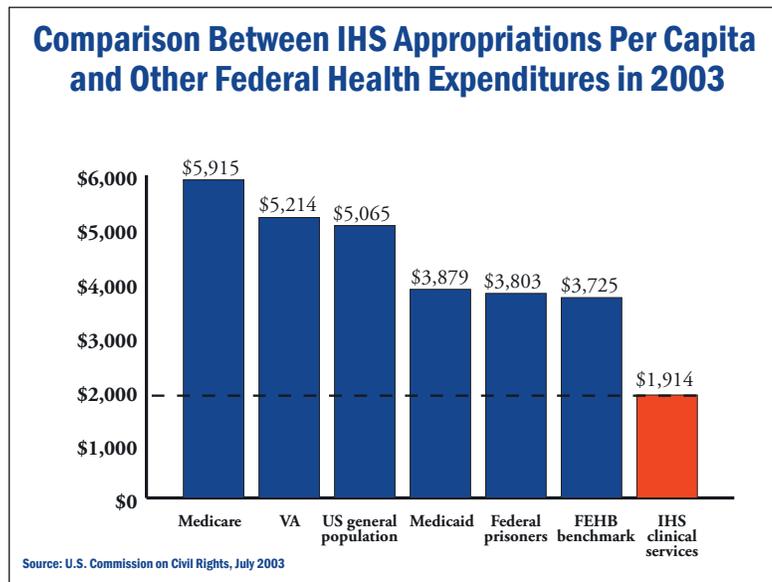
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There is a serious health care crisis in Indian Country, affecting over four million Native Americans. According to a study conducted by the Indian Health Service (IHS), in 2003, Native Americans had a diabetes rate which is 249 percent higher than average, a tuberculosis rate 533 percent higher than average, and an alcoholism rate 627 percent higher than average.

Native Americans born today suffer a disproportionate occurrence of disease and have a life expectancy six years below the U.S. average. For example, the life expectancy for men on the Pine Ridge and Rosebud reservations in South Dakota is lower than all but one other country in the Western Hemisphere (Haiti has the lowest life expectancy for men).

Approximately 60 percent of Native Americans rely on the IHS to provide for their health care needs, yet funding for IHS has not



kept pace with medical inflation and population growth. As a result, IHS services are underfunded, and patients are routinely denied care. For many critical services, patients are subjected to a literal “life or limb” test; their care is denied unless their life is threatened or they risk immediate loss of a limb. Care is denied or delayed until their condition worsens and treatment is costlier or, all too often, comes too late to be effective.

Federal per capita funding for Indian health is only \$1,914, about half the allotment of federal per capita funding for health care for federal prisoners. The chart below illustrates the disparity between per capita IHS spending and federal health expenditures for other groups.

Senate Democrats, led by Indian Affairs Committee Vice Chairman Inouye, will continue to fight for additional funding as Congress moves to consideration of the *Fiscal*

*Year 2005 Interior Appropriations bill.*

**Indian Health Care Improvement Act.** Senate Democrats will push for enactment this year of legislation (S. 556) to reauthorize the *Indian Health Care Improvement Act*, the key authorizing legislation for determining how the federal government provides health care services to Native Americans. Republicans have delayed the consideration of this bill for four years, in part because of cost concerns raised by the Bush Administration.

**Indian Health Service Funding Issues.** In each of the last four years, Democrats, led by Senate Democratic Leader Daschle, have offered amendments during the annual budget and appropriations processes to increase IHS funding at least enough to allow the IHS to provide basic clinical health services—both directly and through contracts with other providers—to the current IHS user population. In 2001, the Senate passed by voice vote a Daschle amendment to the Fiscal Year 2002 budget resolution to increase IHS clinical services by \$4.2 billion, but the funding increase was eliminated in the Republican-controlled conference committee.

In 2002, the Senate Budget Committee, then under Democratic control with Senator Conrad as the Chairman, added \$1 billion to the *Fiscal Year 2003 budget resolution*, but Senate Republicans effectively blocked the resolution.

In 2003, Senator Daschle introduced an amendment to increase this same account by \$2.9 billion in *Fiscal Year 2004* was defeated by a narrow two-vote margin, with all Republican Senators voting against it. The Senate subsequently adopted by voice vote a Republican alternative to increase IHS funding by one-tenth of that amount, \$292 million. Again, the Republican-controlled conference committee dropped the funding in the final bill. During consideration of the *Fiscal Year 2004* Interior Appropriations bill, Senator Daschle, joined by Senators Murray, Bingaman, and others, offered an amendment to increase IHS clinical services by \$2.9 billion. When that amendment was defeated, Senator Daschle offered an amendment to provide the \$292 million increase Senate Republicans had supported earlier in the year. Senate Republicans blocked even that minimal increase they had originally proposed. In 2004, Senate Republicans defeated an amendment to increase the *Fiscal Year 2005* IHS clinical services budget by \$3.4 billion.

**Contract Health Providers.** In addition to hurting Native American patients, the lack of IHS funding has a severe impact on the broader rural community, including the budgets of non-IHS facilities and providers throughout the nation. Indians routinely are referred to many non-IHS hospitals with the understanding that IHS will pay for the services. But provision of these services depends on the availability of funds, the severity of illness, and residence within a defined Contract Health Service Delivery Area. All these factors together mean that the non-IHS facilities are less likely to receive payment for the services they provide Indian patients. Ambulance services are particularly affected by this policy. Some IHS hospitals rely on rural ambulance services to transport patients, but they do not always have the funds to reimburse the provider for the transportation it gives to Indian patients.

**Urban Indian Health Programs.** Many Native Americans have moved to urban areas in an attempt to escape the poverty and high unemployment rates often found on reservations. Federal policy promoted this relocation during the 1950s and 1960s. Today, about 60 percent of Native Americans live in urban areas. There are 34 Urban Indian Health Centers that provide culturally appropriate health services to these Native Americans, including primary care as well as outreach and referral services. These centers receive funding from IHS as well as other government and private sources. According to the National Council of Urban Indian Health (NCUIH), insufficient funding is limiting the health services available to urban Indians. The NCUIH estimates a funding shortfall of \$1.5 billion, which is allowing IHS to serve only about 16 percent of eligible urban Indians.

**Diabetes.** The Special Diabetes Program Initiative at the Indian Health Service funds treatment and prevention programs for American Indians and Alaska Natives, whose diabetes rate is 249 percent higher than average. In 2002, Senate Democrats supported legislation that secured funding for this program at an increased rate of \$150 million per year through 2008.

**Native Veterans' Health Care.** Senate Democrats are committed to making sure that the Department of Veterans Affairs (VA) and the IHS offer the necessary services to our nation's Native veterans, including transportation and affordable prescription drugs. Native veterans with diabetes who were potentially exposed to Agent Orange in Vietnam have access to VA health benefits and disability compensation as a result of enactment of the *Agent Orange Act of 2001*, introduced by Senators Daschle and Kerry.

**GAO Investigation of IHS Clinical Services.** Senators Daschle and Dorgan have asked Congress's investigatory arm, the Government Accountability Office (GAO), to investigate the delays and denials of health care that Native Americans experience as a result of inadequate federal funding. Democrats hope the GAO report, which is expected to be completed by early next year, will help convince opposition in Congress that this "quiet crisis" must be addressed by fully funding the Indian Health Service.

**Bicameral Democratic Minority Health Bill.** Senate and House Democrats, led by Leaders Daschle and Pelosi, have introduced joint legislation (S. 1833/H.R. 3459) to identify and address health disparities experienced by racial and ethnic minorities. The bill would guarantee adequate funding for the IHS by making IHS health care an entitlement and would authorize new programs to improve health care services for Native Americans.

**Bush Administration on Health Disparities.** Senate and House Democrats have criticized changes that the Bush Administration made to a recent report on the health disparities encountered by racial and ethnic minorities including Native American communities. The changes—in language, examples used, and the report's conclusions—reflected an attempt to underestimate

the problem. Health and Human Services Secretary Tommy Thompson acknowledged that his office had been wrong to make these changes.

