NLWJC-2006-0197-F (seg 3) Kagan

Folder: Native American Issues – General [2]

Native American - general

REPORT ON EXECUTIVE BRANCH GOVERNMENT-TO-GOVERNMENT RELATIONS WITH NATIVE AMERICAN TRIBAL GOVERNMENTS

I. Executive Summary -- The Status of Government-to-Government Relations between the United States and Tribal Governments

On April 24, 1994, President Clinton issued the Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments, which recognized the unique status of Indian tribes as governments reflected in the United States Constitution, treaties, statutes, executive orders, and judicial decisions.[1] The Executive Memorandum directs all departments and agencies, to the greatest extent practicable and permitted by law, to work with tribal governments within a framework of government-to-government relations concerning tribal government, treaty rights and trust resources.

The Executive Memorandum has fostered improved working relationships, coordination and communication between agencies and tribal governments. Several agencies have established offices, or designated staff within existing offices, to ensure that work on Native American issues proceeds within a government-to-government framework. Agency personnel receive training on the unique governmental status and rights of Indian tribes and frequently meet with tribal leaders, both in Washington and in tribal communities. Also, Cabinet officers now appear at national meetings of tribal governments to consult face-to-face with tribal leaders.

The Administration also has secured important legislation supporting Indian tribes and has successfully opposed legislative proposals that would undercut tribal self-government. For example, the White House Offices of Intergovernmental Affairs successfully coordinated Administration opposition to a recent effort to eliminate tribal sovereign immunity, and last year the President signed the Native American Housing Assistance and Self-Determination Act into law. Under the President's government-to-government relations policy, the Federal Government works with tribal governments on a basis of mutual respect.

On May 23, 1997, the White House Chief of Staff requested agency reports on the implementation of the Executive Memorandum. This report summarizes agency responses and includes recommendations to improve government-to-government relations and enhance tribal self-government.

II. Background of U.S. Relations with Indian Tribes

Before Europeans landed on America's shores, Indian nations were self-governing societies with remarkable scientific, artistic, and cultural achievements. In order the acquire land and establish peace, European nations entered into treaties with Indian nations, thereby

---

[1] Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments, 59 Fed. Reg. 22951 (1994).

CLINTON LIBRARY PHOTOCOPY

recognizing their sovereignty. Since the founding of our nation, the United States has recognized many Indian tribes as domestic dependent nations with sovereign powers over their members and territory and has entered into numerous treaties with various tribes pledging protection and guaranteeing tribal self-government.

However, throughout our history, Indian peoples have suffered when the United States has failed to recognize tribal self-governance. From 1887 to 1934 alone, Indian tribes lost almost 100 million acres of Indian lands, leaving their people destitute. Then, in 1934, President Roosevelt announced the Indian New Deal -- the Indian Reorganization Act ("IRA"). The IRA's goal was to revitalize tribal governments to help ensure that Native Americans can maintain Native languages and cultures and determine their own future. In the 1950s, Congress, under its Termination Policy, again turned away from its support for tribal self-government and removed federal recognition from so-called "advanced tribes," effectively ending their governmental functions.

In the 1960s, the Kennedy and Johnson Administrations returned to a policy of support for tribal governments by including tribes in the War on Poverty programs. By 1968, the Johnson Administration secured passage of the Indian Civil Rights Act which recognized the right of Indian tribes to self-government while securing Bill of Rights protections for people within tribal jurisdictions. In the 1970s, the Nixon Administration built on progress made in the 1960s by declaring the Indian Self-Determination Policy. Implementing legislation authorized Indian tribes to contract to perform governmental functions (such as education, health care, public safety, and transportation), that the Departments of Interior and Health and Human Services had traditionally performed. The Carter, Reagan, and Bush Administrations continued to follow the Indian Self-Determination Policy without major departure.

Yet even after these years of federal government attention to the issues of tribal self-government, many Native Americans continue to be among the poorest people in the nation. The 1990 Census reported that 43% of Native American children under five years old fall below the poverty line.

III. The Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments

The 1994 Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments was a milestone in the field of Indian affairs. By directing *all* departments and agencies to work on a government-to-government basis with Indian tribes on issues of tribal self-government, treaty rights, and trust resources, the Executive Memorandum transformed the way that the Federal Government works with Indian tribes.

In the past, American Indian issues were overlooked by some agencies because they were considered only relevant to the Department of Interior. However, as a result of the

CLINTON LIBRARY PHOTOCOPY

Executive Memorandum, several departments and agencies established American Indian offices and hired coordinators in component agencies. For example, the Department of Justice created an Office of Tribal Justice to perform department-wide coordination of Indian affairs policy, set-up an American Indian and Alaska Native desk in the Office of Justice Programs, established an Indian Country Investigations Office at the FBI, and designated Assistant U.S. Attorneys to serve as tribal government liaisons in Indian country jurisdictions.

From Agriculture to Veterans' Affairs, departments and agencies are working actively and effectively with tribal governments. Some highlights of their work include:

- The Small Business Administration's Natural Resource Conservation Service (NRCS) has established 33 full-time and 73 part-time offices at tribal headquarters to facilitate tribal access to NRCS programs.

- The Department of Energy allocated $15 million in FY97 to support Indian initiatives, including fish habitat restoration in the Pacific Northwest, cultural resource protection programs, and renewable energy projects.

- The EPA established an American Indian Environmental Office, adopted a Nine Point Plan to strengthen EPA tribal operations, and increased resources for Indian country environmental protection from $36 million in FY94 to $137 million in FY98.

- In FY95, the Department of Health and Human Services ("HHS") provided over 75 Tribal JOBS grantees a total of $8,521,220. In FY96, Tribal JOBS grantees assisted 1,250 AFDC recipients get jobs at an average hourly wage of $6.36.

- HHS's Indian Health Service transferred over $730 million in FY95 to Indian tribes and tribal organizations to support tribal health delivery programs.

- The Administration and the Department of Housing and Urban Development ("HUD") secured passage of the Native American Housing Assistance and Self-Determination Act of 1996, which promotes tribal self-government by authorizing direct block grants for Indian housing.

- The Department of Interior has instituted formal written policies requiring every bureau and office to incorporate trust protection procedures into all planning and operations.

- Since 1995, DOJ's Community Oriented Policing Services (COPS) office has made over $43 million in grants to 143 tribal law enforcement agencies to fund over 570 police officers in Indian communities.

- DOJ's Violence Against Women Office made $5.7 million in grants to Indian tribes in FY97.

CLINTON LIBRARY PHOTOCOPY

- SBA's loan dollar volume for Native American firms increased by over 50% from FY94 to FY96, rising from $52 million to $81 million.

- The Department of Transportation ("DOT") is seeking passage of the National Economic Crossroads Transportation Efficiency Act, which would require states to consult with tribal governments in developing transportation improvement plans, and would provide a modest increase to $200 million annually for Indian reservation roads.

- The VA has opened three American Indian "Vet Centers" on Indian reservations to provide counseling and other services.

As these programs demonstrate, the Executive Memorandum has revitalized the nation's respect for Indian tribes as "domestic dependent nations" and renewed its commitment to honor the treaty pledges that guarantee tribal self-government.

IV. Recommendations

A. General

Based on information supplied by the Agencies, we suggest several recommendations to improve government-to-government relations and enhance tribal self-government:

1. Department Policies on Government-to-Government Relations.

All departments and agencies (including GSA, SBA, State, and Treasury), that have not adopted a formal policy to implement the Executive Memorandum should consider adopting such a policy.

2. Regulations and Operating Manuals.

Departments and agencies should consider whether to incorporate their specific policies on government-to-government relations into their regulations and operating manuals.

3. Staff Assignments and Coordination.

Departments and agencies should designate intergovernmental affairs or other central office staff with the responsibility for coordinating agency implementation of the government-to-government relations policy. Departments and agencies should coordinate Internet websites on Indian issues and scheduling of major tribal meetings. The White House Office of Intergovernmental Affairs should host periodic interagency meetings of designated agency staff to coordinate tribal government issues that affect several agencies. For example, drug and alcohol abuse in Indian country is of concern to the Office of National Drug Control Policy, HHS, HUD, Interior, Justice, and Treasury.

CLINTON LIBRARY PHOTOCOPY

4. Existing Authority.

Departments and agencies should periodically review their programs and operations to ensure that they are effectively exercising existing authority to promote government-to-government relations and support tribal self-government. For example, DOD might review its Indian business development incentives programs and its surplus property programs to ensure optimal assistance to Indian tribes under existing statutory authority; Interior might consider applying its Buy Indian Act authority to all component agencies; and all agencies should implement the Indian employment and training requirements of § 7(b) of the Indian Self-Determination Act.

5. Authorizing Legislation

Departments and agencies should review authorizing legislation, and where appropriate, should seek amendments to ensure treatment of Indian tribes as governments and to remove impediments to working directly and effectively with Indian tribes. For example, DOT might review its authorizing legislation to ensure that its scenic by-ways program comports with government-to-government relations; Labor might review FLSA and OSHA to ensure that Indian tribes are treated as governments; and FEMA might review its authorizing legislation to consider whether an amendment would enable it to work more directly and effectively with tribal governments.

6. Confidential Tribal Communications

The Administration might consider whether to seek an amendment to the Freedom of Information Act (FOIA) to ensure that when Indian tribes communicate confidential information to the United States within the framework of government-to-government relations, the confidential tribal government information is exempt from disclosure under FOIA.

B. Initiatives to Support Tribal Governments

1. Education.

Given the Administration's emphasis on education in general and the unique Federal responsibilities to promote Indian education, the Administration and the Department of Education should consider efforts to restore funding to Indian education programs that have been cut and to enhance educational programs on Native American languages and cultures. Working with GSA, the Department of Education might consider avenues to enhance the transfer of computer technology to elementary and secondary schools on Indian reservations.

2. Economic Development.

An important goal of the longstanding Federal Indian Self-Determination Policy is

CLINTON LIBRARY PHOTOCOPY

economic self-sufficiency for Indian tribes, yet despite recent gains made by a small number of tribes, many reservation Indians continue to suffer in conditions of economic deprivation. BIA labor statistics indicate that unemployment rate on some of the large, remote Indian reservations in the West exceeds 50%. The Departments of Agriculture, Commerce, Defense, HHS, HUD, Interior, Justice, and Treasury and the Small Business Administration should consider holding an interagency summit to plan an economic development initiative for depressed areas of Indian country.

3. Indian Children and Youth

Early child care and intervention programs present the greatest opportunity for assisting Indian tribes in promoting healthy tribal communities. This is a critical area of work because, as noted above, the 1990 Census reported that 43% of Native American children under age five fall below the poverty line and there is a growing disparity in the health status of Indian children and youth compared to other American youth. HHS is developing an interagency initiative for Indian children and youth to promote the physical, mental, social, economic and environmental well-being of Indian children and youth.

