S. HRG. 108–312

TRIBAL GOVERNMENT AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

S. 578

TO AMEND THE HOMELAND SECURITY ACT OF 2002 TO INCLUDE INDIAN TRIBES AMONG THE ENTITIES CONSULTED WITH RESPECT TO ACTIVITIES CARRIED OUT BY THE SECRETARY OF HOMELAND SECURITY

JULY 30, 2003
WASHINGTON, DC

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TRIBAL GOVERNMENT AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

WEDNESDAY, JULY 30, 2003

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

The committee met, pursuant to notice, at 2 p.m. in room 216, Hart Senate Building, Hon. Daniel Inouye (vice chairman of the committee) presiding.

Present: Senators Inouye and Akaka.

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

Senator INOUYE. The Committee on Indian Affairs meets this afternoon to receive testimony on S. 578, a bill to amend the Homeland Security Act of 2002 to include Indian tribal governments among the entities consulted with respect to activities carried out by the Secretary of the Department of Homeland Security.

[Text of S. 578 follows:]

II

108TH CONGRESS
1ST SESSION

S. 578

To amend the Homeland Security Act of 2002 to include Indian tribes among the entities consulted with respect to activities carried out by the Secretary of Homeland Security, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 7, 2003

Mr. INOUYE (for himself, Mr. CAMPBELL, Mr. AKAKA, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

---

A BILL

To amend the Homeland Security Act of 2002 to include Indian tribes among the entities consulted with respect to activities carried out by the Secretary of Homeland Security, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Tribal Government Amendments to the Homeland Security Act of 2002''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) there is a government-to-government relationship between the United States and each Indian tribal government;

(2) through statutes and treaties, Congress has recognized the inherent sovereignty of Indian tribal governments and the rights of Native people to self-determination and self-governance;

(3) each Indian tribal government possesses the inherent sovereign authority—

(A)(i) to establish its own form of government;

(ii) to adopt a constitution or other organic governing documents; and

(iii) to establish a tribal judicial system; and

(B) to provide for the health and safety of those who reside on tribal lands, including the provision of law enforcement services on lands under the jurisdiction of the tribal government;

(4) tribal emergency response providers, such as tribal emergency public safety officers, law enforcement officers, emergency response personnel, emergency medical personnel and facilities (including tribal and Indian Health Service emergency facili-

ties), and related personnel, agencies, and authorities—

(A) play a crucial role in providing for the health and safety of those who reside on tribal lands; and

(B) are necessary components of a comprehensive system to secure the homeland of the United States;

(5) there are more than 25 Indian tribes that have primary jurisdiction over—

(A) lands within the United States that are adjacent to the Canadian or Mexican border; or

(B) waters of the United States that provide direct access by boat to lands within the United States;

(6) the border lands under the jurisdiction of Indian tribal governments comprise more than 260 miles of the approximately 7,400 miles of international border of the United States;

(7) numerous Indian tribal governments exercise criminal, civil, and regulatory jurisdiction over lands on which dams, oil and gas deposits, nuclear or electrical power plants, water and sanitation sys-

tems, or timber or other natural resources are located; and

(8) the involvement of tribal governments in the protection of the homeland of the United States is essential to the comprehensive maintenance of the homeland security of the United States.

(b) PURPOSES.—The purposes of this Act are to ensure that—

(1) the Department of Homeland Security consults with, involves, coordinates with, and includes Indian tribal governments in carrying out the mission of the Department under the Homeland Security Act of 2002 (Public Law 107–296); and

(2) Indian tribal governments participate fully in the protection of the homeland of the United States

SEC. 3. TABLE OF CONTENTS; DEFINITIONS.

(a) TABLE OF CONTENTS.—The table of contents of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2135) is amended in the item relating to section 801 by inserting ", Tribal," after "State".

(b) DEFINITIONS.—Section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101) is amended—

(1) in paragraph (6), by inserting "tribal," after "State,";

(2) by redesignating paragraphs (9), (10), (11), (12), (13), (14), (15), and (16) as paragraphs (10), (11), (12), (13), (14), (15), (16), and (19), respectively;

(3) by inserting after paragraph (8) the following:

"(9) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as being eligible for the special programs and services provided by the United States to Indians because of their status as Indians.";

(4) in paragraph (11) (as redesignated by paragraph (2)), by striking subparagraph (B) and inserting the following:

"(B) an Alaska Native village or organization; and"; and

(5) by inserting after paragraph (16) (as redesignated by paragraph (2)) the following:

"(17) TRIBAL COLLEGE OR UNIVERSITY.—The term 'tribal college or university' has the meaning given the term in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

"(18) TRIBAL GOVERNMENT.—The term 'tribal government' means the governing body of an Indian tribe that is recognized by the Secretary of the Interior.".

SEC. 4. DEPARTMENT OF HOMELAND SECURITY.

(a) EXECUTIVE DEPARTMENT; MISSION.—Section 101(b)(2) of the Homeland Security Act of 2002 (6 U.S.C. 111(b)(2)) is amended by inserting "tribal," after "State,".

(b) SECRETARY; FUNCTIONS.—Section 102(c) of the Homeland Security Act of 2002 (6 U.S.C. 112(c)) is amended—

(1) in the matter preceding paragraph (1), by inserting ", Tribal," after "of State"; and

(2) by inserting ", tribal," after "State" each place it appears.

SEC. 5. INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.

(a) DIRECTORATE FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—Section 201(d) of the Homeland Security Act of 2002 (6 U.S.C. 121(d)) is amended—

(1) in paragraphs (1), (3), (6), (7)(B), (8), (9), (11), and (13), by inserting ", tribal," after "State" each place it appears;

(2) in paragraph (16), by inserting ", tribal," after "State"; and

(3) in paragraph (17), by inserting "tribal," after "State,".

(b) ACCESS TO INFORMATION.—Section 202(d)(2) of the Homeland Security Act of 2002 (6 U.S.C. 122(d)(2)) is amended by inserting ", tribal," after "State".

(c) CRITICAL INFRASTRUCTURE INFORMATION; DEFINITIONS.—Section 212 of the Homeland Security Act of 2002 (6 U.S.C. 131) is amended in paragraphs (3)(A) and (5)(C) by inserting "tribal," after "State," each place it appears.

(d) PROTECTION OF VOLUNTARILY SHARED CRITICAL INFRASTRUCTURE INFORMATION.—Section 214 of the Homeland Security Act of 2002 (6 U.S.C. 133) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (C)—

(i) by inserting "tribal," after "State,"; and

(ii) by striking "or State" and inserting ", State, or tribal"; and

(B) in subparagraph (E)—

(i) in the matter preceding clause (i), by inserting ", tribal," after "State";

(ii) in clause (i), by inserting ", tribal," after "State"; and

(iii) in clause (ii), by inserting ", tribal," after "State";

(2) in subsection (c), by inserting "tribal," after "State,"; and

(3) in subsection (e)(2)(D), by inserting ", tribal," after "State".