**Medicare and Prescription Drugs in Indian Country.** While many Senate Democrats had serious concerns about the final version of last year's Medicare legislation, and voted against final passage, they have noted that the bill included many provisions important to tribal communities. Provisions included in the final version of the legislation include:

- **Prescription Drug Discount Card.** Pharmacies operated by IHS and Indian tribes/tribal organizations would be able to participate in the Prescription Drug Discount Card program.
- **Prescription Drug Benefit.** Pharmacies operated by the Indian Health Service and Indian tribes/tribal organizations would be eligible to participate in the network of pharmacies established by an eligible entity offering a Medicare Prescription Drug Plan under the new Part D.
- **Limitation on Charges for Contract Health Services.** The bill would establish a Medicare-like rate cap on the amount hospitals are able to charge IHS and tribal health programs for inpatient care purchased under the IHS Contract Health Services program. The program is modeled on programs operated by the Departments of Defense and Veterans Affairs.
- **IHS Reimbursement for Supplemental Medical Insurance, Part B, not currently covered.** The bill would require Medicare to cover durable medical equipment, ambulance services, glaucoma screening, and other services that IHS hospitals and clinics previously could not bill Medicare for.
- **Coverage of Telehealth.** Facilities designated as "originating sites" for telehealth purposes would be expanded to include seven additional types of facilities, including those operated by the IHS, Indian tribes, and tribal organizations.
- **Loan Forgiveness.** The Secretary of Health and Human Services would be able to provide loan forgiveness packages to qualifying hospitals that have outreach programs for cancer prevention, early diagnosis, and treatment.

**Dental shortage.** Largely due to the lack of access, Indian populations have greater rates of dental caries (i.e., the decay of a tooth or bone). The GAO found that Indian children, ages 2 to 4 "have five times the rate of dental decay that all children have." Indian children ages 6 to 8 have twice the rate of caries, and the rate of untreated dental decay is often two to three times higher than for their white counterparts. Senator Daschle has introduced the *Dental Health Provider Shortage Act* (S.2740) a legislative solution to the dental benefits shortage, which includes retention bonuses for dentists and dental hygienists to remain at IHS facilities.

**Tribal Nursing Homes.** Currently, the Indian Health Service is not authorized to build or operate nursing homes and other long-term care facilities. This issue is being debated during consideration of the reauthorization of the *Indian Health Care Improvement Act*. IHS may be willing to expand its work in this area, but the agency is hesitant to add long-term care to its mission, since it currently lacks adequate funds to meet its existing responsibilities. Even if IHS funds eventually can be found to construct a facility, there is the question of providing annual operating funds.

Many tribes have expressed an interest in operating their own nursing homes to address this shortfall. Tribal nursing facilities would have to be funded through Medicare and Medicaid, which would mandate state involvement in the funding and managing of each nursing home. This raises many concerns with states that are already facing severe budget crises. Senator Daschle has proposed legislation in the past that would amend the Medicaid regulations to allow facilities that are licensed by their tribe to also receive Medicaid payments.

**Fetal Alcohol Syndrome.** With an alcoholism rate in Indian Country 627 percent higher than the national average, Native Americans are at especially high risk for Fetal Alcohol Syndrome Disorders (FASD)—a lifelong, yet completely preventable set of physical, mental, and neurobehavioral birth defects. In 2000, Senator Daschle led a bipartisan coalition to pass legislation providing \$25 million for a comprehensive Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effects (FAE) program at the Department of Health and Human Services and for the creation of a National FAS Task Force.

The FAS and FAE program is funding prevention and much-needed treatment assistance for individuals with FASD and their families. This funding has supported programs across the country including the Four-State Fetal Alcohol Syndrome Consortium, which serves FASD programs in South Dakota, North Dakota, Minnesota and Montana. Their successes include a direct intervention demonstration program that provided 465 women with support services to keep them from drinking alcohol during their pregnancy. Senator Daschle has introduced a FASD bill that includes assistance for FAS children on Indian reservations.

**Sudden Infant Death Syndrome.** A recent Aberdeen Area Indian Health Service Infant Mortality Study identified protective and risk factors associated with Sudden Infant Death Syndrome (SIDS). The study noted that alcohol consumption by women of childbearing age (especially during pregnancy), maternal and environmental tobacco exposure during pregnancy, and pregnancy by women under the age of 20 increase the risk for SIDS. Nationwide, SIDS rates for infants of American Indian mothers were 2.6 times those of non-Hispanic white mothers. Last year, Senator Daschle secured an additional \$2 million in the Senate-passed *Labor-HHS Appropriations bill* for the Office of Minority Health to reduce SIDS disparity rates and provide risk reduction education to African American and American Indian populations.

**Sexually Transmitted Diseases.** Senator Daschle secured \$1 million in the Senate-passed *Fiscal Year 2004 Labor-HHS Appropriations bill* for a competitive grant program administered by the Centers for Disease Control (CDC). The program will bolster American Indian reservations ability to screen for and treat sexually transmitted diseases (STDs) as well as provide education on this matter. American Indian populations have seen an alarming increase in STD prevalence in recent years. A screening, treatment and education program, administered by tribal health organizations and/or local health care providers, on reservations with high rates of STD infections will help prevent a corresponding increase in the prevalence of HIV.

**West Nile Virus.** Senate Democrats have continuously asked the Director of the CDC to address the West Nile Virus problem. In the *Fiscal Year 2004 Labor-HHS appropriations bill*, Senator Daschle offered an amendment to increase funding for the West Nile virus, which is affecting the Native American population in western states. This amendment created a set-aside for tribes who have expressed concern about their ability to access funds given to the state. Unfortunately, the amendment was defeated.



# Education, Welfare Reform & Children

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## *Education*

Indian schools are a cornerstone of the federal trust responsibility. Native American students are guaranteed the right to an education by treaties, executive orders, and statutes. Indian education encompasses tribally-operated Head Start programs, Bureau of Indian Affairs (BIA) schools, private and parochial schools, public schools on Indian lands, urban Indian learning centers, and tribal colleges. U.S. educational policy in Indian country has had a troubled past, but is now moving in the right direction, with tribal educators assuming more control of Indian education. Senate Democrats support efforts to promote culturally appropriate, lifelong learning opportunities, to provide safe, secure schools, and to encourage the development of quality Indian educators to teach on reservations and in urban communities.

**Elementary and Secondary Education No Child Left Behind Act.** The President signed the *No Child Left Behind Act* (NCLB) in January 2002. NCLB extended the promise of standards-based education reform to all children. The goal of NCLB was to set higher expectations for all children, and demand better results from all schools, including BIA schools. In exchange, the federal government was to provide schools and communities the resources needed to meet the new standards. The President has broken his promise to all of America's children by underfunding NCLB. The President proposes to underfund NCLB by \$9.4 billion for the next fiscal year. Since he signed NCLB, President Bush has proposed three federal budgets, which would have shortchanged NCLB by a total of \$26.5 billion.

Senate Democrats have tried to remedy the President's continual underfunding of NCLB by proposing an amendment to the Republican Budget resolution to fully fund these important programs. The Murray-Kennedy amendment would have provided the resources to:

- Improve training for 200,000 teachers
- Hire an additional 100,000 teachers
- Fund after-school care for an additional 1.4 million children
- Help improve over 25,000 schools that are not making adequate progress.

Unfortunately, Republicans defeated this amendment on March 10, 2004.

**NCLB Implementation in Indian Country.** Most Native American children attend public schools, but a substantial number attend the 185 schools operated by the Bureau of Indian Affairs. Schools funded by the BIA have some of the lowest levels of student achievement in the country. Public schools that serve significant numbers of Indian students are likely to receive funding through the Department of Education's Impact Aid program. BIA schools are primarily funded through the Department of the Interior, although they receive some funding through set-asides in programs administered by the Department of Education. The most important of these is Title I of NCLB, which provides funding for the most disadvantaged students.

Children in both public and BIA schools are subject to the requirements imposed under NCLB. Public schools are responsible for aligning their curricula, training their teachers, and administering state-designed tests to measure achievement. The BIA, in consultation with tribes, is responsible for setting goals to achieve Adequate Yearly Progress as required under the law. To meet Adequate Yearly Progress (AYP) requirements in reading and math, schools must have a certain percentage of students at the proficient and advanced levels.

Under NCLB, all public and BIA students in the United States must be proficient in reading and math by 2014. To achieve this goal, schools must work to close achievement gaps and make sure all students, including ethnic groups, economically disadvantaged students, students with disabilities, and limited English-proficient students, achieve academic proficiency. In addition to the academic requirements, each elementary and middle school must maintain a minimum attendance rate of 94 percent and each high school must maintain a minimum graduation rate of 90 percent. Schools and districts not meeting these goals are placed on alert status and schools or districts failing to meet the objectives for two consecutive years are identified for school improvement.