4. Indian Country Law Enforcement.

Given the significant concerns about rising crime rates on reservations, the Department of Justice, in cooperation with the Department of Interior, is considering steps to enhance law enforcement in Indian country. The Administration should continue to support these efforts.

5. Tribal Courts

As a complement to efforts to enhance law enforcement in Indian country, the Departments of Interior and Justice are considering steps to enhance tribal courts, which are central institutions of tribal government that have been historically under-funded. The Administration should support these efforts.

6. Indigenous Rights

The United Nations ("U.N.") has declared 1994-2004 at the Decade of Indigenous Peoples. Currently, the U.N. and the Organization of American States ("OAS") are considering declarations on the rights of indigenous peoples. These efforts represent important standard setting exercises, reflecting many of the positive principles of federal Indian law, and offer the Administration a historic opportunity to promote understanding and respect for the rights of Native Americans, indigenous peoples in the Americas and indigenous peoples throughout the world. The Administration should consider focusing attention on these initiatives to bring them to fruition.

CLINTON LIBRARY PHOTOCOPY

V. Department and Agency Reports on Government-to Government Relations with Tribal Governments

A. Department of Agriculture (USDA)

1. Policy on Government-to-Government Relations.

USDA policy recognizes that Indian tribes possess the right of self-government and the right to manage American Indian resources. USDA pledges to consult with tribal governments, share technical skills and information, and coordinate with other agencies.

2. Native American Programs Director, Office of Intergovernmental Affairs

The Director serves as USDA's principal adviser on American Indian policy and programs and the primary liaison with tribal governments; chairs USDA's Native American Working Group; and assists the Under Secretary for Rural Development with the work of the Domestic Policy Council Working Group on American Indians and Alaska Natives.

3. Improved Working Relations with Indian Tribes

The Farm Service Agency (FSA), Foreign Agricultural Service (FAS), Forest Service (FS), Natural Resources Conservation Service (NRCS), Food and Consumer Service (FCS), Rural Development (RD), Marketing and Regulatory Programs, and Office of Civil Rights have designated American Indian coordinators who serve as liaisons with tribal governments.

The FY 1996 USDA funding level American Indians and Alaska Natives programs was $146 million, the estimated FY 1997 program level is $189 million, and the anticipated FY 1998 program level is $212 million. These funds support USDA initiatives for food and nutrition assistance, rural development loans and grants, extension, and conservation practices.

USDA is conducting outreach efforts to tribal governments and communities to ensure that they have access to its programs. USDA is publishing a *Guide to USDA Programs for American Indians and Alaska Natives*. For the first time, the *Agriculture Fact Book 1997* includes a summary of highlights of recent activities and programs in USDA mission areas which serve Indian tribes and their members. FS recently published the *Forest Service National Resource Book on American Indian and Alaska Native Relations* to promote cooperative relations with Indian tribes. FSA, FAS, NCRS, the Animal and Plant Health Inspection Service (APHIS) and the Risk Management Agency (RMA) are implementing a 5-year joint outreach effort with the Intertribal Agriculture Council to increase awareness of USDA services available to tribal communities.

NRCS has established 33 full-time and 73 part-time offices at tribal headquarters and

CLINTON LIBRARY PHOTOCOPY

plans to locate an additional 47 full-time offices at tribal headquarters during the next 2 years. NRCS has conducted 20 "Working Effectively with American Indians" workshops in 10 states; these sessions focus on historical, legal, and cultural issues that are significant for effective program delivery to American Indians and Alaska Natives.

USDA has increased emphasis on economic development and programs in tribal communities. RD, working at the national, State, and local level to provide financial and technical assistance directly to tribal governments, has increased investments in tribal water and waste programs, housing, community facilities, and business projects. RD also adopted a policy acknowledging tribal government authority to apply Tribal Employment Rights Ordinances in certain contracts and grants on Indian reservations.

FCS administers the Food Distribution Program on Indian Reservations (FDPIR) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and, in many instances, Indian Tribal Organizations deliver services to program participants. In consultation with tribal leaders and tribally appointed FDIPR Directors, USDA modified the FDPIR food package to improve its nutritional value and increase its appeal, without increasing its costs, and initiated and expanded the FDPIR Fresh Fruit and Vegetable Pilot Project (FFV), under which fresh produce is available to tribes. FCS worked with American Indian WIC advisers to develop an award winning fetal alcohol syndrome prevention video.

The Cooperative State Research, Education, and Extension Service (CSREES) works with the 29 designated Land-Grant Tribal Colleges to provide an annual award to strengthen instruction programs in the food and agricultural sciences and to disburse the interest from an endowment fund to each of these institutions. USDA's new Tribal Colleges Extension Program, established in October 1997, will support training and education in production agriculture, business management, community and family development, 4-H and youth leadership, natural resources and conservation, nutrition, diet, and health.

APHIS has founded its Native American Working Group to improve communication and delivery of services to Indian tribes, and enters into Memoranda of Understanding or cooperative agreements with Indian tribes to provide a wide variety of services to protect resources and human health and safety.

The Office of Civil Rights sponsored education programs for USDA staff and tribal representatives on building partnerships with tribal governments and on tribal realty and land management. USDA recently published the *Civil Rights at the United States Department of Agriculture, A Report by the Civil Rights Action Team*, which contains recommended actions, including Indian-specific recommendations, which USDA will implement to remedy its long-standing civil rights problems.

CLINTON LIBRARY PHOTOCOPY

4. Coordination with other Executive Departments and Agencies

USDA works in partnership with DOD to implement the FDPIR Fresh Fruit and Vegetable Pilot Project. DOD serves as USDA's project procurement agent and delivery service. FCS and Health and Human Services' Indian Health Service entered into a Memorandum of Understanding to coordinate issues of mutual interest, share resources and information, and resolve concerns and problems. USDA works with Justice on tribal self-government and tribal lands issues and with Interior to maximize the delivery of USDA programs and services to American Indians and Alaska Natives.

5. Current Initiatives to Support Tribal Self-Government

a. Rural Housing Native American Pilot Loan Program

RD's Rural Housing Service has a pilot program with Fannie Mae and several Indian tribes under its Section 502 Guaranteed Rural Housing loan program to improve home financing on Indian reservations.

b. Tribal Conservation Districts

Indian tribes have the option of establishing Tribal Conservation Districts under tribal law. A Tribal Conservation District provides guidance to American Indian farmers and ranchers regarding USDA program assistance to Indian tribes and assists NRCS in implementing USDA conservation programs. NRCS has established relationships with 15 Tribal Conservation Districts; two additional agreements are in the development phase.

B. Department of Commerce

1. Policy on Government-to-Government Relations

The Commerce Department's policy recognizes the inherent sovereignty of Indian tribes and their right to self-government. It also acknowledges the trust responsibility, commits to a government-to-government relationship, and directs Commerce agencies to remove impediments to working with Indian tribes and to promote the tribes' economic economic development and self-sufficiency.

2. Office of the Secretary

A senior policy advisor in the Office of the Secretary serves as the primary liason between Commerce and tribal governments. This advisor also coordiantes the activities of several tribal liasons designated by component agencies.

CLINTON LIBRARY PHOTOCOPY

3. **Improved Working Relationships with Indian Tribes**

The Census Bureau is working with Indian tribes to increase the participation of Native Americans in the 2000 Census. They are asking tribes to designate tribal officials to work directly with Census personnel and are planning a Census 2000 rehearsal at the Menominee Reservation.

Though the Economic Development Administration ("EDA") grant programs have been substantially reduced, within its resources, the EDA has established the Indian Planning Program (IPP) to support tribal formulation and implementation of economic development programs. IPP is intended to help create and sustain full-time permanent jobs for Native Americans, with a focus on those who are unemployed or underemployed. Currently, sixty tribes receive IPP funding.

The Minority Business Administration at Commerce has established an Office of Native American Programs, with eight Native American Business Development Centers and a business consultant, that provides management and technical assistance to Native American businesses.

The National Oceonographic and Atmospheric Administration has a Memorandum of Understanding with the American Indian Science and Engineering Society that promotes educational, internship and employment opportunities for Native American students and professionals. The Patent and Trademark office also has several programs to improve educational opportunities for students at tribal community colleges.

Finally, the National Telecommunication and Information Administration ("NTIA") is working with Indian tribes to extend the benefits of the Internet to tribal communities. Since 1994, the NTIA has funded over a dozen model projects within Indian country. NITA is also working with over forty tribal communities to modernize public broadcasting under its Public Telecommunications Facilities Program.

4. **Coordination with Other Agencies**

On June 5, 1997, Secretary Daley and Secretary Babbitt signed a secretarial order that clarifies Commerce's responsibilities when the implementation of the Endangered Species Act affects tribal rights, trust resources or lands.

C. Department of Defense (DOD)

1. **Policy on Government-to-Government Relations**

DOD has initiated a consultation process with Indian tribes to develop a department-wide American Indian and Alaska Native policy by the close of the year. The DOD policy

CLINTON LIBRARY PHOTOCOPY

will emphasize: 1) government-to-government relations; 2) empowering tribal governments; and 3) cleaning-up Native American lands.

2. Office of the Under Secretary for Environmental Security

DOD designated the Office of the Under Secretary for Environmental Security as its primary liaison with tribal governments and the Under Secretary and her staff attend numerous tribal government consultations.

3. Improved Working Relationships with Indian Tribes

DOD is currently working with the Oglala Sioux Tribe on a technology demonstration project. This project will assist the tribe to develop the technical and management skills necessary to operate a program to remove live ordnance from a World War II bombing range located on reservation lands. DOD is also working to transfer surplus buildings to the Oglala Sioux from Ellsworth Air Force base.

DOD has consulted with tribal leaders on the development of the Range Rule (i.e., cleaning-up closed or transferred firing and bombing ranges), and will provide tribal leaders with guidelines for funding and clean-up.

4. Coordination with Other Executive Departments and Agencies

DOD participates, along with other agencies, in the DPC Working Group on American Indians and Alaska Natives, chaired by Secretary Babbitt. DOD is working with EPA and DOJ on an environmental enforcement policy for Indian country. DOD is working with DOJ and other agencies in reviewing affirmative action programs, including programs available to Native American owned firms.

5. Current Initiatives to Support Tribal Self-Government

a. Native American Mitigation Information System

This system will provide reliable information regarding the environmental, human health, and cultural impacts of DOD activity on tribal lands. Information will be available on the Internet.

D. Department of Education

1. Policy on Government-to-Government Relations

Education has not developed a specific policy on government-to-government relations, but development of a policy is planned.

CLINTON LIBRARY PHOTOCOPY

2. **Office of Indian Education (OIE)**

OIE's Director is designated as the primary liaison with tribal governments. OIE has 4 major duties: 1) Administering Title IX of the Improving America's Schools Act (IASA); 2) developing policies affecting Indian children and adults under Office of Elementary and Secondary Education programs; 3) coordinating development of policy for all Indian-related programs; and 4) assisting the Assistant Secretary of the Office of Educational Research and Improvement in identifying Indian educational research priorities.