(e) ENHANCEMENT OF NON-FEDERAL CYBERSECURITY.—Section 223(1) of the Homeland Security Act of 2002 (6 U.S.C. 143(1)) is amended by inserting ", tribal," after "State".

(f) MISSION OF OFFICE; DUTIES.—Section 232 of the Homeland Security Act of 2002 (6 U.S.C. 162) is amended—

(1) in subsection (a)(2), by inserting "tribal," after "State,";

(2) in subsection (b)—

(A) in paragraphs (2) and (3), by inserting "tribal," after "State," each place it appears;

(B) in paragraph (6)—

(i) in the matter preceding subparagraph (A), by inserting "tribal," after "State,"; and

(ii) in subparagraph (H), by inserting ", tribal," after "State"; and

(C) in paragraphs (9), (11), and (14), by inserting ", tribal," after "State" each place it appears; and

(3) in subsection (g)(1)(A), by inserting "tribal," after "State,".

(g) NATIONAL LAW ENFORCEMENT AND CORRECTIONS TECHNOLOGY CENTERS.—Section 235(d) of the Homeland Security Act of 2002 (6 U.S.C. 165(d)) is amended by inserting "tribal," after "State,".

SEC. 6. SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY.

(a) RESPONSIBILITIES AND AUTHORITIES OF THE UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.—Section 302(6) of the Homeland Security Act of 2002 (6 U.S.C. 182(6)) is amended by inserting "tribal," after "State,".

(b) CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.—Section 304(a) of the Homeland Security Act of 2002 (6 U.S.C. 184(a)) is amended by inserting "and the Indian Health Service" after "Public Health Service".

(c) CONDUCT OF RESEARCH, DEVELOPMENT, DEMONSTRATION, TESTING, AND EVALUATION.—Section

308(b) of the Homeland Security Act of 2002 (6 U.S.C. 188(b)) is amended—

(1) in paragraph (1)(A), by striking ''colleges, universities,'' and inserting ''colleges and universities (including tribal colleges and universities),''; and

(2) in paragraph (2)(B), by inserting ''(including tribal colleges or universities)'' after ''universities''.

(d) UTILIZATION OF DEPARTMENT OF ENERGY NATIONAL LABORATORIES AND SITES IN SUPPORT OF HOMELAND SECURITY ACTIVITIES.—Section 309(d) of the Homeland Security Act of 2002 (6 U.S.C. 189(d)) is amended by inserting '', tribal,'' after ''State''.

(e) HOMELAND SECURITY INSTITUTE.—Section 312(d) of the Homeland Security Act of 2002 (6 U.S.C. 192(d)) is amended by inserting ''tribal colleges and universities,'' after ''education,''.

(f) TECHNOLOGY CLEARINGHOUSE TO ENCOURAGE AND SUPPORT INNOVATIVE SOLUTIONS TO ENHANCE HOMELAND SECURITY.—Section 313 of the Homeland Security Act of 2002 (6 U.S.C. 193) is amended—

(1) in paragraphs (1) and (4) of subsection (b), by inserting ''tribal,'' after ''State,'' each place it appears; and

(2) in subsection (c)(1), by inserting ", tribal," after "State".

SEC. 7. DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY.

(a) OFFICE FOR DOMESTIC PREPAREDNESS.—Section 430(c)(5) of the Homeland Security Act of 2002 (6 U.S.C. 238(c)(5)) is amended by inserting ", tribal," after "State".

(b) REPORT ON IMPROVING ENFORCEMENT FUNCTIONS.—Section 445(b) of the Homeland Security Act of 2002 (6 U.S.C. 255(b)) is amended by inserting ", tribal," after "State".

SEC. 8. EMERGENCY PREPAREDNESS AND RESPONSE.

(a) RESPONSIBILITIES.—Section 502(5) of the Homeland Security Act of 2002 (6 U.S.C. 312(5)) is amended by inserting "tribal," after "State".

(b) CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.—Section 505(a) of the Homeland Security Act of 2002 (6 U.S.C. 315(a)) is amended—

(1) by inserting "tribal," after "State,"; and

(2) by inserting "and the Indian Health Service" after "Public Health Service".

SEC. 9. TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS.

Section 601(c)(9)(B) of the Homeland Security Act of 2002 (6 U.S.C. 331(c)(9)(B)) is amended by inserting ''tribal,'' after ''State,''.

SEC. 10. COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS.

(a) OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.—Section 801 of the Homeland Security Act of 2002 (6 U.S.C. 361) is amended—

(1) in the section heading, by inserting ''**, TRIBAL,**'' after ''**STATE**'';

(2) in subsection (a)—

(A) by inserting '', Tribal,'' after ''State''; and

(B) by inserting '', tribal,'' after ''State''; and

(3) in subsection (b), by inserting '', tribal,'' after ''State'' each place it appears.

(b) LITIGATION MANAGEMENT.—Section 863(a)(1) of the Homeland Security Act of 2002 (6 U.S.C. 442(a)(1)) is amended in the second sentence by inserting

1 ", or area under the jurisdiction of an Indian tribe," after
2 "State".
3 (c) DEFINITIONS FOR SUPPORT ANTI-TERRORISM BY
4 FOSTERING EFFECTIVE TECHNOLOGIES ACT.—Section
5 865(6) of the Homeland Security Act of 2002 (6 U.S.C.
6 444(6)) is amended by inserting ", tribal," after "State".
7 (d) REGULATORY AUTHORITY AND PREEMPTION.—
8 Section 877(b) of the Homeland Security Act of 2002 (6
9 U.S.C. 457(b)) is amended—
10 (1) in the subsection heading, by inserting ",
11 TRIBAL," after "STATE"; and
12 (2) by inserting ", tribal," after "State" each
13 place it appears.
14 (e) INFORMATION SHARING.—Section 891 of the
15 Homeland Security Act of 2002 (6 U.S.C. 481) is
16 amended—
17 (1) in subsection (b)—
18 (A) in paragraphs (2), (4), (5), (7), (8),
19 and (9), by inserting ", tribal," after "State"
20 each place it appears;
21 (B) in paragraph (6)—
22 (i) by inserting ", tribal," after "cer-
23 tain State"; and
24 (ii) by inserting "tribal," after
25 "State,"; and

(C) in paragraphs (10) and (11), by inserting ''tribal,'' after ''State,'' each place it appears; and

(2) in subsection (c), by inserting ''tribal,'' after ''State,''.

(f) FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.—Section 892 of the Homeland Security Act of 2002 (6 U.S.C. 482) is amended—

(1) in subsection (a)(1)(A), by inserting '', tribal,'' after ''State'';

(2) in paragraphs (1), (2)(D), and (6) of subsection (b), by inserting '', tribal,'' after ''State'' each place it appears;

(3) in subsection (c), by inserting '', tribal,'' after ''State'' each place it appears;

(4) in subsection (e), by inserting '', tribal,'' after ''State'' each place it appears;

(5) in subsection (f)—

(A) in paragraph (1), by inserting ''tribal,'' after ''State,''; and

(B) in paragraph (3)—

(i) in the matter preceding subparagraph (A), by inserting '', tribal,'' after ''State'';

(ii) in subparagraph (A), by inserting ''tribally or'' after ''other'';

(iii) in subparagraph (B), by inserting '', tribal,'' after ''State''; and

(iv) in subparagraph (D), by inserting ''tribal,'' after ''State,''; and

(6) in subsection (g), by inserting '', tribal,'' after ''State''.