Many schools served by the BIA that have been labeled as “needing improvement” have also found that the additional funding and technical assistance to help them correct their problems and help their children achieve have been slow to materialize. Indian educators report that guidance regarding the development and implementation of improvement plans has often been unclear and inconsistent. In addition, funding from the Department of Education has been late. In fact, this year, many schools received their Title I funding as late as January, more than halfway through the school year. Delays of this kind make it even more difficult for schools to provide quality services.

Democrats recognize the great need for educational reform in general, especially in Indian country. However, to be effective, such reforms should be guided and directed by Indian educators. Indian educators need the flexibility to design and implement improvements, standards, and strategies that fit the unique educational needs of Indian students. Additional research is also needed about culturally sensitive educational strategies and techniques that are effective in Indian communities.

**School Construction.** One of the main obstacles to Indian education is the lack of adequate funds to construct new schools and repair those already established. Too many BIA schools lack adequate facilities. Many have actually been declared unsafe. Because of insufficient funding, however, schools that urgently need to be repaired, upgraded or even replaced are placed on a priority list and it can take more than 10 years for many schools to be funded. The BIA estimates that the backlog in education facility repair and replacement construction is \$1 billion. In addition, the school replacement application and construction processes are lengthy and cumbersome, diverting already limited resources away from tribal schools.

Despite this, the President’s 2005 budget actually proposed to cut funding for BIA school construction. Supporting these schools is a federal trust obligation. Senator Johnson, joined by Senators Daschle and Murray, introduced the *Indian School Construction Act* (S. 594) to provide \$200 million in school construction bonds to help finance school replacement projects at schools funded or run by the BIA. Purchasers of the bonds would receive a federal tax credit in lieu of interest on the bond. This mechanism has been used successfully to support school renovation in the Qualified Zone Academy bond program.

Senator Johnson’s bill also would create a \$30 million federal escrow account to provide funds, managed by experienced bond trustees, to be invested to pay the principal on tribal school construction bonds. This provision would not only help reduce the BIA’s construction backlog, but it would also encourage financial institutions to establish relationships with tribes. Senators Daschle, Johnson, and Murray worked with the Indian Affairs Committee to include the bill in the Foreign Sales Corporation bill (FSC), S.1637, which passed the Senate on May 11, 2004.

**Teacher Qualifications and Training.** The *No Child Left Behind Act* requires that by the end of the 2005-2006 school year all newly hired teachers and those teaching core subjects be “highly qualified.” This means that public elementary and secondary school teachers have obtained full state certification or passed the state teacher licensing examination; hold a license to teach in the state; and have not had a certificate or license requirement waived under emergency, temporary or provisional conditions.

These requirements have the potential to place an undue financial burden on teachers and districts. Many schools, particularly smaller districts and those in remote, reservation areas, are concerned that they will have a difficult time attracting and retaining highly qualified teachers, especially at the high school level, where teachers often have to teach several different subjects. NCLB does provide districts funding to recruit and train teachers, however, the President has proposed to freeze those funds in his budget this year.

**Impact Aid and Public Schools on Indian Lands.** Impact Aid provides resources to public schools whose tax base is reduced because of federal activities, including the presence of an Indian Reservation. (BIA-funded schools do not receive Impact Aid.) Many public school districts residing on Indian lands and serving a significant number of Native American students receive much-needed assistance through this program. Although funds have been restored to this program in recent years, it is still significantly underfunded.

**Reorganization of the Bureau of Indian Affairs (BIA).** In a clear violation of the government-to-government relationship between tribal nations and the federal government, the Bush Administration is attempting to reorganize the BIA without sufficient consultation with tribes. Indian educators are very concerned about the impact reorganization will have on the Office of Indian Education Programs. Specifically, they are concerned about current proposals to reduce or completely reassign education line officers, the individuals responsible for overseeing BIA funding for local school districts, and give the Secretary of Education the authority to close or consolidate BIA-funded schools without the consent of tribal governments.

These proposed changes could negatively impact the level of service provided to many schools, making it more difficult for them to meet the requirements of NCLB. In addition, NCLB clearly states that tribes have the right to approve the closing or consolidation of BIA-funded schools. The Department of Education should construct and conduct an inclusive consultation process with tribes on what is needed to improve BIA schools.

**Early Childhood Development Tribal Head Start.** Head Start provides early childhood education and services, including health, nutrition, social and behavioral development, for low-income preschool children and their families. This program has been extremely successful in Indian Country, but improvements are still needed. Increased funding for transportation services, professional development, training, technical assistance, and upgrading Head Start facilities would help to bolster the program in Indian Country.

Despite its documented success, President Bush has made two attempts to undermine Head Start during this Administration. Many tribal Head Start and Indian education organizations joined Senate Democrats in opposing and successfully defeating the President's ill-conceived proposals to block grant Head Start funding to states, which would likely result in less tribal control. The President also proposed to shift the program from the Department of Health and Human Services to the Department of Education, which could elevate the academic component of Head Start at the expense of the developmental and health services that are a key part of the program. The federal government must recognize tribal sovereignty when making proposals to change programs that serve tribal communities.

**Higher Education and Tribal Colleges.** Though only in existence for the last 30 years, tribal colleges and universities (TCUs) have arguably done more to improve the quality of life on reservations than any other institution by providing opportunities for lifelong learning and creating an educated workforce. Today, there are 34 tribally controlled universities and universities throughout the nation. Before the tribal college movement began, only six or seven out of every 100 Native American students attended college and even fewer received a degree. Studies now show that 91 percent of 1998 tribal college and university graduates are working or pursuing additional education one year after graduating.

Since tribal institutions are located on tribal lands and have culturally relevant curricula, often focused on a tribe's particular philosophy, culture, language and economic needs, they have a high success rate in educating Native American people. The unemployment status of recently college educated Native Americans is substantially lower, 15 percent, compared to 55 percent on many reservations overall. In addition, many tribal colleges and universities serve a significant number of non-Indian students, proving to be an asset to surrounding reservation communities as well.

**Higher Education Act.** Congress will work to reauthorize the *Higher Education Act* (HEA) during the 109th Congress. Tribal colleges will push to include the following provisions in the reauthorization:

- Simplify the process of applying for federal institutional support for TCUs;
- Increase the budget authorization levels; and
- Make sure Native American students have fair access to TRIO and campus-based student aid programs like work-study.

The HEA provides two key funding streams for TCUs. Title III, Part A, Section 316, “Strengthening Tribal Colleges” (P.L. 105–244) provides funds to support basic enhancements to infrastructure, faculty, and curriculum, and provide vital services. The *Tribally Controlled College or University Assistance Act* (P.L. 95–471) provides funding for institutional operations. Funding for institutional operations is one of the most critical issues for the nation’s TCUs. Increased funding is essential to address the growing need for technical assistance; the need to keep pace with the mounting research, data collection, and assessment needs; and escalating reporting and accountability requirements.

**Strengthening and Expanding TCU Infrastructure and Construction.** The nation’s tribal colleges and universities are trying to expand their opportunities for infrastructure and facilities construction. Many of these colleges have limited classroom space and no student/faculty housing or student recreation facilities. Insufficient funding for TCU infrastructure remains a critical problem, especially given the record student enrollment TCUs are now experiencing.

Senate Democratic Leader Daschle has been leading an effort (joined by other Senators with tribal colleges in their states) to obtain approximately \$15.5 million total in four spending bills (Labor-HHS, VA-HUD, Defense, Agriculture) for facilities improvement, repair, and computer equipment. Since *Fiscal Year 2001*, these funds have made college campus expansions across Indian Country possible.

**Teacher Recruitment and Retention.** Senator Daschle has introduced the *Tribal Colleges and Universities Teacher Loan Forgiveness Act* (S. 378) to provide loan forgiveness to individuals who commit to teach for up to five years in one of the 34 tribal colleges nationwide. Individuals who have Perkins, Direct, or Guaranteed loans may qualify to receive up to \$15,000 in loan forgiveness. Senate Democrats are working to add this program, which will provide TCUs help in attracting qualified teachers, to the HEA bill.

Senate Democrats recognize that TCUs are the hubs of their communities. They provide educational opportunity, workforce development, and empowerment of Indian people through advancement and self-determination. TCUs have paid significant dividends in terms of employment, education, and economic development in Indian Country. Senate Democrats are committed to continuing to bring quality education to thousands of Native Americans and making a significant investment in these important institutions.