3. **Working Relationships with Indian Tribes**

Education consults with Indian tribes through the National Advisory Council on Indian Education (NACIE), established by Congress to advise the Secretary on the funding, administration and development of policies and programs for the education of American Indians. NACIE's board is appointed by the President from a list submitted by tribal governments. In 1995, NACIE consulted with Indian tribes and prepared a report for Secretary Riley on the status of American Indian education. After consultation with the American Indian Higher Education Consortium, Education has taken important steps to implement the Executive Order on Tribal Colleges. Recently, Congress has eliminated NACIE's funding; thus, Education now funds NACIE at a reduced level from general appropriations. Over Education's objections, Congress eliminated key Indian education discretionary programs for FY96 and FY97, which compromised efforts to promote Indian educational opportunities.

4. **Coordination with other Executive Departments and Agencies**

Working with the White House Office of Intergovernmental Affairs, Education has participated in meetings with tribal government leaders at the White House. Education is coordinating with HHS on a proposed Executive or Secretarial Order on American Indian and Alaska Native Children and Youth. OIE coordinates quarterly with Interior's BIA Education programs.

5. **Key Areas for Future Development to Support Tribal Self-Government**

a. Restore funding for Indian Education Programs

Education needs additional funding for Indian education to restore important programs lost in budget cuts.

b. Executive Order on American Indian Education

Education has worked closely with NACIE and other federal agencies to develop an Executive Order to improve educational opportunities for Native Americans.

CLINTON LIBRARY PHOTOCOPY

c. American Indian Language and Culture

Indian tribes have identified a commitment to education in American Indian languages and cultures as an important priority.

E. Department of Energy (DOE)

1. **Policy on Government-to-Government Relations**

DOE policy pledges that DOE will work with tribal governments within the framework of government-to-government relations, recognizes the federal trust responsibility to Indian tribes, and pledges to remove impediments to working directly and effectively with Indian tribes. DOE has also pledged to coordinate with other Federal and state agencies on tribal issues, and to include tribal government relations in long-term planning and management processes.

2. **Office of Congressional, Public and Intergovernmental Affairs**

DOE has assigned the Office of Congressional, Public, and Intergovernmental Affairs as the primary policy office on Indian issues, and has created the position of DOE Liaison for Indian Issues within that office to guide and monitor a network of Indian issues points of contact throughout the agency.

3. **Improved Working Relations with Indian Tribes**

DOE allocated $15 million in FY97 to support Indian initiatives, including fish habitat restoration in the Pacific Northwest, cultural resource protection programs, and renewable energy projects. DOE entered into ten cooperative agreements with Indian tribes in 1997 to address health and safety issues. DOE also initiated some activities relating to the Executive Order on Tribal Colleges.

4. **Coordination with Other Executive Departments and Agencies**

DOE has coordinated with the Department of Interior and other agencies on several of its Indian country projects.

5. **Current Initiatives to Support Tribal Self-Government**

DOE is developing a handbook for Indian tribes on the implications of the restructuring of the electric utility industry that concerns the commercial and consumer interests of tribal communities.

DOE is establishing an Indian program presence on the Internet and is participating in

CLINTON LIBRARY PHOTOCOPY

the Interagency American Indian Telecommunications Infrastructure Working Group.

F. Environmental Protection Agency (EPA)

1. EPA Policy on American Indians and Alaska Natives

EPA has been a leader in the area of government-to-government relations with Indian tribes since the early 1980s. EPA policy establishes that EPA will work with Indian tribes on a government-to-government basis, recognizes Indian tribes as the primary authorities for setting standards, environmental policy decisions, and managing environmental programs for Indian reservations. EPA has also pledged to remove impediments to dealing directly and effectively with Indian tribes, included tribal government concerns in EPA policy-making decisions, and coordinated with other federal agencies to ensure compliance with federal environmental statutes and regulations in Indian country. EPA has a five-year strategic plan to actuate its policy.

2. American Indian Environmental Office

The Director of the American Indian Environmental Office serves as the primary EPA liaison with tribal governments, and coordinates EPA policy with Indian liaison officers in EPA field offices.

3. Improved Working Relationships with Indian Tribes

Since 1994, EPA has worked hard to improve working relationships with Indian tribes. EPA established a Tribal Operations Committee and American Indian Environmental Office, adopted a nine-point plan to strengthen EPA's tribal government operations, and received significant increases in EPA resources for environmental protection in Indian country.

EPA conducts quarterly meetings with its Tribal Operations Committee (TOC), which includes nineteen tribal representatives and EPA's senior leadership team. The TOC discusses implementation of joint EPA / tribal environmental protection efforts. EPA also includes tribal leaders on working groups, such as the Grand Canyon Visibility Transport Commission.

EPA has actively removed impediments to dealing directly and effectively with Indian tribes through actions such as removing the previous $15 million cap on tribal environmental protection multi-media program grants. EPA also tailors its efforts to meet unique tribal needs through the Indian Environmental General Assistance Program, which provides funding for tribes to establish, implement, and enforce environmental codes and regulations tailored to their reservation's environmental needs.

CLINTON LIBRARY PHOTOCOPY

4. **Coordination with Other Executive Departments and Agencies**

EPA has been an active participant in the DPC Working Group on American Indians and Alaska Natives, and has actively assisted other agencies, such as DOD, Agriculture and other land management agencies, with Indian environmental issues. EPA has an Memorandum of Understanding with DOI's Bureau of Indian Affairs, HHS's Indian Health Service, and HUD to address pollution control in Indian country. EPA also works closely with DOJ and DOI on environmental enforcement in Indian country.

5. **Current Initiatives to Support Tribal Self-Government**

a. Policy Implementation Team.

EPA Administrator Carol Browner has directed the formation of a team of senior managers and tribal representatives to draft implementation guidelines for EPA's Indian policy.

b. Treatment of Tribes in the Same Manner as States.

Recognizing that Indian tribes have unique characteristics, as domestic dependent nations, EPA has adopted a policy to respect Indian sovereignty by applying certain program requirements to Indian tribes in the same manner as those program requirements are applied to states.

c. Consolidation of Tribal Grant Applications.

Through the Performance Partnership Grant (PPG) program, Indian tribes may consolidate grant applications, budgets, work plans and reports to reduce administrative burdens on tribal governments.

G. Federal Emergency Management Agency (FEMA)

1. **Policy on Government-to-Government Relations**

FEMA is in the process of developing an agency policy on government-to-government relations with tribal governments.

2. **Office of Intergovernmental Affairs**

The Office of Intergovernmental Affairs is FEMA's designated liaison with tribal governments, and an experienced American Indian staff member has been hired in that office to work with Indian tribes.

CLINTON LIBRARY PHOTOCOPY

3. **Improved Working Relationships with Indian Tribes**

FEMA has established a Tribal Policy Working Group composed of representatives from Intergovernmental Affairs and regional offices, which has met with Indian tribes to consult about the proposed FEMA policy on government-to-government relations with Indian nations. As an adjunct to this effort, FEMA has increased outreach efforts to Indian tribes to promote responsiveness to tribal communities and increase awareness of FEMA program availability.

4. **Coordination with other Executive Departments and Agencies**

The Tribal Policy Working Group has worked with DOI and DOJ to learn about tribal self-government, treaty rights, and trust resources.

5. **Key Areas for Future Development to Support Tribal Self-Government**

FEMA may need to examine authorizing legislation to determine if an amendment is necessary to work more directly and effectively with tribal governments.

H. General Service Administration (GSA)

1. **Policy on Government-to-Government Relations**

GSA has not adopted a written policy on government-to-government relations with tribal governments.

2. **Office of Congressional Affairs and Intergovernmental Relations**

GSA has designated the Office of Congressional Affairs and Intergovernmental Relations as the primary GSA liaison with tribal governments.

3. **Improved Working Relationships with Tribal Governments**

GSA has been working directly with tribal governments on a number of issues:

a. Surplus and Real Property Transfers.

Under the Property Act of 1949, GSA has authority to transfer excess real property within Indian reservations to the Secretary of the Interior to be held in trust for Indian tribes. From FY92 through FY97, GSA transferred approximately 7,058 acres under this authority. In addition, GSA has authority to transfer excess personal property, and from October 1, 1996 through May 31, 1997, GSA transferred 6,727 items of personal property (pens to desks to cars) to Indian tribes with a dollar value of $31,345.

CLINTON LIBRARY PHOTOCOPY

b. Travel and Transportation Payment and Expense Control System.

Under the Indian Self-Determination Act, tribal governments may use discounted U.S. government fares for tribal government travel. GSA enters into contracts with numerous airlines for the discounted fares. Tribal government may use these contracts by first obtaining government travel charge accounts from American Express Travel Related Services, Inc.

c. Federal Telecommunications Service.

Under the Indian Self-Determination Act, when carrying out self-determination contracts, tribal governments may use GSA's long-distance rate, video, and voice telecommunications services, as well as local telecommunications and wireless services. In December 1996, a MOU between the DOI and GSA was executed which allows tribal governments to order these services directly from GSA. Since then, a number of tribal entities have signed individual MOU's with GSA to access these services.

d. Computers to Schools.

Executive Order 12999 permits Indian reservation schools (BIA schools) to obtain computers from GSA for their primary and secondary students under the same procedures available to all other educational facilities. At the time of GSA's report in August, 1997, no transfers had yet been made under this authority.

e. Sacred Sites.

GSA is preparing a memorandum for the Assistant to the President for Domestic Policy regarding implementation of Executive Order 13007, regarding Indian Sacred Sites.

I. Health and Human Services (HHS)

1. **Policy on Government to Government Relations**

HHS policy recognizes the government-to-government relationship between the U.S. and Indian tribes and the Federal trust responsibility to Indian tribes. It also encourages maximum participation by Indian people in Indian health planning and services, directs components to consult with, assess program impacts on, and remove procedural impediments to working with Indian tribes, and pledges to collaborate with other agencies to this end.

2. **Director, Office of Intergovernmental Affairs**

Until a planned tribal consultation division is established in that office, the Director of the Office of Intergovernmental Affairs is the HHS tribal government liaison. HHS has recommended that component agencies designate individual tribal points of contact.

CLINTON LIBRARY PHOTOCOPY

3. Improved Working Relationships with Tribal Governments

In both 1995 and 1996, the Administration on Aging awarded over $15 million in grants to 221 tribal organizations to provide supportive and nutrition services to tribal elders. The Administration for Children and Families (ACF) holds trainings for tribes on ACF programs and Head Start. In FY96, the American Indian Head Start Program provided $98 million to 130 grantees representing 144 Indian tribes and 8 Alaska Native Regional Corporations serving 35 villages and cities. The Administration for Native Americans (ANA) administers programs to enhance tribal economic development, environmental protection, and Native languages and cultures.