(g) REPORT.—Section 893(a) of the Homeland Security Act of 2002 (6 U.S.C. 483(a)) is amended in the second sentence by inserting ''tribal,'' after ''State,''.

SEC. 11. DEPARTMENT OF JUSTICE DIVISIONS.

Section 1114(b) of the Homeland Security Act of 2002 (6 U.S.C. 532(b)) is amended by inserting ''tribal,'' after ''State,''.

SEC. 12. AMENDMENTS TO OTHER LAWS.

(a) CYBER SECURITY ENHANCEMENT ACT OF 2002.—

(1) EMERGENCY DISCLOSURE EXCEPTION.—Section 2702(b)(7) of title 18, United States Code (as added by section 225(d) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2157)), is amended by inserting ''tribal,'' after ''State,''.

(2) PROTECTING PRIVACY—Section 2701(b)(1) of title 18, United States Code (as amended by section 225(j)(2)(A) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2158)), is amended by inserting ''or Indian tribe'' after ''or any State''.

(b) NATIONAL INSTITUTE OF JUSTICE.—Section 202(c)(11) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3722(c)(11)) (as added by section 237(2) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2162)) is amended by inserting ''tribal,'' after ''State,''.

(c) HOMELAND SECURITY FUNDING ANALYSIS IN PRESIDENT'S BUDGET.—Section 1105(a)(33)(A)(iii) of title 31, United States Code (as added by section 889(a) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2250) is amended by inserting '', tribal,'' after ''State''.

(d) AUTHORITY TO SHARE GRAND JURY INFORMATION.—Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure (as amended by section 895(2) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2256)) is amended—

(1) in clause (i)(VI), by striking ''federal, state,'' and inserting ''Federal, State, tribal,''; and

(2) in the last sentence of clause (iii), by striking ''state,'' and inserting ''State, tribal,''.

(e) AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.—Section 2517(8) of title 18, United States Code (as added by section 896 of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2257)), is amended by inserting ''tribal,'' after ''State,'' each place it appears.

(f) FOREIGN INTELLIGENCE INFORMATION.—Section 203(d)(1) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (50 U.S.C. 403–5d) (as amended by section 897(a) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2257)) is amended by inserting ''tribal,'' after ''State,'' each place it appears.

(g) FOREIGN INTELLIGENCE SURVEILLANCE.—

(1) INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE.—Section 106(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) (as amended by section 898 of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2258)) is amended by inserting ''or Indian tribe'' after ''subdivision)''.

(2) INFORMATION ACQUIRED FROM A PHYSICAL SEARCH.—Section 305(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1825) (as amended by section 899 of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2258)) is amended by inserting ''or Indian tribe'' after ''subdivision)''.

(h) TRANSFER OF CERTAIN SECURITY AND LAW ENFORCEMENT FUNCTIONS AND AUTHORITIES.—Section 1315 of title 40, United States Code (as amended by section 1706(b)(1) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2316)), is amended—

(1) in subsection (d)(3), by inserting ''tribal,'' after ''State,''; and

(2) in subsection (e), by inserting '', tribal,'' after ''State'' each place it appears.

SEC. 13. CONGRESSIONAL AFFIRMATION AND DECLARATION OF TRIBAL GOVERNMENT AUTHORITIES.

(a) IN GENERAL.—For the purpose of this Act, Congress affirms and declares that the inherent sovereign authority of an Indian tribal government includes the authority to enforce and adjudicate violations of applicable criminal, civil, and regulatory laws committed by any per-

son on land under the jurisdiction of the Indian tribal government, except as expressly and clearly limited by—

(1) a treaty between the United States and an Indian tribe; or

(2) an Act of Congress.

(b) SCOPE.—The authority of an Indian tribal government described in subsection (a) shall—

(1) be concurrent with the authority of the United States; and

(2) extend to—

(A) all places and persons within the Indian country (as defined in section 1151 of title 18, United States Code) under the concurrent jurisdiction of the United States and the Indian tribal government; and

(B) any person, activity, or event having sufficient contacts with that land, or with a member of the Indian tribal goverment, to ensure protection of due process rights.

○

Senator INOUYE. In the current act, there is a definition of local governments which, as we all know, are political subdivisions of the States, but this definition of local government also includes Indian tribes, so one of the objectives of S. 578 is to remove Indian tribes from the definition of local government and instead to provide for a definition of tribal government. S. 578 also proposes to insert the term "tribal government" in each place it is appropriate to do so in the Homeland Security Act.

Finally, based upon testimony received by this committee last year from a representative of the Department of Justice, this measure clarifies that for purposes of homeland security only. The Congress affirms and declares that the inherent sovereign authority of an Indian tribal government includes the authority to enforce and adjudicate violations of applicable criminal, civil and regulatory laws committed by any person on land under the jurisdiction of the Indian tribal government.

It is this last section that appears to have generated some mischief by those who want to read the language as if it doesn't pertain to homeland security. They cite a parade of horribles in which the alleged tribal governments might engage under the authority of this act, including "stripping several million U.S. citizens of their constitutional protections." They call it a "breathtaking example of racial tyranny." I think it is important and prudent that we take a moment to understand the provision to which these outlandish comments are directed.

Acts of terrorism or activities which threaten the national security are violations of Federal law. Put another way, if a person were to engage in an act of terrorism, they would be violating Federal law and they would be subject to prosecution in Federal courts, not a tribal court. Should tribal governments be able to stop, detain and arrest those who violate Federal law by committing acts of terrorism until such time as Federal authorities can take over or do those who reside in Indian country, be they Indian or non-Indian, want to have hours and sometimes possibly even days go by before Federal law enforcement officers or the FBI can travel from a city to a remote rural area in order to arrest those engaged in terrorism activities?

We do not have to reach far back in our memories to recall the events of September 11 and to know that in most instances there will not be the luxury of time to respond in this fashion. That is why those who are experienced in law enforcement believe, as we do, that tribal governments must have the authority to enforce Federal law until such time as Federal law enforcement officers can assume responsibility. They will tell you that in many areas of Indian country, tribal governments are the only law enforcement presence and the only government capable of responding to threats of terrorism on a timely basis.

One of the commentators whose opposition to this bill is widely advertised suggests that this bill will "place this country under attack from within." I would remind one and all that in all the military actions and wars in which this Nation has been engaged in the last century and the beginning of this century, more Native people of the United States on a per capita basis have volunteered

to serve in the Armed Forces of our Nation and placed themselves in harm's way than any other group of Americans.