## ***Welfare Reform in Indian Country***

The incidence of poverty in tribal areas is twice as high as poverty in the U.S. population as a whole. Twenty-six percent of Native Americans have extremely low incomes, and 12 of the top 50 poorest counties in the U.S. have significant Indian populations. In 1996, Congress enacted the *Personal Responsibility and Work Opportunity Act*, which established the *Temporary Assistance for Needy Families (TANF)* program and made fundamental changes in federal welfare programs. Among its more significant provisions, it required able-bodied parents to engage in work activities to qualify for cash welfare payments. For the first time, it gave tribes the option to receive TANF funds to run their own welfare programs. More than 30 tribes are now running TANF programs.

**Tribal TANF.** TANF is up for reauthorization. The President has proposed to make a number of controversial changes including:

- Increasing the work participation requirements for parents from 30 to 40 hours. Mothers with children under the age of 6 would be required to increase their work effort from 20 to 40 hours.
- Reducing the number of activities, including education and training, that would count as work.
- Providing no new funding for child care despite significant increases in work requirements.

The House has passed a bill that largely tracks the President’s proposal. The Senate Finance Committee has passed a more moderate bill. The Senate bill authorizes—but provides no actual funding—to help tribes increase their capacity to run TANF programs.

The National Congress of American Indians (NCAI) describes welfare reform as a vehicle for strengthening tribal families, protecting the interests of tribal children, promoting family self-sufficiency, substantially reducing dependence on public assistance, and developing economically prosperous and culturally thriving tribal communities. NCAI supports shifting the focus

from promoting marriage to reducing child poverty and increasing family income, strengthening the safety net for low-income working families, increasing TANF funds to facilitate job promotion and retention, and providing comprehensive transition services. During the Senate Finance Committee markup, Senate Democrats fought to strengthen TANF by offering amendments that would have increased funding for child care and other work supports.

Last year, Senators Baucus, Daschle, and Johnson introduced the *American Indian Welfare Reform Act*, a bill specifically designed to improve assistance for Native Americans. That bill includes provisions to strengthen the ability of tribes to deliver social services and to fund economic development on reservations. Floor consideration of the TANF reauthorization will provide another opportunity to improve the provisions affecting Native American communities.

## ***Children's Issues***

**Child Welfare.** During the period from about 1870 to 1970, the federal government removed Indian children from their homes and placed them in off-reservation boarding schools, often hundreds of miles away. This was done to purge children of their native language and culture and to “civilize” them. A popular credo of the time was “Kill the Indian, save the man.” To this day, Indian children suffer some of the highest rates of abuse, neglect, victimization, poverty, and out-of-home placements.

Unfortunately, the child welfare systems serving many children in tribal areas are inferior to the systems serving non-reservation children, due to inequities in federal child welfare laws. When children are placed in state-run foster care, the federal government, through Title IV-E of the *Social Security Act*, provides funds to foster families to assist with the cost of food, shelter, clothing, daily supervision, and school supplies. Additionally, states receive funding for administrative training and data collection.

Native American children who are placed in foster care by tribal courts do not receive the type of foster care, adoptive services, and assistance to which all other income-eligible children are entitled. Some tribes have entered into agreements with their states to run IV-E programs, but these arrangements are the exception. While states receive federal money for administration and training, most tribes receive no funding from the states to train tribal social workers and foster and adoptive parents. The tribal community supports S. 331, a bipartisan bill introduced by Senator Daschle to allow tribes to be treated like a state when they choose to run their own IV-E programs. The bill would extend Title IV-E entitlement protections to children placed by tribal agencies in foster and adoptive homes as well as authorize tribal governments to receive direct funding from the Department of Health and Human Services for administration of approved IV-E programs.

The Administration has proposed to allow states to choose to receive “flexible funding” for foster care. As part of this proposal tribes would be provided with \$30 million in block grants for child welfare programs, but they would still not have access to the same options as state governments. States could either opt into a new, capped foster care program or continue to access the current open-ended foster care and adoption assistance program. Under the Administration’s proposal, tribes would only have access to capped funding for foster care.

**Domestic and Family Violence.** The Department of Justice reports that American Indians experience higher rates of domestic violence and related crimes than other racial groups. The prevalence of unemployment and alcoholism are large contributing factors to this problem. Because of the stigma associated with domestic and family violence and the lack of understanding among law enforcement and other parts of the legal system, these crimes go unreported and unprosecuted. Senators Daschle, Leahy, and Biden have worked in recent years to help address the issue of family violence by supporting passage of the *Violence Against Women Act* and providing funding for domestic violence shelters, child advocacy centers, and visitation centers. The *Violence Against Women Act* is up for reauthorization this year and will likely have an expanded tribal role in the next Congress, especially for child advocacy.

**Fetal Alcohol Syndrome.** Fetal Alcohol Syndrome (FAS), which is 100 percent preventable, disproportionately affects Native Americans. The Four-State Fetal Alcohol Syndrome Consortium has made tremendous strides in coordinating resources and information across a large region to reduce the condition and its effects. The Consortium is located at the University of South Dakota Medical School and serves FAS programs in South Dakota, North Dakota, Minnesota, and Montana. Consortium

successes include a direct intervention demonstration program that provided 465 women with support services to keep them from drinking alcohol during their pregnancy. The *Substance Abuse and Mental Health Services Act* (SAMHSA), which provides funding for this project, will expire this year, and Congress is expected to reauthorize it in the 109th Congress.



# Housing, Infrastructure & Economic Opportunity

*A Special Report Prepared by:*

*Democratic Policy Committee*

*Democratic Steering and Coordination Committee*

*Office of Senate Democratic Leader Tom Daschle*

It is difficult to overstate and understand the full extent of the economic challenges facing American Indians and Alaska Natives throughout Indian Country. By virtually any measure, economic conditions on most American Indian reservations and Alaska Native villages are among the worst in the nation. Many of the poorest counties in the nation are within Native reservations.

Like other rural areas across the nation, the challenge of stimulating economic development involves many interrelated issues. While these challenges are difficult for rural areas, they are even more vexing for Indian Country, where extreme poverty, inadequate infrastructure and a lack of access to capital make even the most rudimentary economic development efforts seem daunting.

## *Housing*

Lack of adequate housing is one of the most pressing community development issues in Indian Country. While there are many reasons for the lack of adequate housing on Indian Reservations, there is one dynamic—the difficulty in obtaining a mortgage—that relates to both the underlying housing problems and broader economic development issues.

Much Indian land is held in trust by the federal government and cannot be conveyed by the Tribe or members for any transaction unless approved by the Secretary of the Interior. This limitation makes it extremely difficult to obtain a mortgage on trust land. Not only is it much tougher to get a mortgage, but it is also more difficult to tap into home equity or borrow against trust holdings for new business ventures. In fact, several small business studies have found that home equity is one of the major sources of capital for small business start-ups. The BIA has sought to speed up the time it takes to approve the paperwork necessary to obtain a mortgage on trust land, but this continues to be a persistent, structural barrier to economic development on tribal lands.

The *Native American Housing Assistance and Self-Determination Act* (NAHASDA), first passed in 1996, is the preeminent federal program that provides housing assistance to low- to moderate-income families on Indian reservations. The project has been a success across Indian Country, and for this reason Senate Democrats played an integral part in the reauthorization of the bill through 2007. The purpose of NAHASDA is to improve the delivery of housing assistance to Indian tribes in a manner that recognizes the right of tribal self-governance. The original bill created an independent Indian housing program, which distributes grants directly to individual tribes. The tribes are authorized to create housing authorities to assist in the implementation of the program. Since original passage, NAHASDA has helped speed up the construction of new homes and has proven the ability of the tribal housing committees to do what is best for the individuals they serve. The new homes created through this program are an important investment in the future of tribal communities.

## *Tribal Infrastructure*

While America is known for its extensive and strong infrastructure, tribal communities lack even the most basic infrastructure, such as transportation, telecommunications, water and sewer.

**Transportation.** By some estimates, only half the families on Indian reservations own—or have ready access to—an automobile. In urban areas with public transportation, this is commonplace. In rural areas, a round-trip to work—or to the doctor or a grocery store—is at least 50 miles. Hitchhiking is commonplace.

Public transportation is extremely limited in Indian Country, and is largely non-existent. Very few tribes have any type of public bus system, although a few rural areas have limited service for the elderly and disabled. Senate Democrats included in the *SAFETEA highway bill* provisions for transit start-ups.

Paved roads are less common on the reservations than throughout much of the state. Existing roads frequently carry residents to non-native, off-reservation communities for shopping and services, rather than fostering transportation within reservation boundaries. Tribal road funding is generally limited to a modest BIA account.