In the Office of Community Services, the Family Violence Prevention & Services Program provided $4.5 million in grants to 140 Indian tribes and tribal organizations in FY96, and the Community Services Block Grant allocation for Indian tribes to reduce poverty in tribal communities was $2.3 million in FY96. The Child Care Bureau provided $28 million in grants to 225 tribal consortia representing over 500 Indian tribes and Alaska Native Villages in child care and development block grants. The Office of Child Support Enforcement created a Native American Working Group and significantly increased its efforts in this area since the enactment of the Temporary Assistance to Needy Families Act ("TANF") in 1996.

In FY95, tribal Job Opportunities and Basic Skills (JOBS) training grantees assisted 1,250 AFDC recipients get jobs at an average hourly wage of $6.36. **JTPA** and JOBS held numerous consultations and provided technical assistance to tribes around the country. The Office of Family Assistance administers the JOBS and in FY96, more than 75 Tribal JOBS grantees received a total of $8,521,220.

The Indian Health Service (IHS) worked with DOI to revise Indian Self-Determination contract regulations through negotiated rule-making with Indian tribes. In FY95, IHS transferred over $730 million to Indian tribes and tribal organizations to support tribal health delivery programs. For FY96, IHS negotiated 29 self-governance compacts and 42 annual funding agreements, and transferred approximately $300 million to 197 tribes in Alaska and 28 tribal governments in the lower 48 states.

4. Coordination with other Executive Departments and Agencies

HHS works closely with the DPC Working Group on American Indians and Alaska Natives. HHS is also working with DOJ and DOI on welfare reform and child support enforcement issues. The Indian Health Service has coordinated with Education, DOI, and DOJ on its American Indian and Alaska Native Youth Initiative.

CLINTON LIBRARY PHOTOCOPY

5. **Current Initiatives to Support Tribal Self-Government**

a. Temporary Assistance to Needy Families (TANF).

TANF replaces AFDC, Emergency Assistance, and JOBS money with a block grant available to Indian tribes. HHS has established a new Division of Tribal Services within the Administration for Children and Families to provide program assistance to tribes seeking to administer their own TANF programs. They have published Tribal Guidance for TANF Program which explains the new provisions to tribes. HHS and DOJ worked to craft technical amendments to the TANF legislation that would accommodate the unique economic situation in Indian country and allow for the establishment of realistic time limits, set by the Secretary in consultation with tribes, for tribal members.

J. Department of Housing and Urban Development (HUD)

1. **Policy on Government-to-Government Relations**

HUD has adopted a departmental policy on government-to-government relations, which recognizes the unique status of tribal governments, the trust responsibility, and emphasizes HUD's special responsibility to promote safe, sanitary housing for low income families and its goal of maximizing Indian self-determination through Indian Housing Authority administration of programs in tribal communities.

2. **Deputy Assistant Secretary, Office of Native American Programs**

HUD established the Office of Native American Programs (ONAP) under the direction of the Assistant Secretary for Public and Indian Housing. The Deputy Assistant Secretary for Indian Housing serves as ONAP's administrator and primary HUD liaison with tribal governments. The Deputy Assistant Secretary has offices in Washington, D.C., but ONAP's main offices are in Denver, Colorado, close to Indian country. ONAP also has field offices in Chicago, Oklahoma City, Phoenix, Seattle, and Anchorage.

3. **Improved Working Relationships with Indian Tribes**

In 1996, the Administration secured passage of the Native American Housing Assistance and Self-Determination Act, which promotes tribal self-government by authorizing direct block grants to Indian housing authorities, under the direction of tribal governments.

In 1995, HUD issued a policy on Customer Service which requires HUD personnel to adopt certain core principles for interaction with Indian tribes and tribal members consistent with the Executive Memorandum on Government-to-Government Relations.

CLINTON LIBRARY PHOTOCOPY

4. **Coordination with Other Executive Departments and Agencies**

HUD entered into an Interdepartmental Agreement with the Bureau of Indian Affairs and the Indian Health Service to improve the delivery of services and financial assistance to tribal and Indian Housing authorities through better interagency communication. HUD's CODETALK, an interagency Indian program website, is available to Indian programs at other federal agencies.

5. **Current Initiatives to Support Tribal Self-Government**

HUD is currently working with tribal governments through a negotiated rule-making process to develop regulations to implement the Native American Housing Assistance and Self-Determination Act.

a. Operation Safe Home.

HUD's Operation Safe Home campaign is a continuing initiative begun in 1994 to combat crime in HUD housing, with a special focus on violent crime and criminal gang activity. Programs that facilitate eviction of habitual criminals from HUD housing and removal of gang graffiti are operated in Indian country.

b. Native American Women and Youth

HUD is working together with Native American women and youth to strengthen leadership ability and fight drug and alcohol abuse through peer counseling and leadership training workshops.

c, Boys & Girls Club

Recognizing that Native American youth face many socioeconomic difficulties and disadvantages, HUD has teamed with the Boys & Girls Clubs of America to promote comprehensive club development in Indian Country. More than twenty clubs are currently operating in Indian country, serving Native American youth aged five to nineteen. The clubs provide athletic and cultural activities for young people and focus on the problems of drugs, alcohol and teen pregnancy.

J. Department of Interior (DOI)

1. **Policy on Government-to-Government Relations**

Secretary Babbitt has ordered component agencies to establish guidelines for implementing the Executive Memorandum on Government-to-Government Relations. The Secretarial order (which requires agencies to establish written guidance to enhance tribal

CLINTON LIBRARY PHOTOCOPY

consultation, improve agency coordination, and ensure compliance with the trust responsibility) is included in the Department Manual, and DOI agencies have promulgated agency policies pursuant to that Order.

2. Assistant Secretary for Indian Affairs and Director, Office of American Indian Trust

The Assistant Secretary for Indian Affairs is DOI's primary liaison with Indian tribes. Several Interior component agencies have established agency liaisons with Indian tribes, and these agency liaisons coordinate with the Director of the Office of American Indian Trust, who has primary responsibility for ensuring department-wide implementation of the government-to-government relations policy and trust procedures.

3. Improved Working Relationships with Indian Tribes

The Secretary and Assistant Secretary actively consult with Indian tribes on issues important to tribal governments, including Indian lands, water rights, tribal governmental authority, and the application of federal law in Indian country. Efforts to establish better working relationships with Indian tribes have included the use of the negotiated rulemaking process in the development of the new regulations for the Indian Self-Determination Act and the Indian Self-Governance Act. DOI has expanded its use of memoranda of understanding and negotiations on a wide variety of issues, including the implementation of the Endangered Species Act in Indian country. Much of this work is effected by the small tribal liaison offices established in each Bureau to advance the Federal Indian Self-Determination Policy, ensure fulfillment of the trust responsibility, and improve government-to-government relations.

4. Coordination with Other Executive Departments and Agencies

The Secretary chairs the Domestic Policy Council's Inter-Departmental Working Group on American Indians and Alaska Natives, and has fostered an unprecedented level of cooperation between coordinate agencies. Interior works closely with DOJ on Indian country law enforcement and litigation related to tribal governments, treaty rights, and trust resources. Other agencies, such as DOD, EPA, DOE, and HHS, are routinely invited to Interior consultations with Indian tribes. Interior works with the White House Office of Intergovernmental Affairs on issues of national importance to tribal leaders.

5. Current Initiatives to Support Tribal Self-Government

a. Implementation of the Indian Self-Determination Act Amendments and the Indian Self-Governance Act.

Through consultations with Indian tribes, Interior has streamlined Indian self-determination contracting and self-governance contracting to ensure that Indian tribes are able

CLINTON LIBRARY PHOTOCOPY

to undertake management of governmental services to the Indian peoples. Since the enactment of the Indian Self-Governance Act of 1991, 203 Indian tribes have entered into self-governance compacts.

b. Advancing Tribal Sovereignty.

DOI has an ongoing program to advance tribal sovereignty, which recently resulted in the streamlining of federal acknowledgment process regulations and the recognition of 223 Alaska Native villages as Indian tribes.

c. Implementing the Executive Order on Sacred Sites

The Office of American Indian Trust facilitated interagency consultations with tribal governments on the Executive Order on Sacred Sites and developed important agency guidance for implementing the Executive Order.

d. Endangered Species Act

Recognizing that the Endangered Species Act (ESA) may impact tribal treaty rights and trust resources, DOI conducted a series of consultations with Indian tribes and developed a MOU on the implementation of the ESA in Indian country.

e. Furthering Federal-Tribal Consultation

Each DOI bureau is now bound by departmental policy to consult with tribes on a government-to-government basis. Currently, many of the offices are also developing specific internal procedures for consultation with Indian tribes. The new consultation procedures have made it easier for Indian tribes to work with DOI agencies on issues such as tribal historic preservation.

In addition, each bureau has instituted several activities to support tribal self-governance, improve and expand services to tribes, effect better relationships, enhance education and outreach, improve access to information, resolve conflicts, and improve communications. Internal training and education efforts are on-going.

6. **Area of Concern -- Confidential Tribal Information.**

The United States works with Indian tribes through government-to-government consultation with tribes. Consultation may result in the sharing of confidential information, and the release of such information under the Freedom of Information Act (FOIA) could jeopardize the United States' ability to defend tribal interests and could therefore chill communications. DOI and DOJ are working on agreements on a case-by-case basis to establish consultant status for tribes, so that confidential tribal information is FOIA exempt.

CLINTON LIBRARY PHOTOCOPY

The Administration could consider a more global solution to the problem by proposing an amendment to FOIA.

L. Department of Justice (DOJ)

1. **Policy on Government-to-Government Relations with Indian Tribes**

DOJ Policy recognizes Indian tribes as domestic dependent nations and pledges support for tribal self-government. DOJ policy directs components to work with tribes on a government-to-government basis, to remove impediments to working directly with Indian tribes, and to work cooperatively with other federal agencies on Indian issues.

2. **Office of Tribal Justice (OTJ)**

Established under the Executive Memorandum on Government-to-Government Relations, OTJ functions to: (1) provide a government-to-government communication channel between DOJ and Indian tribes; (2) coordinate Indian affairs policy within DOJ and with other agencies; and (3) promote DOJ government-to-government relations with Indian Tribes.

3. **Improved Working Relationships with Indian Tribes**

U.S. Attorneys with jurisdiction in Indian country each appointed Assistant U.S. Attorneys as tribal liaisons to improve criminal justice and enhance working relations with Indian tribes. The FBI created an Office of Indian Country Investigations, assigned thirty new Indian country agents in FY97, and requested 30 more Indian country agents for FY98.