To suggest that tribal governments are terrorists or that citizens of this country are subject to attack by Native people is to me one of the most outrageous assertions I have ever heard. I hope this kind of inflammatory rhetoric will be seen for what it is. Yesterday the committee held a full day forum for tribal leaders and Federal agencies and I believe we learned a great deal about the critical infrastructure that is located in or near Indian country. It is far more extensive than our records would have indicated, so we are very grateful and gratified that this crucially important information was shared with the committee yesterday and that it will be made a part of the official record of this hearing.

Members of Congress are all too familiar with the scare tactics that are sometimes employed in opposing legislation. That is why the information from yesterday's forum and the testimony received today, both oral and written, will serve such an important role in helping us all to focus on the real threats at hand because as the highest officials of our government have repeatedly stated, it is a matter of when another terrorist act is likely to take place; sadly, it is not a matter of if.

With that, I would like to call upon the first panel of witnesses and welcome them to the committee. The first panel consists of: Thomas B. Heffelfinger, U.S. attorney, Minnesota, representing the U.S. Department of Justice; Terry Virden, director, BIA, Department of the Interior; Josh Filler, director, Office of State and Local Government Coordination, Department of Homeland Security; and William F. Raub, principal deputy assistant secretary, Office of Public Health Emergency Preparedness, Department of Health and Human Services. Gentlemen, welcome.

May I first recognize U.S. Attorney Heffelfinger.

STATEMENT OF THOMAS B. HEFFELFINGER, U.S. ATTORNEY, STATE OF MINNESOTA, ON BEHALF OF THE DEPARTMENT OF JUSTICE

Mr. HEFFELFINGER. Thank you, Senator Inouye.

In addition to being the U.S. attorney for the State of Minnesota, I am also the chairman of the Attorneys General Advisory Committee, Subcommittee on Native American Issues. This is the subcommittee responsible for developing policy, for consideration and approval by the Attorney General related to effective law enforcement in Indian country.

With the Attorney General's approval, the NAIS has identified terrorism as our number one priority. As you heard, Senator, and as the record made clear yesterday, more than 25 tribes have land on or near the international borders or shorelines within the United States as part of our international borders. In addition, there are numerous potential terrorist targets located within Indian country that are a part of this country's national infrastructure. Therefore, it is our position that it is imperative that our national homeland security strategy include tribes in the planning process and in the provision of services relative to homeland security.

The Homeland Security Act of 2002 describes tribes as "local governments" along with cities and counties organized under State law. The U.S. Supreme Court precedent treats tribes as separate sovereign governments. Administration policies have afforded tribes sovereign status in accordance with this precedent. Tribal governments use their governing authority to provide public safety in Indian country both as to homeland security issues as well as general criminal issues.

On a wide variety of public safety and criminal issues, the Federal Government consistently works directly with tribes on a government-to-government basis. This is consistent with recent proclamations by many Presidents including the November 12, 2001 statement of President George W. Bush, "My Administration will continue to work with tribal governments on a sovereign to sovereign basis."

Working directly with tribes to assist them in obtaining the necessary public safety resources and training and to conduct strategic planning for homeland security concerns is not only consistent with Supreme Court precedent and the direction of all recent Presidents, but also enhances the effectiveness of our homeland security preparation in these unique communities.

As the Department of Justice continues our efforts to reach out to the tribes on these issues, I, on behalf of the Department, applaud the general goals of S. 578 to maximize the opportunities for the Federal Government to work with tribal governments in carrying out the activities needed to protect our Nation's homeland. Likewise, the Department looks forward to working with the committee to address some of the technical issues raised by the bill.

As to section 13 of the bill to which you alluded in your introductory comments, Senator, section 13 of S. 578 is a legislative overturn of the Supreme Court decision in *Oliphant* v. *Suquamish Tribe. Oliphant* held that tribal courts do not have criminal jurisdiction over non-Indians. In the view of many, the *Oliphant* decision has created a gap in Indian country law enforcement and negatively impacts tribes' abilities to respond effectively to terrorist incidents and other crimes which may be committed by non–Indians in Indian country. However, overruling *Oliphant* in a broad and isolated manner could result in complicated legal and practical law enforcement issues such as those of due process concerns, double jeopardy, resources and appellate rights.

Enacting section 13 prior to working through these complicated matters is premature and we do not believe that S. 578 provides the best vehicle for doing so. In this connection, law enforcement in Indian country is primarily a Federal and tribal function. Those law enforcement officers who work in Indian country work hard to address the unique and sometimes confusing jurisdictional challenges associated with protecting the public on Indian reservations. As an example, in response to *Oliphant's* constraints, some tribal law enforcement agencies have obtained cross-commissions from State, local and Federal authorities to expand their authority to arrest non-Indian criminal suspects under State or Federal law. Unfortunately, such cooperative arrangements are not made in many jurisdictions due to various factors such as local political issues or concerns over civil liability. As a result, effective law enforcement

over non–Indians who commit crimes in Indian country is not consistent from reservation to reservation.

Given the law enforcement constraints imposed by the *Oliphant* decision, the question therefore becomes what can Congress do to improve homeland security in Indian country? Section 13 of S. 578 is an attempt to deal with the *Oliphant* issue head-on. In February 2003, the NAIS, which I chair, formed an Oliphant Working Group under the leadership of South Dakota U.S. Attorney Jim McMahon. In addition to other considerations, the working group studies section 13 extensively. The group did not develop a position on whether or not it would eventually support such an *Oliphant* fix. However, the working group did decide that section 13 as currently written is too broad. The working group identified a number of concerns including due process issues that Congress may want to consider as it addresses this issue and which become increasingly important as one considers expanding tribal court jurisdiction in the face of *Oliphant.* These concerns include issues such as separation of powers, provision of defense counsel for indigent defendants, make up of jury pools which was one of the issues cited in the original *Oliphant* decisions and appellate and habeas corpus relief.

A significant expansion of tribal court jurisdiction raises serious issues regarding protections of individual due process rights and this I know will be considered. Consideration must also be given to issues such as disparate tribal resources as one looks around the country, the impact of any mandate of legal obligations on the ability of the tribes to provide such legal protections, and the need for additional training not currently being provided or for additional experienced tribal judicial and law enforcement officers that would be required in response to such a significant change.

Section 13 addresses "the authority to enforce and adjudicate violations by any person." As such, the section expands the jurisdiction both for tribal law enforcement and for tribal courts. Homeland security concerns are primarily a law enforcement concern and not a tribal court concern. It is the ability of tribal law enforcement to investigate arrests and/or detain suspected terrorists that is at issue, not the ability of tribal courts to prosecute such individuals. It is highly unlikely that the Federal Government would defer Federal felony prosecution of terrorists in deference to tribal court misdemeanor prosecution. Therefore, consideration should be given to whether there are other options that can allow tribal law enforcement to be full partners in providing for a secure homeland while avoiding some of the adverse impact of a significant expansion of tribal court jurisdiction. These options include expanded use of "cross commissions" and of tribal law enforcement authority recognized under some district court and appellate court decisions to detain individuals who are suspected of violating State or Federal law.