The Senate-passed *SAFETEA transportation bill* includes increases for Indian Reservation Roads, first time funding for Indian bridges, tribal transit funds, tribal safety and seatbelt provisions, and other key improved provisions to address tribal infrastructure that is vital to building tribal economies.

**Telecommunications.** While most communities in America are searching for ways to enhance broadband Internet access, much of Indian Country still lacks basic telephone service. Many tribal members cannot report a fire or medical emergency, let alone leave a phone number to be contacted for a job interview. Some efforts have been made to provide wireless service, but coverage continues to be spotty at best. Internet access is uncommon.

Senator Inouye introduced the *Native American Connectivity Act* (S. 2382). This legislation would establish a Native American telecommunications block grant program within the National Telecommunications and Information Agency that would award tribes, tribal organizations, tribal colleges, or other institutions acting in conjunction with an Indian tribe, competitive grants for the development of telecommunications capacities in Indian Country.

**Water and Sanitary Systems.** Many tribal members do not have clean drinking water or adequate sanitary facilities. In many communities, the wastewater treatment facilities are leaking or overloaded, and they threaten to contaminate the drinking water supply.

Senate Democrats are working to address the issue of safe drinking water as part of the *Water Resources Development Act* reauthorization, and also funding provision enacted in the *2002 Farm bill*.

## ***Economic Development***

**Legal Issues.** Many legal issues are especially important with regard to economic development and deserve specific mention within the context of economic development on Indian reservations.

**National Labor Relations Board (NLRB) Ruling.** In May 2004, the NLRB overturned 30 years of its own precedent and ruled that it has jurisdiction over tribal government enterprises located on tribes' own sovereign lands in San Manuel Indian Bingo and Casino, 341 NLRB No. 138 (May 28, 2004). The *National Labor Relations Act* expressly exempts states, cities, and local governments from its coverage, and the NLRB has ruled that territorial governments, such as Puerto Rico and Guam, are also exempt from NLRB jurisdiction. If this decision stands, the only governments that will be subject to NLRB jurisdiction will be tribal governments.

**Improving Tribal Judicial Systems.** Uncertainty with regard to tribal laws and regulations and the lack of an independent tribal judiciary are often cited by non-tribal investors as one of the main reasons they refuse to commit capital to otherwise worthy investments on reservations<sup>1</sup>. Some tribes have taken the unique step of adopting the Uniform Commercial Code (UCC) in the hopes that it will give outside investors more comfort regarding the tribe's judicial system.

**Stability of Tribal Government.** Because tribal governments are such large players in tribal economies, a change in administration can have dramatic economic effects on the reservation. One recent controversial case in South Dakota involved the Rosebud Sioux Tribe and Bell Farms. The new tribal administration reversed its previous decision to allow Bell Farms to operate a hog confinement facility after the facility was constructed. This case has been brought to federal court, and an appeal is pending. Outside private investors are leery of partnering on reservations wary whether agreements and contracts will be honored by tribal leadership.

**Inalienability of Tribal Land.** Tribal land is largely held in trust by the federal government and is inalienable; individuals are not allowed to sell or encumber the land without permission from the Department of Interior. The obvious impact of this legal structure is that most Indians aren't able to utilize their most valuable asset for economic development purposes. Economist Hernando De Soto has done extensive work in this area, demonstrating that an inability to utilize land as an asset has been a major impediment to economic growth for most third-world countries.<sup>2</sup> Although his work does not directly examine the role that trust status plays in tribal economies, it does raise interesting issues that may shed light on tribal economic development efforts.

**Financial/Tax Issues.** Most American Indian and Alaska Native tribes have extremely poor financial infrastructures. There are many barriers to capital on the reservation, ranging from technical or physical barriers to cultural ones. There are few banks in reservation communities, and, as a result, it is extremely difficult to obtain credit or conduct routine financial transactions. This poor financial infrastructure has a profound impact on the ability of tribal communities to support economic development. Not only does it make it more difficult to access capital, but it also makes it difficult to access even the most basic financial services. Take, for example, the effect the financial infrastructure has on transaction processing and how it relates to credit. Because most non-traditional income earners use cash for all their transactions, they often don't have any credit history established when it comes time to apply for a loan. Senate Democrats are urging the Senate Banking Committee majority to hold an oversight hearing on banking and lending in Indian Country to further examine this issue.

**Microloan Funds.** One of the more promising developments regarding tribal financial institutions has been the emergence of community development loan funds. These institutions, which receive support from the Treasury Department's Community Development Financial Institutions (CDFI) Fund, provide microloans (usually under \$25,000) business planning assistance and other technical support to tribal entrepreneurs. Although these institutions don't provide the broad array of services that a typical community bank would, they serve an important role in Tribal communities.

**New Markets.** In the *JOBS bill*, Senator Daschle worked to include a Tribal New Market Tax Credit which would expand the existing New Market Tax Credit Program by authorizing \$50 million in tax credits for people who make capital investments on Indian reservations with poverty rates over 40 percent. These tax credits, which would be awarded through competitive application process run by the Department of Treasury, would provide investors the incentives they need to invest in reservations, and they would help create jobs that otherwise would not exist.

**Tribal Tax-Exempt Bonding.** Under current law, Tribes may issue tax-exempt bonds under limited circumstances. Tribes may issue exempt bonds for (1) essential governmental functions (an activity customarily performed by states and local governments); and (2) bonds to finance the acquisition, construction, reconstruction or improvement of a manufacturing facility that is owned and operated by a government body. Senator Daschle worked with the Indian Affairs Committee to include a proposal which would permit Tribes to issue tax-exempt bonds for (1) essential governmental functions; and (2) for facilities constructed on a reservation. This proposal brings tribes more in line with other government bodies with respect to their ability to issue exempt bonds, and provides an important tool for economic development on the reservation.

**Extension of the Indian Employment Credit.** Under current law, employers receive a credit equal to 20 percent of the wages and health insurance costs incurred employing qualified individuals living on reservations. The provision expires December 31, 2004. The Senate-passed *JOBS bill* would extend the provision.

**Accelerated Depreciation on Indian Reservations.** Under current law, property on Indian reservations depreciates faster than in other places. This provision is set to expire on December 31, 2004. The Senate-passed *JOBS bill* would extend the provision.

## ***Economic Opportunities***

**Tribally owned Businesses.** Many Tribes have developed tribally owned businesses as a means to create job opportunities on reservations. For example, the InterTribal Bison Cooperative (ITBC) has been instrumental in rebuilding tribally owned bison herds on Indian reservations. In 1991, the ITBC began with only 7 tribes and 1,500 bison. In 1999, after only 8 years, the ITBC had expanded to 48 tribes, with 9,000 bison in 16 states. The ITBC's efforts have not only restored a national treasure, but have brought significant economic benefits to participating tribes. In areas with some of the highest unemployment in the nation, hundreds of jobs have been created.

**Entrepreneurship.** As with economic development efforts in general, the barriers to starting a successful small business on the reservation are high. Yet, some people have been able to do it. Encouraging more tribal members to pursue entrepreneurial opportunities is a goal that should be kept in mind, but much work remains to be done, especially with regard to the financial infrastructure, before entrepreneurship promotion can become a viable long-term development strategy.

Several tribal business support organizations have been developed in recent years, most notably the tribal Chambers of Commerce. Senate Democrats believe these organizations can play an important role in supporting and encouraging tribal entrepreneurship.

**Federal Contracting.** The weak economy has caused many businesspeople to look to opportunities to do business with the federal government. Tribes are no different. The process for gaining access to this tremendous market, however, is complicated and daunting. General technical resources—such as the Small Business Administration (SBA) and various websites—are available, but these resources generally do not have the expertise to address issues related to specific agencies.

**Tourism.** Many western states have long relied on tourism as a major component of their economy. There has been some discussion of developing tourism opportunities that highlight Indian culture. International travelers and bus tours have been identified as high potential sources of increased visitation. Tribal people, however, are concerned about the potential commercialization of their culture and rituals.

**Tribal Colleges.** Tribal Colleges have become important institutions in Indian Country. In addition to providing quality educational opportunities, tribal colleges have also become important economic institutions. They are quickly becoming an alternative to tribal governments in developing for-profit ventures and providing employment for tribal members.