In consultation with Indian tribes and the Department of Interior (DOI), the Environment and Natural Resources Division and Office of the Solicitor General support tribal interests in cases involving tribal government, treaty rights, tribal lands, waters, and natural resources, and environmental regulation. The Solicitor General is currently supporting tribal sovereign immunity and Indian reservation boundaries before the Supreme Court, and the Environment Division's Indian Resources Section is supporting tribal environmental protection programs in the lower federal courts. The Civil Rights Division protects Indian and Alaska Native civil rights (including voting rights), and recently, won notable lending and education discrimination cases. The Community Relations Service assists tribes in resolving community disputes.

The Office of Justice Programs (OJP) created an American Indian and Alaska Native desk to ensure that Indian tribes have access to DOJ funded programs, and OJP funds domestic violence programs, drug courts, corrections, victims services, and multi-disciplinary crime prevention and other programs in Indian country. The Violence Against Women Office made $5.7 million in grants to Indian tribes in FY97. Since 1995, the Community Oriented Policing Services (COPS) Office has made over $43 million in grants to 143 tribal law enforcement

CLINTON LIBRARY PHOTOCOPY

agencies for over 570 officers in Indian communities. OJP's Bureau of Justice Statistics initiated projects to improve tribal law enforcement information systems, the National Institute of Justice is researching crime in Indian country, and the Bureau of Prisons provides technical assistance to tribal governments through the National Institute of Corrections.

4. **Coordination with other Executive Departments and Agencies**

DOJ works closely with the White House Office of Intergovernmental Affairs and DOI on Indian policy issues. DOJ also works with USDA on tribal self-government and tribal lands issues, with DOD and EPA on environmental enforcement policy for Indian country, with the Comptroller of the Currency on Indian banking issues, and with HHS and IHS on welfare reform and youth and family issues in Indian country.

5. **Current Initiatives to Support Tribal Self-Government**

a. Indian Country Law Enforcement

Pursuant to the President's directive on Indian country law enforcement, DOJ is working with DOI and Indian tribes to develop options for the President to improve public safety and law enforcement in Indian country.

b. Tribal Courts

DOJ is also working actively with DOI on tribal courts issues because they are central institutions of tribal self-government. Working in cooperation with DOI, DOJ has proposed a Tribal Court Enhancement Bill, which is pending with OMB. This legislation is important to ensure that tribal courts may take their place as true partners with federal and state courts in our nationwide system of justice.

c. Indigenous Rights

DOJ is working with the State Department and DOI on the OAS and U.N. Draft Declarations on the Rights of Indigenous Peoples. These declarations offer an important opportunity for the United States to support the rights of indigenous peoples throughout the Americas (and the world) and for the Administration to establish a lasting legacy in the field of indigenous rights.

L. Department of Labor (DOL)

1. **Policy on Government-to-Government Relations**

DOL has drafted a policy, but it has not yet been finalized.

CLINTON LIBRARY PHOTOCOPY

2. **Division of Indian and Native American Programs**

The Division of Indian and Native American Programs is the primary Labor liaison with Indian tribes. Labor consults with tribes about employment and training issues through the DOL Native American Employment and Training Council, whose charter was recently renewed by the Secretary for another two-year term. The Council meets not less than twice annually to consider policy, regulations, performance measures, and information technology.

3. **Improved Working Relationships with Indian Tribes**

The Division of Indian and Native American Programs seeks to work with Indian tribes and tribal grantees as "partners" in the administration of employment and training programs.

4. **Coordination with other Executive Departments and Agencies**

The Division of Indian and Native American Labor has been working with HHS's Indian Health Service and other departments and agencies on an initiative for American Indian and Alaska Native Youth.

5. **Areas of Concern**

Indian tribes have expressed concern that Labor seeks to apply the labor laws contained within the Fair Labor Standards Act and Occupational Safety and Health Act to Indian tribes, although the statutes do not expressly refer to Indian tribes and do not contain provisions to treat Indian tribes as governments. The statutes do contain special provisions for state governments, and consideration should be given to amending the statutes to provide similar protections for tribal governments.

O Small Business Administration (SBA)

1. **Policy on Government-to-Government Relations with Indian Tribes**

SBA does not have a formal written policy to implement the Executive Memorandum on Government-to-Government Relations with Tribal Governments.

2. **Office of Native American Affairs (ONAA)**

ONAA coordinates SBA policy, develops legislative and regulatory initiatives on Indian issues, serves as tribal government liaison and technical assistance provider, and provides outreach to enhance tribal access to SBA programs. ONAA has an annual National Native American Small Business Conference.

CLINTON LIBRARY PHOTOCOPY

3. **Improved Working Relationships with Indian Tribes**

Through ONAA, SBA has new and innovative methods to encourage tribal economic development. ONAA partners with other SBA program offices and Federal and state agencies to assist Indian tribes and individual Native Americans to develop business skills and access to capital. The Office of Women Owned Business opened two centers in reservation communities. ONAA facilitates intertribal economic development and joint venture partnerships for tribal organizations. SBA District Offices also facilitate business partnerships for tribal governments, support tribally-owned SBA 8(a) small disadvantaged business enterprises, and promote tribal opportunities for access to capital and credit markets.

4. **Coordination with other Executive Departments and Agencies**

Since 1995, in conjunction with the DOI's Bureau of Indian Affairs, ONAA established seventeen Indian reservation-based Tribal Business Information Centers to provide a full range of technical assistance and business and program information for small businesses.

5. **Current Initiatives to Support Tribal Self-Government**

SBA is now working on regulatory reforms to remove impediments to working with tribal governments.

O Department of State (DOS)

1. **Policy on Government-to-Government Relations with Indian Tribes**

State has not adopted a written policy on government-to-government relations with tribal governments.

2. **Under Secretary for Global and Environmental Affairs**

The Under-Secretary for Global and Environmental Affairs has coordinated the State Department's consultations with tribal governments. Several State Department bureaus have been involved in indigenous issues, most notably the Bureau of Democracy, Human Rights, and Labor.

3. **Improved Working Relationships with Indian Tribes**

State has several matters relating to tribal governments: (1) the U.N. Draft Declaration on the Rights of Indigenous Peoples; (2) the OAS Draft Declaration on the Rights of Indigenous Peoples; (3) the Arctic Council Declaration; (4) Section 8(j) of the International Convention on Bio-diversity; and (5) International whaling and fishing agreements.

CLINTON LIBRARY PHOTOCOPY

The U.N. Draft Declaration on the Rights of Indigenous Peoples and the OAS Draft Declaration on the Rights of Indigenous Peoples hold great promise for the future of indigenous peoples worldwide. The declarations represent an important standard-setting exercise, providing protections for indigenous local self-governance, lands and natural resources, religions, cultures, languages, and freedom from discrimination.

4. **Coordination with other Executive Departments and Agencies**

State works closely with Justice and Interior on the U.N. and OAS Draft Declarations on the Rights of Indigenous Peoples. In cooperation with Interior and Justice, State has held consultations with tribal governments on these initiatives in Washington and around the nation.

5. **Key Areas for Future Development to Support Tribal Self-Government**

In essence, both the U.N. and OAS Draft Declarations on the Rights of Indigenous Peoples present an historic opportunity to reinforce the positive aspects of Federal law relating to American Indians and Alaska Natives, and provide similar protections for indigenous peoples throughout the Americas and around the World. Many Indian tribes view the adoption of the declarations as a milestone in their efforts to foster respect for tribal self-governance. Because the declarations present issues which interest a number of agencies there is a need for high-level Administration commitment and definitive guidance to realize progress on the declarations. The OAS Draft Declaration presents an immediate opportunity for progress for indigenous peoples because strong Administration support and policy guidance could very well result in its adoption in 1998 or 1999.

P <u>Department of Transportation (DOT)</u>

1. **Policy on Government-to-Government Relations with Indian Tribes**

Though DOT has not issued a department-wide policy, most operating administrations have informally incorporated the requirements of the Executive Memorandum into their activities. FHWA and FAA are developing agency policies on government-to-government relations.

2. **Governmental Affairs**

Deputy Assistant Secretary for Governmental Affairs serves as DOT's principal liaison with tribal governments.

3. **Improved Working Relationships with Indian Tribes**

DOT consults with tribal governments in transportation planning processes, in the development and implementation of policies that impact tribes (such as NEXTEA, the surface

CLINTON LIBRARY PHOTOCOPY

transportation reauthorization proposal), and specific projects. FHWA, FTA, and DOI's BIA have developed guidelines for including Indian tribes in federal and state transportation planning under ISTEA, and have worked to increase state-tribal cooperation. The Federal Lands Highway program (within FHWA) works cooperatively with the BIA to implement the $191 million Indian Reservation Roads Transportation Improvement Program (IRR). About one-third of the IRR program is carried out by Indian tribes, and under the Indian Self-Determination Act, the Buy-Indian Act, and the Tribal Employment Rights Ordinances (TEROs), over 82% of the IRR projects employed Indians or Indian firms. The Local Technical Assistance Program (LTAP) was expanded to provide services to tribal governments and there are six Native American LTAP centers.

The National Highway Traffic Safety Administration (NHTSA) has provided technical support to tribal government safety programs, focusing on alcohol safety, occupant protection, and effective police traffic services. Recognizing that Native Americans die from motor vehicle crashes at rates up to three times greater than other Americans, NHTSA has emphasized face-to-face communication with tribal leaders concerning traffic safety. States are required to include Indian tribes in a fair distribution of funds under FTA's non-urbanized formula assistance program.

FAA is conducting consultations with neighboring Indian tribes concerning overflights of the Grand Canyon National Park and a Native American representative serves on the National Park Overflight working group.

The Coast Guard is working with Indian tribes regarding marine safety and with the American Indian Science and Engineering Society to promote Coast Guard career opportunities.

The Office of Small and Disadvantaged Business encourages the participation of Native American small businesses, among others, to participate in DOT-funded and assisted projects.

4. Coordination with Other Executive Departments and Agencies

FHWA hosted a Native American issues conference in Denver in January 1997, and invited BIA and DOJ to participate. DOT's General Counsel is working with FAA, DOJ and DOD to consult with tribal governments in New Mexico about their complaints regarding aircraft noise interference with their religious ceremonies.

5. Current Initiatives to Support Tribal Self-Government

a. NEXTEA.

DOT is working toward the enactment of the Administration's National Economic Crossroads Transportation Efficiency Act (NEXTEA), which reiterates ISTEA's requirements

CLINTON LIBRARY PHOTOCOPY

of state consultation with tribal governments in state transportation improvement plans, and provides an increase to $200 million annually for the Indian Reservation Road program.

b. FAA Policy on Government-to-Government Relations.

FAA is currently developing a policy on government-to-government relations with Indian tribes.

Q. Department of Treasury

1. **Policy on Government-to-Government Relations with Indian Tribes**

Treasury has not developed an official policy to implement the Executive Memorandum on Government-to-Government Relations with Tribal Governments.

2. **Public Liaison**

The Assistant Secretary for Public Liaison is the Department's designated liaison with tribal governments.