While section 13 might address some of the factors limiting the widespread use of these options, this section also raises issues not fully addressed in the proposed legislation and there are ways of expanding the use of these options. Therefore, the expansion of tribal jurisdiction reflected in section 13, we believe, should appropriately be considered as part of a comprehensive review and clarification of tribal court jurisdiction such as that we suggested to this

committee last July in discussing the need for a comprehensive clarification of tribal court jurisdiction.

We look forward to working with this committee on that and any other issues that the committee wishes. I want to thank you for the opportunity to address you and I look forward to standing for questions at the appropriate time.

[Prepared statement of Mr. Heffelfinger appeatrs in appendix.]

Senator INOUYE. Thank you, very much.

Now may I recognize Mr. Virden.

STATEMENT OF TERRY VIRDEN, DIRECTOR, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. VIRDEN. Thank you, Mr. Chairman, and thank you for the opportunity to present the views of the Department of the Interior on this very important bill to amend the Homeland Security Act of 2002.

The Department supports the concept of maximizing opportunities for the Federal Government to work with tribal governments in carrying out the activities needed to protect our Nation's homeland.

Indian country consists of 56 million acres of trust lands, approximately 25 tribes are located on or near international borders with Mexico and Canada, with additional tribes located on or near international waterways. Of particular note are the Tohono O'Odham Nation in Southern Arizona and the St. Regis Mohawk Nation in upstate New York. Both reservations include lands that cross the international borders and, therefore, have tribal members on either side of the border. Border tribes are faced with attempted illegal border crossings and trafficking of illicit contraband. Tribal law enforcement works in tandem with Federal, State and local law enforcement agencies on helping combat these illegal activities.

Since September 11, 2001, our tribal law enforcement officers have been on alert and have worked with other law enforcement officers to protect our Canadian and Mexican borders as well as the waterways that are part of Indian country. Our principal responsibility of homeland security is domestic preparedness to prevent, respond to and recover from attack. Homeland security for tribes includes law enforcement, security and emergency management personnel, key components tribal governance must provide in protecting its members, residents and visitors. There is a need to have direct funding streams from the Department of Homeland Security for such activity.

Tribal law enforcement can be vital in protecting our borders and waterways. In certain areas of the country, tribal emergency management may be the only agency able to respond to a terrorist threat or attack. Tribal public health can provide valuable expertise in confronting an outbreak of a deadly disease and tribal members may be the only citizens within miles to detect terrorist activity.

S. 578 is an appropriate step in recognizing the importance of American Indians in protecting our homeland. Establishing the appropriate role for the tribes with the 50 States will facilitate protection of critical infrastructure and key assets in Indian country and

bring to bear the leadership, expertise and dedication of Indian people.

We are concerned, however, that Alaska Native villages and organizations are not included in the definition of Indian tribe. Alaska Native villages and organizations have been included in the definition of Indian tribe under laws including the Indian Self-Determination Act. We believe for this purpose they should be included in the definition of Indian tribe.

This concludes my prepared statement and I also am available for questions later.

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

Senator INOUYE. Thank you, very much, Mr. Virden.

Now, may I call upon Mr. Filler.

STATEMENT OF JOSH FILLER, DIRECTOR, OFFICE OF STATE AND LOCAL GOVERNMENT COORDINATION, DEPARTMENT OF HOMELAND SECURITY

Mr. FILLER. Thank you, Mr. Chairman.

Good afternoon and thank you for the opportunity to appear before you today to discuss the Department of Homeland Security's views on S. 578. We support S. 578's goals and objectives of enhancing coordination and cooperation between the Department and tribal governments regarding homeland security.

The Department of Homeland Security recognizes and appreciates the critical role the tribal governments play in enhancing our homeland security. With tribal lands adjacent to hundreds of miles of both our northern and southern land borders including readily accessible coastline and containing numerous pieces of critical infrastructure, tribal governments are essential partners in the work of the Department of Homeland Security. That is why the Department has created a position specifically for coordination with the tribes. The director for Tribal Coordination, who participated in panel discussions hosted by this committee yesterday, is here with me today.

Since it was created, the Department of Homeland Security has been actively undertaking outreach to tribal interests to build the relationships necessary for successful coordination of homeland security activities within tribal lands. These efforts have included but are not limited to, the creation of a specific position as I mentioned before for tribal coordination. Through this office, American Indian tribes, Alaska Native villages, tribal organizations and associations have a dedicated day-to-day point of contact for tribal concerns.

The U.S. Border Patrol has liaison officers at each sector and at headquarters specifically focused on tribal law enforcement coordination with their Native American counterparts. Coordination includes sharing training, intelligence, equipment and participating in joint operations. The Department has met and coordinated with numerous tribal governments regarding DHS functions, activities and the Department's programs.

We are currently working with the National Congress of American Indians on tribal issues. We were pleased to attend the recent NCAI conference where DHS participated in a workshop on creating emergency preparedness plans. The workshop covered what resources are available from DHS, including training opportunities

and emphasized the need for tribal emergency preparedness plans. We are participating with the National Native American Law Enforcement Association and are providing presenters for homeland security-related training at the upcoming annual training conference. The U.S. Border Patrol is providing specialized training seminars for this November conference as well as technical displays of current hardware being employed by the Border Patrol.

DHS is also currently planning the second U.S. Border Patrol/Native American Border Security Conference. I believe it is tentatively scheduled for the first week in October of this year. The aim of this conference is to identify mechanisms to better the Patrol's working relationship with Native American law enforcement to further our shared goal of securing the Nation's borders.

DHS is in discussion with other executive branch departments like those represented here today to ensure coordination of DHS missions in Indian country. We have been pleased to include tribes in the consultation process for upcoming discussions on the National Incident Management System as well as the National Response Plan, both of which are required by Homeland Security Presidential Directive No. 5.

DHS is a participant in informal, interagency, Indian country working groups which includes the exchange of information and presentations on Indian country programs and program support. This is a very positive, ad hoc forum where Federal/Indian country representatives get together to exchange information and provide briefings on different programs.

DHS, as you know, is a young department and we view these accomplishments simply as a good start to ensuring that tribal governments are truly integrated into the Department's efforts to better secure our borders, protect our critical infrastructure and to be prepared for a terrorist attack or natural disaster.

As indicated earlier, we support S. 578's objective of improving the Department's coordination with tribal governments in the area of homeland security and we welcome the opportunity to work with the committee regarding the particulars of the bill.

I thank you for your support of the Department and we would be happy to answer any questions you might have at the appropriate time.

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

Senator INOUYE. Thank you very much, Mr. Filler.

May I now recognize Dr. Raub.

STATEMENT OF WILLIAM F. RAUB, PRINCIPAL DEPUTY ASSISTANT SECRETARY, OFFICE OF PUBLIC HEALTH EMERGENCY PREPAREDNESS, DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Mr. RAUB. Thank you very much, Mr. Chairman. I am pleased to have the opportunity to make some remarks on behalf of the Department of Health and Human Services.