**Gaming.** Although it has not had consistent impact across all of Indian Country, gaming is an important source of revenue for tribes. Gaming compacts with the state limit the size and scope of operations. Since 1988, tribes have used their gaming resources to supplement tribal programs, and have used these funds for community enhancement of surrounding reservation territory. Although gaming has not been a panacea, it has allowed tribes to leverage resources to help diversify their tribal economies.

## ***Endnotes:***

1. “The Report of the Native American Lending Study,” p. 4, CDFI Fund, November 2001.
2. De Soto, Hernando, *The Mystery of Capital*. New York: Basic Books, 2000.



# Justice, Law Enforcement & Homeland Security

## *A Special Report Prepared by:*

*Democratic Policy Committee*

*Democratic Steering and Coordination Committee*

*Office of Senate Democratic Leader Tom Daschle*

Jurisdictional issues in Indian Country are among the most intractable issues Congress encounters. Many tribal people feel that states should have no legal jurisdiction over them, and many non-Indians living within or near reservation boundaries are resentful of any exposure to tribal jurisdiction. Because of the “checkerboard” jurisdiction in many areas (non-Indian communities on state land within the exterior boundaries of a reservation), this situation has become increasingly complicated. In addition to jurisdictional complications, inadequate funding for tribal law enforcement is also a recurring issue.

## *Law Enforcement*

**Racial Profiling.** Racial profiling has been persistent in and around Indian country for many years, and continues to undermine the relationship between law enforcement and the community, as well as the ability of law enforcement to do its job effectively. In fact, many Indians now question the motives for any police action taken against them.

For these reasons, the Senate has been working diligently to develop legislation that would balance the need for strong law enforcement with the importance of racial sensitivity. While separate legislation has not yet been introduced, Senate Democrats included language in the *Equal Rights and Equal Dignity for Americans Act of 2003* that expressed the Senate’s support for legislation to ban racial profiling.

**Disparities in Sentencing.** It is well documented that minorities often receive harsher sentences than their white counterparts, and this is certainly true for much of Indian country. There are a number of reasons for these disparities, including institutional racism, lack of access to legal services, and fear of engaging in the legal system. These issues are hard to address comprehensively in Congress because of the separation of powers between the judicial and legislative branches of our government. Yet, the problems remain, and Congress must work to address them in any way possible.

**Prison Issues.** Prison conditions are a growing concern nationwide, including within the Native American community. The Senate recently passed bipartisan legislation on the issue of prison rape—the *Prison Rape Elimination Act of 2003*. This statute provides for the analysis of the incidence and effects of prison rape in federal, state, and local institutions, as well as information, resources, recommendations, and funding to protect individuals from prison rape. Freedom to practice native religions in prison also continues to be of concern.

Because of the steadily growing Native American population, and general increases in both the frequency and severity of crimes on many reservations and within urban areas, these problems will only continue to escalate. In an effort to improve conditions in prisons that house Native American prisoners, a group of Democratic Senators wrote to the Senate Appropriations Committee earlier this year in support of adequate funding for the construction of tribal prison facilities.

**Juvenile Justice.** The Department of Justice (DOJ) issued a report that found many states out of compliance with existing federal guidelines for treatment of juvenile offenders, thus removing their federal grant eligibility. As a result, many state legislatures are passing laws that would bring them back into compliance.

Among other things, the federal statute requires that states address whether minority juveniles are confined at a greater rate than other youth. Preliminary information suggests that Indian juveniles are arrested and incarcerated at a disproportionately high rate compared to white youth. Various federal programs—for example, DOJ’s Juvenile Accountability Incentives Block Grant

(JAIBG) program—have been helpful in addressing problems in the juvenile justice system. However, the President continues to underfund or eliminate programs that would provide much-needed resources for prevention, rehabilitation, and after-school activities.

**Drugs.** The Administration has made international drug traffickers its highest priority in the war on drugs and, accordingly, has proposed requiring High Intensity Drug Trafficking Area (HIDTA) grant applicants to demonstrate a link to international drug trafficking in order to qualify for funding under the program. This could have a negative impact on anti-drug efforts in rural and tribal communities, since most drugs in these areas are produced in labs at home, such as methamphetamine, with no ties to international drug trafficking. Senate Democrats continue to oppose the Administration's proposal to require HIDTA regions to demonstrate a link to international drug trafficking in order to qualify for funding. (Senator Daschle has introduced the Rural Safety Act, which contains provisions to assist with methamphetamine prevention, treatment, and clean-up efforts.)

**Rural Law Enforcement.** Senate Democrats have supported a number of initiatives during the 108th Congress that would provide assistance to both state and federal law enforcement. Senator Daschle introduced the *Rural Safety Act*, which would authorize grants to rural communities to help them retain officers, purchase crime-fighting technology, improve access to 9-1-1 services, and establish juvenile justice programs. This legislation also contains provisions to improve training programs for rural law enforcement, and provides a set-aside for tribal communities.

**Tribal Policing and Law Enforcement.** Tribal law enforcement is in a state of crisis. The jurisdiction of a typical tribal police department covers a sparsely populated area the size of Delaware (or larger), and is patrolled by no more than three officers—and as few as one—at any given time. Some have extremely high per-capita crime rates. Officers are generally high school and law enforcement academy graduates; a slight majority are Native American. They are forced to be generalists, making it difficult to focus on the special needs of the populations they serve (such as alcohol abuse, substance abuse, and domestic violence). In addition, they face a complex web of jurisdictional issues; for example, they may be able to arrest someone on one side of the road, but not the other.

Data suggests that tribes have far fewer resources than non-tribal communities, while, at the same time, they experience a violent crime rate more than double the national average. Furthermore, tribal communities have a much smaller police-to-citizen ratio than communities with comparable policing needs. Complicating matters, many tribal communities have an antagonistic relationship with tribal law enforcement officials. Because of the lack of resources, many law enforcement officials are unable to perform their jobs effectively, strengthening the perception that the police are unmotivated or corrupt. In addition, evidence suggests that many young people who train for careers in law enforcement return less respectful of the local tribal customs and traditions, thus complicating—and even creating—problems that could easily be solved using traditional tribal dispute resolution techniques. As a result, many tribal leaders are advocating for the creation of their own culturally appropriate tribal law enforcement training centers.

**Homeland Security.** Last year, Senators Inouye and Campbell introduced their version of tribal provisions to the *Homeland Security Act* (S. 578). While most of the bill is non-controversial, there is one major controversial provision. Section 13 of S. 578 would legislatively reverse a U.S. Supreme Court decision (*Nevada v. Hicks*) that has had the effect of limiting or eliminating the sovereign power of Indian tribes to exercise civil, criminal and regulatory jurisdiction over non-tribal members on Indian lands for national security purposes. This provision has raised serious concerns both from non-member Indians and non-Indians who do not want another tribe to have jurisdiction over them, and from tribes who feel they currently do not have the resources to assume these responsibilities.

**PATRIOT Act.** The *PATRIOT Act* has been controversial as a result of the broad powers it provides the federal government for investigations and prosecutions related to terrorism. Since its passage, Senate Democrats have joined a number of advocacy organizations to question certain provisions of the Act and implementation of the Act by Attorney General Ashcroft. Several bills have been introduced in both the House and the Senate to scale back provisions affecting civil liberties and personal privacy. However, in a speech last fall, President Bush reiterated the Administration's intention to push legislation that would further expand the government's authority under the *PATRIOT Act*, including: 1) authorizing the death penalty for certain additional terrorist acts; 2) allowing a judge to deny bail in some terrorist cases; and 3) allowing DOJ to issue administrative subpoenas (DOJ would not have to go to a judge first).

**Domestic and Family Violence.** DOJ reports that American Indians experience higher rates of domestic violence and related crimes than other racial groups. However, because of the stigma associated with the issue, and the lack of understanding among law enforcement and other parts of the legal system, these crimes largely go unreported and un-prosecuted.

Senators Daschle, Leahy, and Biden have worked in recent years to help address the issue of family violence by supporting passage of the *Violence Against Women Act*, and providing funding for domestic violence shelters, child advocacy centers, and visitation centers. The *Violence Against Women Act* is scheduled to be reauthorized next year, and the reauthorization language will likely include an expanded tribal role, especially with respect to child advocacy.

**Child Sexual Assault.** From about 1870 to 1970, the federal government removed Indian children from their homes and placed them in boarding schools, often hundreds of miles away. This was done to purge them of their native language and culture, and to “civilize” them. A popular credo of the time was, “Kill the Indian, save the man.” Tragically, many of the teachers and staff attracted to these remote schools were pedophiles. While attending these boarding schools, many Indian children were sexually abused by their teachers and other school staff.