3. **Improved Working Relationships with Indian Tribes**

Treasury's working relations with tribal governments cover banking, financial services, tax, and community development issues. The Office of the Comptroller of the Currency (OCC) is working to improve banking and lending in Indian country, issuing a guide to mortgage lending in Indian country, providing technical assistance to Indian tribes that operate or acquire national banks, and with DOJ, cosponsoring a *Banking in Indian Country* conference attended by over 500 tribal leaders and bankers. The Comptroller has successfully encouraged national banks to open new branches in Indian country.

Treasury and the IRS have published the *Indian Assistance Handbook* to provide guidance to promote uniform application of the federal tax laws in Indian country and the Handbook recognizes that Indian tribes are not subject to federal income tax under existing law.

4. **Coordination with Other Agencies**

Working together with the White House Offices of Intergovernmental Affairs and Legislative Affairs, the DOI and the DOJ, Treasury opposed recent attempts to impose federal income tax on tribal government business activities.

CLINTON LIBRARY PHOTOCOPY

R. Department of Veterans' Affairs (VA)

1. **Policy on Government-to-Government Relations**

The VA circulated the Executive Memorandum on Government-to-Government Relations with Tribal Governments to all employees with a memorandum expressing the Secretary's commitment to working with Indian tribes within the framework of government-to-government relations.

2. **Director, VA Center for Minority Veterans**

VA has established an Indian liaison in the VA Center for Minority Veterans who is responsible for outreach to Indian tribes and American Indian veterans. The Center hosts a bi-monthly telephone conference with tribal and other veterans groups around the nation.

3. **Improved Working Relationships with Indian Tribes**

The Secretary has personally attended Native American events, such as the National Congress of American Indians' annual meeting to meet with tribal leaders. VA encourages and fosters greater interaction with Indian tribes, including participation in tribal governmental and cultural activities.

Three American Indian "Vet Centers" have been opened on Indian reservations to provide counseling and other services, and more are planned. VA is also working to address transportation problems, and has executed several agreements with Indian tribes to improve access to health care for Indian veterans. VA has also provided additional staff training on Indian issues.

VA has appointed two American Indian veterans to its Advisory Committee on Minority Veterans, and the Secretary has appointed a Hopi veteran as his designated staff representative to the Committee.

4. **Coordination with other Executive Departments and Agencies**

VA participates in several interagency working groups on Indian issues, and is working with HHS's Administration on Aging to explore the long term health care needs of elderly Indian veterans. VA is also working with the National Cancer Institute to bring state-of-the-art cancer treatment trials to American Indian and other minority veterans.

CLINTON LIBRARY PHOTOCOPY

5. Current Initiatives to Support Tribal Self-Government

a. Native American Veteran Direct Loan Program

VA has finalized 50 memoranda of understanding with tribal governments to provide direct home loans to Indian veterans residing on trust lands through the Loan Guaranty Service of the VA's Benefits Administration. An information campaign about this program is also being implemented.

b. Indian "Vet Centers"

Planning efforts to open new Indian "Vet Centers" in tribal communities is underway. The centers will provide counseling to Indian veterans.

CLINTON LIBRARY PHOTOCOPY

Native America - general

Peter Rundlet
12/17/97 07:32:20 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Julie A. Fernandes/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: Final Report from IWG on Native Americans

In her recent letter to the President, Angela Oh suggested that we create something along the lines of an Indian Affairs Council, which is something that Pres. Johnson created. The President noted that he thought we should pursue this idea. In so doing, I have come to learn that by an Executive Order in 1994 an IWG on Native Americans and Native Alaskans was created, and that you all are currently reviewing the final draft of a report to Erskine or the President that summarizes the relevant activities of the agencies vis-a-vis the tribal nations.

In order to be responsive to Oh's suggestion and the President's interest, Sylvia asked me to find out what the status of your review is. My sense is that she is interested in seeing in completed as soon as practicable so that we may respond to Angela.

Do I understand everything correctly? Can you give me an update on where we are? Thanks.

CLINTON LIBRARY PHOTOCOPY

Native American - general

Leanne A. Shimabukuro 09/17/97 01:03:57 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Jose Cerda III/OPD/EOP
Subject: update on Government-to-Government memo

Update on BNR/Erskine memo to agencies:

We have finally received responses from all the agencies (except for a delinquent Commerce Department) on their policies to carry out the President's 1994 directive on Government-to-Government relations. Most of the responses were better than I thought, although some were disappointing-- especially the Education Department response.

I met with Lynn Cutler on Monday and we agreed that a document which could boil down the policies to maybe 20-30 pages of highlights with an executive summary would be useful. I plan on working with Office of Tribal Justice at the Justice Department to get this done. Lynn would like to brief the President on the document in late October and use it to pitch for possible funding increases for certain Indian programs in the FY99 budget or legislation, if needed.

I've also talked to communications research about using these responses to update our accomplishments documents.

Please let me know if there is any other follow up you would like for me to do on this. Thanks!

CLINTON LIBRARY PHOTOCOPY

Native American - general

Mary L. Smith
09/17/97 12:52:54 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: See the distribution list at the bottom of this message
Subject: Possible Native American Initiatives

There are a few proposals that are moving through the Administration on Native Americans that may be of interest, including two executive orders being drafted by the DPC's interagency working group on Native Americans and Alaska Natives.

Here are summaries of the proposals:

1. **Executive Order on Comprehensive Indian Education:** This proposed executive order provides that each agency will appoint a senior official to serve as a liaison for Indian education activities. The executive order also contemplates that a Board, under the auspices of the National Advisory Council on Indian Education (NACIE), will be appointed to monitor and report on the progress made by the agencies in fulfilling the purposes of the executive order. Each agency will be tasked with drafting a 5-year strategic plan to promote educational change, systemic reform, and student achievement. In drafting the strategic plans, agencies will promote the President's national education goals.

2. **Executive Order on Indian Youth.** This proposed executive order seeks to improve the quality of life for Indian youth by coordinating and expanding services related to health, community empowerment, crime, and education. This executive order also contemplates that each agency will appoint a senior official to be a liaison from the agency to promote the goals of the executive order. The order also establishes in HHS a Presidential advisory committee entitled the Federal/Tribal Partnership Council to be comprised of tribal representatives and members of various Native American groups.

3. **Indian School Construction Legislation.** One group from the Loneman School Corp. is working on proposed legislation to issue bonds to pay for school construction for federally-funded Indian schools. This group is working on the debt and bonding issues and has met with Bob Shireman of the NEC and Hill staff.

4. **Crime in Indian Country.** The President has tasked DOJ and Interior to report on ways to curb crime on reservations. A report with options is due by the end of the year.

Timeframe: With respect to the two proposed executive orders, the working group plans to have final drafts by the middle of October. The working group will then present these drafts to Secretary Babbitt. The group then plans on presenting these drafts to the White House for vetting.

The National Congress of American Indians, which includes approximately 250 tribes, is holding its annual conference in Santa Fe from November 16 through 21. This conference could be used to announce some policy, as the result of the race initiative or otherwise.

CLINTON LIBRARY PHOTOCOPY

Native American - generally

MEMORANDUM

PW/BL/EK - I thought this a very good summary of native American concerns. TMF.

TO: TOM FREEDMAN, MARY SMITH, TANYA MARTIN

FROM: JULIE MIKUTA

RE: NATIVE AMERICAN CONCERNS

DATE: AUGUST 6, 1997

SUMMARY

Attached is a table of pending bills concerning Native American affairs.

I. STATISTICS

- There are approximately 2.4 million Native Americans in the United States today.
- Average annual income: $6,000 [US News & World Report, 3/24/97].
- The average unemployment rate on reservations is 49%-- the range is from 4.2% to 65%. Employers say alcohol-related behavior is a frequent cause for firing employees [NYT 6/11/97].
- Indian poverty in reservation areas is 3.9 times the national average rate [Congressional finding of HR 486].
- 17% of American Indian teenagers on reservations have attempted suicide (four times as many as other teenagers) [Journal of the AMA, 1992].
- The dropout rate of tribal secondary students is well above 50% [*NARF Annual Report*, 1996].
- 20% of teenage Indian boys on reservations develop drinking problems before leaving high school [Journal of the AMA, 1992].
- In Arizona in 1990, the age-adjusted motor-vehicle crash mortality rate was 23.8/ 100,000 for all ethnic groups and 81.6 for American Indians. Alcohol use contributes to this mortality rate, and to pedestrian fatalities [AZ Dept of Health Services, 1993].

II. GOVERNMENT WORKING GROUP

An inter-agency working group on American Indians and Alaska Natives led by the Department of Interior meets quarterly. The minutes from the most recent meeting (approximately 3 weeks

CLINTON LIBRARY PHOTOCOPY

ago) will be distributed on Friday. Drew will pass them on to you. The subgroups of the working group are: education; environment; religious freedom; sacred sites; housing and health; and, an initiative for Indian children and adolescents.

III. ISSUES

A. HEALTH

The Indian Health Service (IHS --part of the DHSS) is the principal federal health care provider for Indian people. It provides health services to approximately 1.4 million American Indians and Alaska Natives in 34 states. The IHS Director, Dr. Michael H. Trujillo, emphasizes progress within the health care community that contributes towards the overarching goal of complete recognition for Indian Self-Determination.

The health initiatives currently underway within the IHS are: elderly care; injury prevention; sanitation facilities; traditional medicine; women's health; and, Indian youth and substance abuse.

Within the health care community there are calls to increase the number of mental health workers for the nation's Indian 400,000 youths. There are currently only 17.

The American Indian and Alaska Native elder population doubled during the decade of 1980 to 1990. Almost 60% of American Indian and Alaska Native elders live within the service areas of IHS health care facilities. Their health needs are mainly chronic and degenerative diseases. Services for elders come from a variety of tribal, local, State, and Federal programs.

B. LEGAL

1. The Native American Rights Fund (NARF)

The NARF has provided legal services to Indian tribes and individuals since 1970. Its focus is on the preservation of tribal sovereignty. The types of the major cases NARF handled in 1996, and the number of cases of each type were: tribal recognition (6 cases); hunting and fishing rights (6); land claim (5); water rights in arid regions (5); strengthening tribal rights in education (4); tribal court jurisdiction (3); Aboriginal rights (3); judgement [i.e. concerning the allocation of funds set aside for compensation of individuals or tribes whose land was taken by the federal government] (3); taxation (3); self-sufficiency, oil and gas lease, or repatriation (1 of each type).

The NARF has also drafted a Comprehensive Federal Indian Policy Statement that was approved by the National Congress of American Indians and will be presented to the Clinton administration. It addresses issues such as the intergovernmental relationship between Indian tribes and the federal government, and the primacy of tribal governments in Indian education.

CLINTON LIBRARY PHOTOCOPY

2. Pending Supreme Court Case

The Supreme Court will hear the case, State of Alaska v. Native Village of Venetie-- a Ninth Circuit ruling affirmed that Venetie possesses the same rights as Indian tribes of the contiguous United States. The Supreme Court will now definitively address for the first time the powers of Alaska Native Villages, most of which have governed themselves for ages with no challenges from the State. The NARF represents Venetie.