When we use the term public health emergency preparedness, that is shorthand for readiness for bioterrorism, other outbreaks of infectious disease and other public health threats and emergencies. When we talk specifically about bioterrorism, the immutable fact is that by definition all terrorism is local. Therefore, however complex

and widespread the event and incident ultimately may become, it begins in a particular place and therefore, State, local, and tribal readiness are very high priorities for us with respect to the way we direct our investments.

To that end, we use the instrument of the cooperative agreement with all 50 of the States and certain other eligible entities to provide funding to enhance public health departments, hospitals and other health care entities. That is over and beyond our direct funding of the hospitals of the Indian Health Service. In fiscal year 2002, we provided approximately $1 billion through those cooperative agreements. In the current fiscal year, and we are amidst the reward and review process right now, we expect to award approximately $1.5 billion in total.

One of the major priorities of each of those awards is to ensure that we have a systematic involvement with all of the tribes in the planning and implementation of these programs. The implementation means that not only the flow of funds to the tribes as appropriate to achieve the statewide plan, but also the availability of services such as surveillance and epidemiologic response to ensure that the health needs of the tribes are met as systematically as the health needs of anyone else within those State borders.

We involve our colleagues from the Indian Health Services in our review panels, we have an internal Bioterrorism Council of which the Director of the Indian Health Service is a member, and we have a strategic plan for the Department for bioterrorism that includes specific roles for the Indian Health Service.

We look forward to continuing to develop these programs overall and strengthening the relationship and involvement with the Indian tribes.

I appreciate the opportunity to be here today and will respond with our colleagues here to questions as best I can.

[Prepared Statement of Mr. Raub appears in appendix.]

Senator INOUYE. I am deeply grateful to all of you for your testimony and I must say I am very much encouraged. If I may, I would like to ask a few questions.

Mr. Heffelfinger, your concerns about chapter 13 I think have merit. Is your office willing to work with the committee in drafting language that would address the concerns you have raised?

Mr. HEFFELFINGER. Yes; very much so, Senator. We believe this is an area that the Department of Justice and your committee should be working together on. It is a perfect vehicle for us to develop a comprehensive clarification of all of the confusing areas of tribal jurisdiction. We think this would enhance our ability to provide quality law enforcement both in the area of criminal misconduct as well as the area of homeland security and that they really cannot be separated.

Senator INOUYE. If I were smart, at this point I would say the meeting is adjourned. [Laughter.]

I am most grateful for your offer to help us. I think the staff is prepared to work with you and come forth with a bill that would meet the needs of all the departments as well as the needs in Indian country. I think we can do that. So thank you very much, Mr. Heffelfinger.

If I may ask, Mr. Virden, at yesterday's forum we heard something about the Conlee Dam, Grand Conlee Dam. I note that the Department of the Interior has jurisdiction over that. Has the Department undertaken any activities to secure Grand Conlee Dam?

Mr. VIRDEN. I'm hesitating.

Senator INOUYE. I am not trying to embarrass you but I just want to know the extent the problem we have.

Mr. VIRDEN. I understand. The Department has an extensive program of early warning systems that are mandated to be installed and I believe on most of our dams, we are there. I know, speaking for the BIA, we have installed in most of our high priority dams early warning systems.

Senator INOUYE. I suppose you would welcome some Indian assistance there?

Mr. VIRDEN. Yes; we would.

Senator INOUYE. I was very much gratified to hear that we have programs for training Indian tribes and tribal members to carryout these responsibilities, so I thank you very much.

Mr. Filler, I am grateful that the Administration supports this measure. Are you also concerned about section 13?

Mr. FILLER. Senator, I'll be honest, I lack the expertise in the details to which that chapter refers, so I would defer.

Senator INOUYE. So your department would be satisfied if Justice and the committee can work out something out?

Mr. FILLER. I think we will work with the Justice Department and follow their lead and work with them on this issue.

Senator INOUYE. Do you have any problems with the definition of local government as it relates to Indian tribes?

Mr. FILLER. I think it is important that everyone be a part of the homeland security process. That includes tribes, the territories, local government, State government and obviously the Federal Government. Our vision is that you create a coordinated effort through statewide planning, not State planning but statewide planning, statewide planning, built from the bottom up, including the tribes, municipalities, counties, towns, parishes, so on and so forth. I think what is important is everyone has a seat at the table and that table be the place where the plan for spending homeland security dollars is developed. I think if we do that, the issue of State versus local or tribal becomes less of an issue. We have a responsibility at the Federal side to ensure that coordination is taking place.

Senator INOUYE. I was very much pleased with the assurance that your department will be funding programs to enhance the ability of Indian country to carryout this mission, but apparently the funds go through the States, don't they?

Mr. FILLER. Yes, sir.

Senator INOUYE. Can we get some report from you advising us as to how much Indian country is receiving for homeland security?

Mr. FILLER. Sure. We will go back to the States. They are required to file paperwork with us on all the funds they receive from the Department and we can make a request that they tell us exactly how much all of the tribes within the State are receiving.

Senator INOUYE. Recently, we were told that Secretary Ridge established a State and Local Advisory Committee to advise the

Homeland Security Advisory Council but I note that this committee is made up of governors, legislators, mayors, city officials, county judges but no representatives from Indian country. Can we secure some sort of representation there?

Mr. FILLER. I will certainly go back and speak with the executive director of the Homeland Security Advisory Council and engage him on that issue.

Senator INOUYE. I thank you very much.

Dr. Raub, the Indian Health Service has determined that $51.5 million is needed annually for tribal emergency medical services. Given the potential for terrorism and the threat in Indian country, what activities has the Department undertaken to inform Congress of the need for additional funding?

Mr. RAUB. Those matters are under consideration right now with respect to development of the fiscal year 2005 budget request. I expect one of the issues that will be joined further within the Department and between the Department and the Office of Management and Budget and ultimately our discussions with the Appropriations Committees will be the size and the orientation of that investment.

Whatever we spend directly through the Indian Health Service with respect to terrorism is complemented by the funds I mentioned before that are sent out in the from of the cooperative agreements. In fact, in a few of the States, the State law allows funds from the cooperative agreement to directly supplement activities of the Indian Health Service. Other State laws preclude this. To the extent it is possible, we have tried to use every mechanism available.

Senator INOUYE. As a member of the Appropriations Committee, I can assure you we will do our best to support your request.

Gentlemen, once again, I thank you very much for your participation. I am certain I speak for Indian country when I say that we feel very much encouraged and look forward to working with you, Mr. Heffelfinger.

Mr. HEFFELFINGER. Thank you, Senator.

Senator INOUYE. Thank you, very much.

Now, may I call on the second panel. It consists of the following: Roland E. Johnson, Governor, Pueblo of Laguna Pueblo of New Mexico; Audrey Bennett, president, Prairie Island Indian Community, Minnesota; Earl Old Person, chief and tribal council member, Blackfeet Tribal Business Council, Montana; Vivian Juan-Saunders, chairwoman, Tohono O'odham Nation, Arizona; and Alvin Windy Boy, chairman, Chippewa Cree Business Committee, Montana.