As a result, many victims of this sexual abuse suffered from mental disorders and alcoholism. In addition, some victims became sexual predators themselves, passing the problem from one generation to the next, cycles which have been difficult to break.

To deal with part of the individual, collective, and intergenerational damage felt by victims and their families, there is a nationwide campaign to seek acknowledgement by and restitution from the individuals and institutions responsible for the assaults. Hundreds of lawsuits have been filed. Tribal people and their supporters in Congress are working to address the needs of victims and stop these cycles of abuse. Next year, Congress will consider the reauthorization of the *Indian Child Protection and Family Violence Prevention Act*.

## **Legal**

**Supreme Court to Review White Mountain Apache and Navajo Nation.** At the request of DOJ, the Supreme Court has granted review of the *White Mountain Apache* and the *Navajo Nation* cases and, in an unusual decision, has agreed to join the cases for back-to-back arguments when the Court begins its new term in October. DOJ has briefed the Supreme Court on these issues, arguing that large Indian trust claims could endanger the U.S. Treasury, and asked for rulings limiting the right of Indian Tribes to sue on such breach of trust cases to circumstances where Congress intended to create a “private right of action” to sue the United States for damages. In recent years, the Supreme Court has restricted such “private rights of action,” making it difficult for individual citizens to sue the federal government. DOJ wants to use this doctrine to limit Indian trust cases.

In addition, DOJ has emphasized in its briefs that when the United States has different duties at issue, such as providing for administrative office space at the White Mountain Apache reservation, those must be taken into account in determining the appropriate standard of conduct for the federal government in a claim of breach of trust due to injury to the trust assets. In other words, where the federal government “wears more than one hat,” Indian tribes cannot expect the undivided loyalty of a private trustee.

***White Mountain Apache v. United States (2001).*** In 1960, the federal government turned over Fort Apache, a 7,500-acre former military post, in trust to the tribe, “subject to the right of the Secretary of the Interior to continue to use” the property for administrative or school buildings. White Mountain Apache Tribe has sued the United States because the Secretary has continued to use many of the buildings for BIA purposes and they have fallen into disrepair. About \$14 million was at stake. However, in the spring of 2003, the Supreme Court ruled in favor of the White Mountain Apache, thereby creating a precedent allowing tribes to sue the federal government for money damages arising out of violations of its trust obligations.

***Navajo Nation v. United States (2001).*** In this case, the Navajo Nation brought suit against the Secretary of the Interior for breach of fiduciary duties owed to the Nation with respect to leases of trust land for coal mining. The Nation alleges that the Department of the Interior concealed a favorable BIA ruling on coal leases, resulting in the negotiation of a lower royalty rate. Over \$600 million was at stake; however, the Supreme Court ruled in favor of the U.S.

**Trust Responsibility: Cobell Litigation.** In *Cobell v. Norton*, individual Indian money (IIM) account holders have sued the Secretary of the Interior for an accounting of the IIM trust funds held by the Secretary, and the Department of the Interior has made clear that it is unable to conduct such an accounting. This case has caused Justice and Interior much concern, as evidenced by the Secretary of the Interior's proposed controversial reorganization plan and Administration efforts to add a rider to the *Fiscal Year 2003* and *Fiscal Year 2004 Interior Appropriations bills* to cut off IIM claims that arose before 1985. However, on September 25, 2003, a U.S. District Court ruled in favor of the plaintiffs, and directed Interior to conduct a full historical accounting of specific accounts.

Unfortunately, the Bush Administration and the House Republican leadership successfully added a controversial rider to the *Fiscal Year 2004 Interior Appropriations bill*. This provision essentially halted the *Cobell* case and directed the Court how to construe existing law (a violation of the constitutional separation of powers).

**Legal Services.** Concerns have frequently been raised about the limited, or often nonexistent, access to free or reduced-cost legal services for Native Americans. The Legal Services Corporation (LSC) provides high-quality legal assistance for persons who would otherwise be unable to afford legal counsel. LSC's programs serve clients with cases concerning housing, family law, income maintenance, consumer issues, and employment. LSC maintains an Indian Legal Services program.

Unfortunately, Congressional Republicans' severely cut federal investments in the LSC in the 1990s. As a result, in recent years, nearly half of all people who applied for assistance from local LSC programs have been turned away. In each of the past two Congresses, Senator Daschle has included a provision in his Democratic leadership bill on civil rights that addresses this shortfall and would restore the funding for LSC to its pre-1994 level of \$400 million.

## *Judicial*

**Judicial Nominations.** The President's nominations to the federal bench increasingly affect Indian tribes and organizations. Federal courts have jurisdiction over issues such as the *Major Crimes Act*, land-into-trust, environmental issues, and sacred sites. The recent debate over William G. Meyers III, a Bush nominee for the Ninth Circuit Court of Appeals, was strongly opposed by national Indian organizations that, previously, had never issued formal positions on judicial nominations. This trend will likely continue, particularly if a vacancy opens on the Supreme Court.

**Tribal Courts.** To be effective in combating the increase in violent crime, law enforcement improvements in Indian country must be combined with equally important prevention, suppression, and intervention programs. Offenders may be arrested, but tribes frequently lack adequate court systems to prosecute them in a timely manner. In *Fiscal Years 1999 and 2000*, Congress funded a Tribal Courts Project administered by the Office of Justice Programs' Bureau of Justice Assistance, which has provided grants for the development and enhancement of tribal courts.

Strong tribal court systems can respond rapidly to crime with graduated sanctions, and can prevent the escalation of minor criminal activity to violent crime, which ultimately becomes the responsibility of the federal criminal justice system. Federal Judge William C. Canby, Ninth Circuit Court of Appeals recognized this fact, stating: "We in the federal and state judiciary could not do without [the tribal courts]...A disappearance of the tribal court system would be a major disaster, not just for the tribes and their courts, but for our whole national system of civil and criminal justice." Without adequate funding, the current backlog in tribal court dockets will continue to rise.



# Indian Trust Land: Fee To Trust/ Payment in Lieu of Taxes

## *A Special Report Prepared by:*

*Democratic Policy Committee*

*Democratic Steering and Coordination Committee*

*Office of Senate Democratic Leader Tom Daschle*

Tribal land ownership, and the process of putting tribally owned land into federal trust is an oft misunderstood process. Just because a tribe purchases land does not mean the land is automatically put into trust. A tribe must apply with the Bureau of Indian Affairs (BIA) to enter land into trust. Since lands placed into trust are no longer taxable by the local, county or state government, there is often some opposition by local governments when a tribe purchases land.

The following is a brief step-by-step description of the established process for entering land into trust, known as a “Fee-to-Trust Acquisition.” The process varies slightly depending on whether Congress mandated the acquisition, and on whether the land lies inside or outside of reservation boundaries.

### **Fee to Trust Acquisition.**

1. A tribe that wishes to transfer land into trust must submit a request in writing to BIA on its reservation. The land must be owned free and clear of any mortgages or debts to be eligible. Under Title 25, Section 151.10, of the Code of Federal Regulations, the superintendent is required to “notify the state and local governments having regulatory jurisdiction over the land to be acquired.” The local entities have 30 days from receipt of the application to file written comments on the acquisition. The applying tribe is given a “reasonable time” in which to respond to the local entities’ comments.
2. The superintendent is required to evaluate several specific criteria before making a decision, including whether the tribe needs the additional land, for what purpose they intend to use it, the impact on the state and local governments, and other factors. According to BIA officials, loss of tax revenue by itself is not a sufficient reason to block the placement of land into trust. Local entities need to show that the loss would have a detrimental effect on them.
3. The superintendent then either approves or denies the request to put into trust. All interested parties are notified of their administrative appeal rights. Both the applicant and impacted entities have the right to appeal, depending on which way the decision goes. The first appeal is to the BIA Regional Director. The Director reviews the case and determines whether or not the superintendent’s decision should stand. If the Regional Director sides with the superintendent, the impacted party may appeal to the Board of Indian Appeals. The land will remain on the tax rolls during the entire appeal process and will not be entered into trust until all appeals are exhausted.
4. Once the administrative appeal process has ended, the superintendent determines the status of the title to the land, and whether the tribe owns that title. The tribe must own the land free and clear of all mortgages, debts, or liens prior to it being entered into trust.
5. Once the title review is completed, the superintendent publishes in the Federal Register, or a “newspaper of general circulation serving the affected area,” that the land will be placed into trust in 30 days. The decision is subject to judicial review, which means that affected entities can file suit in U.S. District Court in opposition to the transfer. The lawsuit must be filed within the 30-day period. If a lawsuit is filed, the process is halted until the court reviews the case. The court then reviews the case, after which further judicial appeals can be made. Land is not placed in trust until the courts make a final determination.