C. COMMUNICATIONS

There is a need for improved communications systems in Indian country. The average phone penetration rates for rural Native Americans is only 50% and actual penetration rates are often much lower. What phone service there is in Indian country is often substandard and prohibitively expensive [findings of HR 486].

Two pending bills, HR 486 and HR 555, address this need by requiring the Federal Government to ensure delivery of telecommunications services to rural Native Americans, and to guarantee that the benefits of Federal universal service policies (such as those required by the Telecommunications Act of 1996) reach Native Americans..

D. EDUCATION

The education subgroup of the working group on American Indians and Alaska Natives will meet on Monday (8/11). It is likely that Tanya will attend in Leanne's place. The Federal Indian education policy statement (as a revised draft executive order), and the tribal college initiative [to improve tribal colleges] will be discussed.

The physical condition of many reservation elementary and secondary schools is a major concern. Schools are currently overcrowded and in horrible physical condition.

In May, the Carnegie Foundation for the Advancement of issued a report calling for the federal government to increase funding for tribal colleges to $40 million (they currently receive $19.5 million). The per-pupil appropriations for the colleges fell from $3,178 in 1994, to $2,860 this year, as rising enrollments were not met with additional funding. In 1986, Congress authorized an appropriation per student of $5,820, which has never been met. [Chronicle of Higher Education, 5/30/97]

E. GAMING

Gambling on reservations continues to be a controversial in both Washington and Indian country. A few tribes have voted to forbid gambling, but the majority see it as an important source of revenue, especially in the face of declining federal assistance. Indian casinos brought in $6 million in 1996 (compared to $100 million in 1988) [NYT, 6/11/97].

CLINTON LIBRARY PHOTOCOPY

F. THE BIA

- The BIA annually distributes $1.7 billion in federal aid and jobs on reservations. The BIA has 10,000 staffers (9,000 of whom are Indians); 90% work on reservations.

- The BIA must approve all business loans in Washington, resulting in delays of over a year [Forbes, 5/19/97].

- Stephen Cornell, an associate professor of sociology at the UC-San Diego has concluded that economic success occurs on reservations when the tribes take control and the BIA is not involved.

- Paul Homan, appointed by President Clinton to devise a plan to reform the administration of Indian land, money and other assets proposed creating a new independent agency run by financial professional to take over asset management activities. Arthur Andersen found in 1996 that $2.4 billion in tribal funds-- supposedly managed by the BIA-- cannot be accounted for. Tribal representatives are enthusiastic about Homan's plan, but suspicious of federal government involvement [NYT 3/2/97].

CLINTON LIBRARY PHOTOCOPY

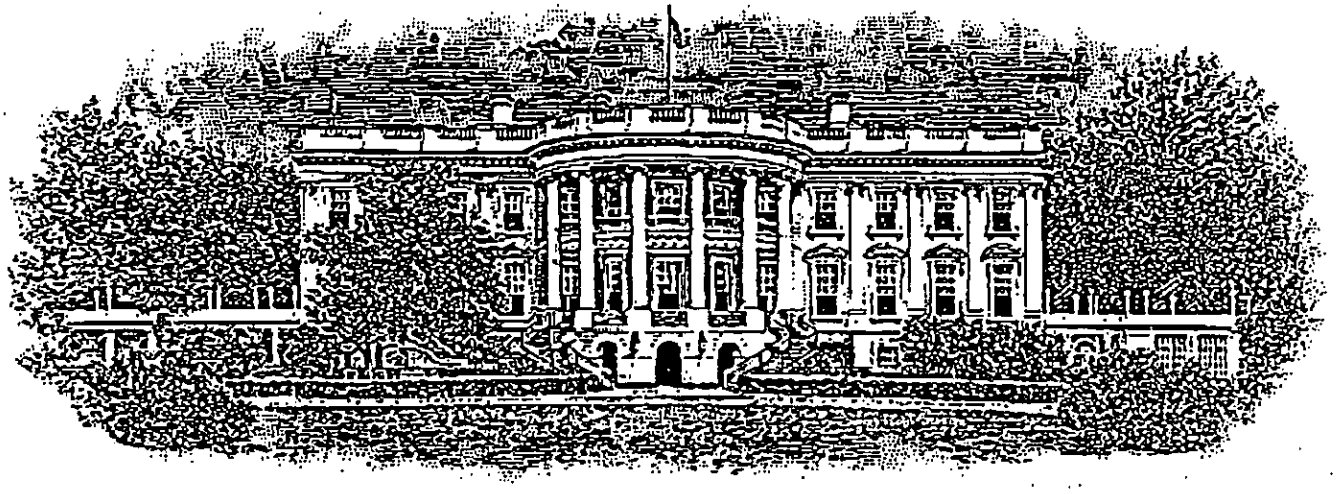
Pending Bills Concerning Native American Issues

Bill No.	Sponsor	Date	# Co-Sponsors	Description
S 818	Sen Campbell	5/23/97	1	Improves the economic conditions and supply of housing in Native American communities by creating a Native American financial institution.
HR 486/ HR 555	Rep Richardson	1/21/97	0	Amends the Communications Act of 1934 to promote greater telecommunications and information services to Native Americans.
HR 749	Rep Abercrombie	2/13/97	1	Amends the Native American Graves Protection and Repatriation Act to allow the removal or excavation of Native American human remains from Federal or tribal lands for study if consent is obtained from lineal descendants or each appropriate Indian tribe. Requires a Federal agency or instrumentality that receives notice of a discovery of Native American cultural items on lands it manages to notify each appropriate Indian tribe or Native Hawaiian organization.
S 110	Sen Inouye	1/21/97	1	HR 749 and also requires that penalties collected under the Act be used to supplement enforcement appropriations.
S 459	Sen Campbell	3/18/97	4	Amends the Native American Programs Act of 1974 to extend authorizations of appropriations through FY 2000 for: (1) social and economic activities under such Act; (2) environmental improvement grants; and (3) native languages preservation grants.
S Amdt 958	Sen Gorton	7/22/97	approved for S 1034	Bars individuals from receiving future funds under the Native American Housing Block Grants Program if they significantly violate its requirements

CLINTON LIBRARY PHOTOCOPY

Native American - law enforcement

The White House



DOMESTIC POLICY

FACSIMILE TRANSMISSION COVER SHEET

TO: Elena Kagan

FAX NUMBER: 62878

TELEPHONE NUMBER:

FROM: Leanne Shimabukuro

TELEPHONE NUMBER:

PAGES (INCLUDING COVER): 2

COMMENTS: Latest version of Indian Law enforcement directive. Changes due date of report to Dec. 31 and references to "Attorney General and Secretary" to "you".
- DOJ signed off on this version.
- OMB - rec'd fax of this version & will let me know tomorrow once they review. (No prob. expected)

CLINTON LIBRARY PHOTOCOPY

(2)

DRAFT

MEMORANDUM FOR THE ATTORNEY GENERAL AND SECRETARY OF THE INTERIOR

Subject: Law Enforcement in Indian Country

I am proud of this Administration's progress in reducing violent crime and improving public safety for our Nation's citizens. Our efforts are making an important difference. Nationwide, the violent crime rate has dropped approximately 17 percent since 1992, and the homicide rate has declined about 22 percent.

Unfortunately, during the same time period life has become more violent for the 1.2 million Indian citizens who live on or near reservations. Homicide rates, for example, have increased to levels that often surpass those in large American cities. Numbers alone, however, cannot convey the tragic impact of such violence on Indian families and their communities.

This and other information you have provided to me make clear that we need to refocus on this growing problem. While some tribal governments have developed strong law enforcement programs, many others have encountered significant difficulty in doing so. Many Indian citizens receive police, investigative, and detention services that lag far behind even this country's poorest jurisdictions.

The Federal government has taken steps to address this problem. The Administration has sought increased Department of Interior funding and tribal control of law enforcement programs on Indian lands. This year, the Federal Bureau of Investigation (FBI) established an Office of Indian Country Investigations in its Violent Crimes Section, allocating additional agents to Indian Country. The FBI also initiated a nationwide outreach training program for Indian Country law enforcement officers. We have created additional tribal liaison positions in the United States Attorney's Offices in Indian Country, intended to improve our ability to bring offenders to justice. Through our Community Oriented Policing Services Program, we have assisted tribal law enforcement agencies in hiring officers in Indian Country.

Yet, law enforcement in Indian Country remains a serious problem. For these reasons, consistent with the spirit of my 1994 memorandum on government-to-government relations and tribal self-governance, I hereby request you to work with tribal leaders to analyze law enforcement problems on Indian lands. By December 31, 1997, you should should provide options to me for improving public safety and criminal justice in Indian Country. To the extent that these options might affect the Departments' budgets, they should be included in your 1999 budget submissions and should be consistent with the funding targets of the Bipartisan Balanced Budget Agreement.

CLINTON LIBRARY PHOTOCOPY

Native American Issues - general

MEMORANDUM FOR HEADS OF AGENCIES AND DEPARTMENTS

FROM: ERSKINE BOWLES
BRUCE REED

DATE: MAY X, 1997

SUBJECT: EXECUTIVE MEMORANDUM ON GOVERNMENT-TO-GOVERNMENT RELATIONS

On April 29, 1994, President Clinton issued an Executive Memorandum to all Executive Departments and Agencies directing them to engage in continuing Government-to-Government relations with federally recognized tribal governments. (See April 29, 1994 Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments, attached.) We write to request the assistance of your Department or Agency in ensuring that the President's directive is appropriately implemented.

The April 29, 1994 Executive Memorandum is based on the unique historical and legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, executive actions, and court decisions. When executive actions will affect government or treaty rights of Indian tribes or tribal trust property, the Executive Memorandum requires the responsible Department or Agency to consult with tribal governments concerning the impact of the federal action to the greatest extent practicable and permitted by law.

Government-to-Government consultations should be conducted with knowledge of, and sensitivity for, tribal governmental and treaty rights. In addition, Executive Departments and Agencies are required to take steps to remove procedural impediments to working directly and effectively with Indian tribes.

Several Executive Departments and Agencies have implemented the President's directive by adopting their own policies on Government-to-Government relations with Native American Tribal Governments. In addition, some Departments and Agencies have designated staff as liaisons with Native American Tribal governments to facilitate implementation of the President's directive.

To assist us in ensuring that the President's directive is appropriately

CLINTON LIBRARY PHOTOCOPY

implemented, please send us the following:

CLINTON LIBRARY PHOTOCOPY

a) your Department or Agency policy on Government-to-Government Relations with native American Tribal governments if you have such a policy;

b) the name, position, address and telephone number of Department or Agency staff designated as liaisons with tribal governments; and

c) a two or three-page synopsis of your Department's or Agency's approach and activities in implementing the President's April 29, 1994 Executive Memorandum.