I have been advised that President Bennett has to get on a plane right away, so may I call upon you first?

STATEMENT OF AUDREY BENNETT, PRESIDENT, PRAIRIE ISLAND INDIAN COMMUNITY, MINNESOTA

Ms. BENNETT. Thank you, Mr. Chairman.

Good afternoon. My name is Audrey Bennett. I am president of the Prairie Island Indian Community and I want to thank you for inviting me to testify today.

I am here to offer this committee a perspective that is unique to our community, emblematic of the homeland security issue with

which many tribal governments in this country must contend. For your reference, we have provided an aerial photo of Prairie Island which is located between the Mississippi and the Vermillion Rivers in the southeastern Minnesota about 50 miles south and east of Minneapolis-St. Paul.

Prairie Island is sacred land. Our people have lived there for countless generations. It is our home as well as our final resting place for our ancestors. As you can see, our reservation is bordered by a nuclear powerplant, a nuclear waste storage site, two nuclear reactors and 17 large storage casts filled with highly radioactive nuclear waste sits 600 yards from our homes, church, community center, and business. Additional casts will be added in the coming years. Our community is the closest in the Nation to a nuclear powerplant and a nuclear waste storage site. Yet we have no special role in helping to protect these facilities or for that matter ourselves.

For decades, well before terrorism became the issue that it is today, our tribe had to fight to be properly recognized by the State of Minnesota and our utility neighbor. In 1997, when the plant was evacuated after a steam generator leaked radiation into the atmosphere, no one bothered to inform our people of the incident. Most tribal members realized something was wrong only after witnessing numerous cars speeding away from the plant. Many of us wisely followed.

Today, we are better prepared for a similar incident and we have reasonably cooperative relationships with the plant and the State. However, conventional emergency planning is simply inadequate for this age of catastrophic terrorism. The radiological exercises in which we participate are based on scenarios involving a slow leak of radiation into the atmosphere, not an intentional act of destruction. Currently our involvement in responding to such an event is as best ill-defined. As I mentioned previously, we have no formal role whatsoever in helping to prevent an attack, an attack that would permanently devastate our community.

Now, imagine being reminded of this vulnerability everytime you leave your home or look out your window. Imagine to this day of color coded warnings and credible threats, fearing the worse everytime an airplane flies by or a news helicopter hovers the neighboring nuclear plant. Imagine, and this happened just recently, driving down the road only to see military humvees, military personnel armed and stationed at your intersection without any explanation or notice. This is what we live with every day. We are uninformed. We are victims in waiting.

Under the existing system, we also have little or no independent recourse should the worse occur. Instead, we are largely subject to State authority. It was evident recently when our community was affected by a major flooding and we had to go through the State to access Federal resources. Our tribal government is ultimately responsible for the health and safety of as many as 10,000 people, including our tribal members, employees and visitors. Many thousands more live just beyond our reservation. Their fate along with ours is tied to the safe, secure operation of a nuclear power plant, a reality not lost on most Minnesotans.

According to a January 2003 poll, nearly 60 percent of Minnesotans say they are concerned with that the State's nuclear power plants could be targeted for terrorism, and 54 percent say they would need to live at least 50 miles from the nuclear power plant to feel safe. Having lived our lives in the shadow of the nuclear facility, we share their concern. We share their concern because we know more can be done to ensure our safety.

To start, we need to be involved in emergency planning and terrorism prevention initiatives. We need the resources for staff to help and maintain our readiness. We have the most to lose in an attack and we cannot afford not to be prepared. We also need access to information. We should be notified of events before reading about them in the newspapers or experiencing them firsthand. There should be a resource within the Department of Homeland Security that is committed to helping our community be informed and prepared.

Reservation lands located along our Nation's borders and near critical infrastructures such as dams, hydroelectric facilities and nuclear powerplants are vulnerable. Tribal governments should be given the same mandate and resources needed to keep these areas safe. Furthermore, in keeping with the Federal Government's trust responsibility to tribes, the Department of Homeland Security should be required to deal with tribes on a government-to-government basis, just as any other Federal agency would.

Clearly if it is going to be effective, the Homeland Security Act must involve tribes and be inclusive of tribe interests. It should recognize the needs of tribal governments and demand the vigilance of us that is expected from others charged with protecting this Nation.

On behalf of our community council and tribe, I thank you again for this opportunity to testify here today. Each of us has an obligation as Americans to do our part to protect the homeland as our ancestors before us protected Mother Earth, it is up to us to protect it for generations not here yet. We pledge to do our part, the Prairie Island Community, and to cooperate in this matter and welcome the opportunity to do our part.

Thank you, Mr. Chairman.

[Prepared statement of Ms. Bennett appears in appendix.]

Senator INOUYE. Thank you very much, President Bennett.

Since you will be leaving us and I hope you don't miss the plane, do you believe the passage of this measure would in some way help your situation?

Ms. BENNETT. I believe it would, Mr. Chairman. Again, it is something we always have to keep fighting for as tribes, to be included in languages that affect us. I think by inserting "tribes and reservations," it is very important, especially with the threat of terrorism that we know today and also to have the same representation as governors, mayors and local units of city people. Tribes should also be on any of those councils and committees to be a part, to keep information flowing and communication moving forward to find solutions everybody can live with. I think it is very important.

Senator INOUYE. We will do our best, Madam President.

Ms. BENNETT. Thank you.

Senator INOUYE. I hope you make the plane.
Ms. BENNETT. Thank you.
Senator INOUYE. May I now recognize Governor Johnson.

STATEMENT OF ROLAND E. JOHNSON, GOVERNOR, PUEBLO OF LAGUNA

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

The Pueblo of Laguna is most appreciative of the committee's invitation to provide testimony in support of S. 578. The Pueblo of Laguna supports S. 578 because it ensures consultation and coordination with and the involvement and inclusion of Indian tribes in the mission of the Homeland Security Department. It ensures that tribal governments participate fully in the protection of the homeland of the United States, including tribal homelands. These purposes are carried out in a direct relationship with tribal governments and not as subdivisions of States.

The Pueblo of Laguna needs S. 578 to address three things. First, to be capable partners, the Pueblo must be well prepared to handle emergency situations. Second, it must be recognized as the legitimate governmental authority responsible for reservation health, safety and welfare. Third, it must have the resources to ensure that all people in the Laguna Pueblo homeland receive timely and expert protection and assistance.

Laguna is at the crossroads of vulnerability because it is located along a major east/west Interstate 40 corridor where a major accident could potentially cripple the rest of the Nation. Laguna's 560,000 acres of reservation are situated in four counties. The Pueblo's six villages are located approximately 45 miles west of Albuquerque and 25 miles east of the community of Grants, New Mexico.