**Payment In Lieu of Taxes (PILT).** Some counties with many acres of non-taxable Indian lands within their boundaries have supported adding Indian lands to the list of lands eligible for PILT. The complexity of the PILT formula makes it very difficult to calculate the consequences of such a move, for both authorization and appropriation levels. Congress would have to decide what type of “Indian lands” would be eligible for such payments as well as a variety of other complex issues.

The many classifications of “Indian lands” include trust lands, restricted lands, and fee (private) lands, both on and off reservations.

- Trust lands are lands held by the federal government in trust for an Indian tribe or individual.
- Restricted lands are lands held by an Indian tribe or individual but subject to federal restrictions on alienation (e.g., sale) or encumbrance (e.g., mortgaging). Most, but by no means all, Indian trust and restricted lands are on Indian reservations. Trust and restricted lands, whether on or off reservations, are not subject to state or local land taxes.
- On-reservation Indian fee lands may or may not be subject to state and local land taxes, depending on the federal statute under which the land was fee-patented.
- Off-reservation Indian fee lands are generally subject to state and local land taxes. (Indian reservations may also include non-Indian fee lands, which are subject to state and local taxation.)
- Alaskan Native corporation lands (none of which are trust lands) are affected by the *Alaska Native Claims Settlement Act's* limits on state taxation.

Congress would have to decide which of these many classifications of Indian lands would be subject to PILT benefits. Further, Congress might choose to distinguish between Indian lands that have never been taxed by a county or state and Indian lands that were once taxable but that were given non-taxable status after some specified date.

Once the eligible categories are determined, Congress may wish to limit payments to counties with more than some minimum percentage of Indian lands within their borders. However, even a very restrictive definition of “Indian lands” seems likely to add millions of acres to those already eligible. If the criteria for eligibility were to be fixed, it would still be difficult to determine the effect on authorization levels. In an extreme example, if all of the Indian lands were in counties whose PILT payments were already capped due to the population ceiling, inclusion of Indian lands would have no effect on PILT authorization levels.

While the effect on appropriations levels would be uncertain, past experience suggests that the full authorized amount would not be appropriated. In that case, each county would receive a pro rata share of the full authorized payment level. Individual counties whose eligible acres had jumped markedly with the inclusion of Indian lands might actually receive substantially more than in the past. However, unless appropriations increased significantly to compensate for the inclusion of millions of acres of newly eligible Indian lands, most counties would not only receive a smaller fraction of the authorized amount, but some (those with few or no eligible Indian acres) might actually receive fewer total dollars than in the past. If Congress were to appropriate the full authorized payment, no county would be hurt by the inclusion of Indian lands.



# Criminal Jurisdiction in Indian Country

## *A Special Report Prepared by:*

*Democratic Policy Committee*

*Democratic Steering and Coordination Committee*

*Office of Senate Democratic Leader Tom Daschle*

The United States Constitution, treaties, federal statutes, executive orders, and court decisions establish and define the unique relationship that exists between the United States and Indian Tribes. This relationship places an obligation upon the federal government to foster tribal self-determination and to act on a government-to-government basis. In criminal cases, however, federal laws vest the Department of Justice with primary jurisdiction over most cases involving felonies that occur on Indian lands.

The Federal Bureau of Investigations (FBI) and the United States Attorneys' offices are the federal law enforcement agencies responsible for investigating and prosecuting these crimes. In addition, the Bureau of Indian Affairs (BIA) provides funds for police officers and jails, and, in some limited cases, provides police officers (who are then cross-deputized as tribal officers), lends criminal investigators, and runs the jails and courts ("CFR Courts"). Tribal and state law enforcement agencies are responsible for misdemeanors that occur in Indian Country, acting as first responders, and providing assistance to federal law enforcement.

**Jurisdictional Complexities.** The *Major Crimes Act of 1885* provided federal agencies with jurisdiction over most serious offenses, which, in turn, distributed authority over criminal justice policy and management in Indian Country across many different government entities. The *Major Crimes Act* was passed in response to the Supreme Court's decision in *Ex parte Crow Dog* (1883). In *Crow Dog*, the Supreme Court held that the U.S. District Court of South Dakota lacked jurisdiction over a Sioux Indian defendant who had already been punished by his tribe for killing another Indian. Congress considered the punishment far too lenient and passed the *Major Crimes Act*. This statute mandated federal jurisdiction over many felony crimes committed on Indian reservations, including murder, kidnapping, rape, and robbery. The statute has since been amended to also cover arson, assault, maiming, larceny, receiving stolen property, manslaughter, attempted homicide, conspiracy to commit murder, and statutory rape.

**Tribal Jurisdiction over Non-Indians.** Beginning in 1978, federal courts began actively eroding tribal jurisdiction. Prior to 1978, the Supreme Court had repeatedly upheld the fundamental principle that, absent an express limitation in a treaty or an Act of Congress, Indian tribal governments have the inherent authority to govern their reservations. In 1978, *Oliphant v. Suquamish Tribe*, the Supreme Court held that Indian tribes lack inherent jurisdiction over crimes committed by non-Indians on Indian lands.

In *Oliphant*, the Court determined that tribal jurisdiction to try non-Indian criminal defendants in tribal courts was inconsistent with the dependent status of the tribes when they were incorporated into the United States. The Court stated that "[b]y submitting to the overriding sovereignty of the United States, Indian Tribes therefore necessarily give up their power to try non-Indian citizens of the United States except in a manner acceptable to Congress."

The *Oliphant* Court went on to reason that since Congress had never delegated authority to the tribes to enforce criminal laws against non-Indians, there was no legal basis for the assertion of such authority by an Indian tribe. Accordingly, in the absence of provisions of federal law that bridge the gap in law enforcement on Indian lands for homeland security purposes only, tribal governments do not have legal jurisdiction over non-Indians on the reservation.

**Criminal Justice System/Jurisdiction.** The components making up the structure of the criminal justice system in Indian Country parallel those in non-Indian communities throughout the country—police, courts, prosecutors, defense attorneys, and correctional and probation systems. However, because criminal cases in Indian Country may involve offenses that cross federal, state, and

tribal jurisdiction, most serious crimes require the involvement of the relevant U.S. Attorney's Office and the FBI. This federal involvement is markedly different from what occurs in most non-Indian communities.

On reservations, federal agencies take the lead role in the investigation and prosecution of what, in most non-Indian communities, would fall under the purview of local law enforcement. Although specific arrangements may vary from reservation to reservation, there are three key factors that determine which entity has primary jurisdiction over criminal matters in Indian Country. These factors have historically narrowed tribal jurisdiction and expanded either state or federal jurisdiction over a wide range of crimes:

1. **Where was the crime committed?** Tribal jurisdiction applies only to crimes committed in Indian Country (on trust land). All crimes committed outside of Indian Country, even if they involve American Indians as offenders or victims, fall under state or federal jurisdiction.
2. **Who committed the crime (Indian or non-Indian)?** In order for the tribe to have jurisdiction, the alleged offender must be an American Indian. However, tribal jurisdiction may not apply if the offender is not a member of the tribe that lives on the reservation where the crime occurred. Tribal jurisdiction does not extend to non-Indians, regardless of the nature of the crime or where it occurred.
3. **What crime was committed?** As a result of the *Major Crimes Act of 1885* and the *Indian Civil Rights Act of 1968*, tribes have jurisdiction over limited categories of crimes. The most serious and violent crimes—including felonies such as murder, manslaughter, arson, burglary, and robbery—fall under the jurisdiction of federal authorities. However, some tribes have exercised increased authority over the investigation and adjudication of more serious crimes.

**Impact of Shared Jurisdiction.** Aside from the obvious loss of sovereignty, the *Major Crimes Act* created a number of hurdles for Indian tribes seeking to develop comprehensive, tribally driven crime strategies—such as those that target serious youth violence, drug-related crime, child abuse, domestic violence, or sexual assault. With this statute in place, tribes are limited in their ability to implement new initiatives because they may have limited or no jurisdiction over the offense, and must coordinate with a variety of federal agencies, including the BIA, the FBI, the U.S. Attorney's Office, and the federal courts. Concerns have been raised that these constraints may limit Tribes' ability to develop effective crime-fighting strategies.