Please return this information to us by August 16, 1997. Information should be sent to XXX at XXX, Old Executive Office Building, Washington, D.C. 20502. If you have any questions, you may call XXX, who can be reached at (202) 456-XXXX.

Thank you for your assistance.

CLINTON LIBRARY PHOTOCOPY

Natiz Amer. Issues Generally

DRAFT MEMORANDUM TO AGENCIES AND DEPARTMENTS

On April 29, 1994, President Clinton issued an Executive Memorandum to all Executive Departments and Agencies directing them to engage in continuing Government-to-Government relations with federally recognized tribal governments. (See April 29, 1994 Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments, attached.) We write to request the assistance of your Department or Agency in ensuring that the President's directive is appropriately implemented.

The April 29, 1994 Executive Memorandum is based on the unique historical and legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, executive actions, and court decisions. When executive actions will affect government or treaty rights of Indian tribes or tribal trust property, the Executive Memorandum requires the responsible Department or Agency to consult with tribal governments concerning the impact of the federal action to the greatest extent practicable and permitted by law.

Government-to-Government consultations should be conducted with knowledge of, and sensitivity for, tribal governmental and treaty rights. In addition, Executive Departments and Agencies are required to take steps to remove procedural impediments to working directly and effectively with Indian tribes.

Several Executive Departments and Agencies have implemented the President's directive by adopting their own policies on Government-to-Government relations with Native American Tribal Governments. In addition, some Departments and Agencies have designated staff as liaisons with Native American Tribal governments to facilitate implementation of the President's directive.

To assist us in ensuring that the President's directive is appropriately implemented, please send us the following:

a) your Department or Agency policy on Government-to-Government Relations with native American Tribal governments if you have such a policy;

b) the name, position, address and telephone number of Department or Agency staff designated as liaisons with tribal governments; and

c) a two or three-page synopsis of your Department's or Agency's approach and activities in implementing the President's April 29, 1994 Executive Memorandum.

If possible, please return this information to us by (X date). Thank you for your assistance.

CLINTON LIBRARY PHOTOCOPY

Native Amer Issues-general

Leanne A. Shimabukuro 04/22/97 04:34:32 PM

Record Type: Record

To: Laura Emmett/WHO/EOP

cc:
Subject: American Indian issue follow up

As we discussed. Thanks.
---------- Forwarded by Leanne A. Shimabukuro/OPD/EOP on 04/22/97 04:39 PM ----------

Leanne A. Shimabukuro 04/17/97 06:30:56 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:
Subject: American Indian issue follow up

As you may recall, I submitted a memo to Sylvia on two Native American issue proposals. When I followed up with Angus King of her staff, he told me that the memo was forwarded to Lynn Cutler, the new person at Intergovernmental handling Native American issues. I took this to mean that Sylvia neither approved nor disapproved the recommendations.

The quarterly DPC Working Group meeting on Native Americans is next Wednesday. There is a lot of interest on behalf of the DPC working group staff and Babbitt to issue the kind of memo we recommended to Sylvia to get updates from agencies on their government-to-government consultation plans. It would be ideal if we could tell them something next Wednesday about this issue.

I've tried to do some legwork on this to see if this is possible. Here's where things stand:

I have spoken with Lynn Cutler about the memo and she is very interested in having some WH action in this area. She thinks that Marcia Hale may be interested in issuing or being on it. Since it is the DPC Native American Working Group, I think Bruce should be on the memo alone or with Marcia (assuming he would want to be). Lynn will be meeting with Sylvia to see if the CoS wants to be on this kind of memo, or if not, if they have any problems with it.

I discussed the issue with Cabinet Affairs (Kris Balderston), who said he did not see any problem with issuing this kind of memo to agencies. His reaction was more of surprise that little has been done in the way of follow up in this area.

I ran a draft memo by WH Counsel's office to make sure this kind of memo doesn't present any legal problems. Robert Weiner made a technical suggestion but said it looked fine.

I am attaching a copy of the draft memo for your review. I worked with the Department of Justice's Office of Tribal Justice on the draft. I am also attaching the memo to Sylvia we worked on, in case you wanted to look at it.

CLINTON LIBRARY PHOTOCOPY

I'm sure your brain must feel like it is in the early childhood development stage after all the work you've been doing, but any feedback you could give me on this would be great. Thanks!

GOVGOV.D MATHEWS.I

CLINTON LIBRARY PHOTOCOPY

Native-America/issues - General

Leanne A. Shimabukuro 04/17/97 06:30:56 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: American Indian issue follow up

As you may recall, I submitted a memo to Sylvia on two Native American issue proposals. When I followed up with Angus King of her staff, he told me that the memo was forwarded to Lynn Cutler, the new person at Intergovernmental handling Native American issues. I took this to mean that Sylvia neither approved nor disapproved the recommendations.

The quarterly DPC Working Group meeting on Native Americans is next Wednesday. There is a lot of interest on behalf of the DPC working group staff and Babbitt to issue the kind of memo we recommended to Sylvia to get updates from agencies on their government-to-government consultation plans. It would be ideal if we could tell them something next Wednesday about this issue.

I've tried to do some legwork on this to see if this is possible. Here's where things stand:

I have spoken with Lynn Cutler about the memo and she is very interested in having some WH action in this area. She thinks that Marcia Hale may be interested in issuing or being on it. Since it is the **DPC** Native American Working Group, I think Bruce should be on the memo alone or with Marcia (assuming he would want to be). Lynn will be meeting with Sylvia to see if the CoS wants to be on this kind of memo, or if not, if they have any problems with it.

I discussed the issue with Cabinet Affairs (Kris Balderston), who said he did not see any problem with issuing this kind of memo to agencies. His reaction was more of surprise that little has been done in the way of follow up in this area.

I ran a draft memo by WH Counsel's office to make sure this kind of memo doesn't present any legal problems. Robert Weiner made a technical suggestion but said it looked fine.

I am attaching a copy of the draft memo for your review. I worked with the Department of Justice's Office of Tribal Justice on the draft. I am also attaching the memo to Sylvia we worked on, in case you wanted to look at it.

I'm sure your brain must feel like it is in the early childhood development stage after all the work you've been doing, but any feedback you could give me on this would be great. Thanks!

GOVGOV.D MATHEWS.I

Need

CLINTON LIBRARY PHOTOCOPY

Native Amer Issues - general

Leanne A. Shimabukuro 04/22/97 01:29:43 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:
Subject: Native American issue

Last week, I sent you an email on the Native American government-to-government memo proposal, which would follow up with agencies on their consultation policies with tribes. Do you have any thoughts about whether this is something Bruce would want to do? Lynn Cutler at Intergovernmental will be meeting with Sylvia Matthews tonight about the memo.

The DPC Native American Working Group meeting is tomorrow. If we had a decision-- or something promising to tell them-- it would be a great thing to announce at the meeting tomorrow.

Thanks.

CLINTON LIBRARY PHOTOCOPY

File - Native American Issues/Generally

MEMORANDUM

To: Sylvia Mathews
cc: Angus King
From: Leanne Shimabukuro, Bruce Reed
Subject: American Indian Proposals
Date: March 19, 1997

You requested comment on two proposals submitted by representatives of American Indian tribes: an Executive Order on Government-to-Government relations with tribes and a Presidential meeting with tribal leaders.

PROPOSED EXECUTIVE ORDER ON GOVERNMENT-TO-GOVERNMENT RELATIONS

President Clinton signed a Presidential Memorandum on Government-to-Government relations with tribes on April 29, 1994. This historic Memorandum acknowledged the special relationship the United States has with American Indian tribes and directed the heads of Executive Departments and Agencies to consult with Federally-recognized Tribal nations on a Government-to-Government basis in formulating policies and programs affecting tribes.

In letters to the President, two tribes now have requested the issuance of an Executive Order on Indian sovereignty and the Government-to-Government relationship. This order would be quite similar in substance to the current Memorandum. It is likely that the tribes want an Executive Order because they believe it will produce greater agency responsiveness than has the Presidential Memorandum.

Federal agencies vary in their compliance with the Memorandum. The Interior Department and the EPA have been particularly responsive in developing and carrying out policies pursuant to the Memorandum. Other agencies have been much slower to develop and implement policies on this front.

An Executive Order is probably not the appropriate response to this problem at this juncture. Issuing an Executive Order similar to the Presidential Memorandum may suggest a failure of the Federal government to act on the President's initial request. This suggestion would be unfair (some agencies have responded well), and could undermine successes achieved by this Administration on Government-to-Government relations. At any rate, issuing essentially the same directive in another form is unlikely to change agencies' behavior.

Instead, we should consider prodding agencies on their compliance with the initial Memorandum. For example, a memorandum to Federal agencies issued by the

CLINTON LIBRARY PHOTOCOPY

Chief of Staff or other appropriate White House official-- or, if more high-profile action is desired, even the President himself-- could ask for the status of their policies pursuant to the 1994 Presidential Memorandum. Such a memo could well spur as yet unresponsive agencies to take positive action. In the event such a memorandum fails to produce results, we should then consider what further steps are necessary to further promote Government-to-Government relations and tribal sovereignty (e.g., Executive Order or other Executive action).

MEETING WITH TRIBAL LEADERS

In April 1994, the President met with over 300 tribal leaders in a large ceremonial event on the White House lawn. The Cabinet was present at the meeting, and the event lasted several hours. During the meeting, the President released his Memorandum on Government-to-Government relations and a Memorandum on the use of eagle feathers for religious purposes.

Leaders of approximately 11 tribes now have asked to have another meeting with the President. Many other tribes would agree that it is time for another Presidential meeting.

We believe that the President should hold another meeting with tribal leaders. This meeting would be an important gesture of goodwill to tribes. It also would allow the President to have direct contact with a constituency that does not often receive such high-level attention.

Such a meeting, however, should include a much wider group of tribal leaders than the 11 who have made the pending request. It would also require significant planning and sufficient lead time-- at least three months for preparation.

Alternatively, the President could speak at a large inter-tribal conference, such as the National Conference of American Indians (NCAI), which meets a few times a year. Secretary Babbitt speaks at one NCAI conference annually, and the Vice President spoke to NCAI in November 1995. A NCAI conference is scheduled for November 1997 in Santa Fe.

A speaking role at an NCAI conference would be easier to coordinate than a Presidential meeting with tribal leaders at the White House. But such an event would not carry quite the same symbolic significance. In addition, the Navajo Nation usually does not attend the NCAI Conference, and the absence of this very large tribe could count as a serious problem.

Either event will place the President at some risk of criticism. The tribes may well complain of a lack of responsiveness to Native American issues at the Department of Interior. The scheduling of either event should take into account the timing of

CLINTON LIBRARY PHOTOCOPY

significant Administration decisions affecting tribes that are expected in the near future-- for example, on Indian gaming, and the BIA/Interior budget.

CLINTON LIBRARY PHOTOCOPY