Laguna has over 8,000 members, making it one of the more populated Pueblo areas in New Mexico. The Burlington Northern and Santa Fe Railroad lines travel approximately 40 miles across our reservation. In addition, both the El Paso Natural Gas Company and Transwestern Pipeline Company have high pressure, interstate gas lines that also cross our reservation. All routes and pipelines converge within a 1-mile radius of each other near the Laguna Industries, a manufacturing facility whose primary customer is the Department of Defense. These pipelines are also located in very close proximity to many homes on the reservation. Other jurisdictions are far away. Laguna must therefore be prepared to serve as the first responder.

Laguna shares vulnerability with neighbors and the State because of many defense and energy related facilities that are located in the State. The Waste Isolation Pilot Project is located in the southern part of the State of New Mexico. Interstate Highway 40 is the primary transportation route for shipment of nuclear waste from sites in Nevada to the site southern New Mexico. Other facilities include the Sandia National Laboratories, the Kirkland Air Force Base, the White Sands Missile Range and the Los Alamos National Laboratory. I might mention here that waste from the Los Alamos National Laboratory is transported across a State road which also crosses the lands of several of the Northern Pueblo in

the State of New Mexico, including the Pueblos of San Ildefonso and the Pueblo of Pojoaque.

On this past Memorial Day, we had an incident occur at Laguna which really tested our state of preparedness to respond to emergency situations. At about 4:15 p.m., 13 cars of a 49-car freight train derailed at Laguna Pueblo and forced and evacuation of a sizable area of the reservation. The westbound Burlington Northern Santa Fe Railroad company was at first reported to be carrying some hazardous materials. Although no one was seriously injured in the accident, some 500 people had to be evacuated from the area where the train derailed and where approximately 80 family homes, schools, tribal government offices are situated. Thereafter, the train tracks were closed in both directions for over 24 hours.

Laguna's response to the situation resulted in both of Laguna's firetrucks with full crews having to respond to the situation, all four of its police department cruisers, with almost all the department law enforcement personnel, Laguna's two ambulances and medical workers, Laguna's hazardous materials response teams, emergency equipment and personnel from adjacent non–Indian communities also responded after Laguna was first on the scene.

One month before this incident took place, Laguna had engaged in a hazardous materials spill exercise based on a mock train derailment. This exercise helped provide a better organized response to the real derailment. Deficiencies were revealed, lessons were learned from both situations. The lessons learned in both situations are quite revealing.

During the actual derailment, five other communities were left unprotected for lengthy periods of time. No one knew just what was on the train or which car might contain dangerous materials. We need to establish clear command systems to provide on-site decisionmaking leadership. We realized we had insufficient facilities for use as a central command post. There were insufficient communications systems to the point where private cell phones had to be used to coordinate many of the activities. We currently have no efficient way to warn our community of impending hazards.

My point here is that approximately 85 trains pass through the Laguna Pueblo each day and the potential for disaster is ever present because they do carry hazardous materials periodically. We need adequate resources to address those disasters when they occur. Through proper inclusion of tribes in homeland security efforts, we hope that S. 578 will better facilitate providing information and assistance to us directly. We also want to benefit from the financial and other assistance programs of the Homeland Security Department to assure that we have adequate planning, training and equipment and have an improved ability to coordinate and distribute warnings and other public information.

The second purpose of S. 578 is to recognize tribal governments as participants in securing the United States homeland. Such participation requires us to be alert, ready and able to respond to terrorist activities that are dangerous to human life, violate criminal laws, are intended to intimidate or coerce a civilian population or their governments or are intended to affect the conduct of government by mass destruction, assassination or kidnapping. Tribes

must be able to investigate, inspect, search, rescue, evacuate, medically treat and suppress fires.

The tribal government must also make sure that governmental authorities are in place to guide all these activities and that the activities are conducted in a manner that is cognizant of human rights and dignity. The Pueblo Government is also the only entity with authority to enter into intergovernmental agreements, best practices and other mechanisms to share and coordinate with State and local governments. This is the only way to ensure that tribal, State and local governments together complete the web of comprehensive, defensive, protection and response necessary for all citizens wherever they are to receive the care and services they need. None of us can do it alone.

Determinations assigning jurisdiction between Federal, State and tribal forums can be very complex and confusing. Clarification is needed when the defense and protection of people, places, and infrastructures are at stake. Emergency action can not linger in order to assess who can be detained, medically treated, evacuated or whose premises can be inspected.

Section 13 of S. 578 provides this clarification by applying concurrently Federal and tribal law in the context of homeland security and it eliminates the confusing aspects of Federal common law. This provision makes use of existing applicable laws which are already, for the most part, Federal and tribal law.

Laguna needs resources to pay for the cost of providing comprehensive health and safety protection and assistance. Federal funds will help but they are limited. States, counties and cities can raise revenue to support police, fire, medical, emergency, and other services. Laguna has a possessory tax to do this but the validity of the tax has come into question because of two Supreme Court cases, *Strait* v. *A–1 Contractors, Adkinson Trading Company* v. *Shirley*. Laguna responded to the BNSF train wreck with full ability and resources but the railroad now asserts that these cases would allow them not to pay the tax that Laguna uses to provide essential governmental services when needed. We assert that this is unconscionable and wrong. Congress and Federal agencies have long encouraged tribal governmental and economic self determination but now the Judicial Branch is crippling exercise of this determination by judicial fiat.

Every other government in this country is allowed to engage in the basis governmental function of raising revenues through taxation within their physical boundaries to provide the kinds of services that we have been talking about and yet Indian tribes are being denied the same opportunity.

Laguna requests amendments to S. 578 that would treat tribal governments in a manner similar to States for the purposes of regulation and taxation to provide health, safety and welfare services on the reservation. Laguna also requests these amendments to ensure that Indian country includes all fee lands and rights of way, no matter who owns them within the exterior boundaries of all Indian reservations and the Pueblo land grants. To address this matter, the Pueblo of Laguna has included in its advanced testimony language to be inserted into S. 578. I refer you to page 8 of the advance testimony of which you have copies.

S. 578 and the changes we recommend would greatly enhance the ability of the Pueblo and other Indian tribes to be prepared for emergencies and terrorism, to provide the leadership and authorities necessary to work effectively on the reservation and with States, counties and cities, and to have the funding and revenue necessary to protect residents, visitors, businesses and critical transportation and infrastructure systems and assets. After all, business activities that are conducted on the reservation benefit from the health, safety and welfare services that are provided by our governments.

I appreciate this opportunity to present my testimony.

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

Senator INOUYE. Thank you very much, Governor Johnson.

Now, may I call upon the distinguished Chief Old Person.

STATEMENT OF EARL OLD PERSON, CHIEF AND TRIBAL COUNCIL MEMBER, BLACKFEET TRIBAL BUSINESS COUNCIL, MONTANA

Mr. OLD PERSON. Thank you, Honorable Senator.

I certainly appreciate this chance to be able to come before your committee and express our concerns on the homeland security. I have a prepared statement but I do want to make just a general statement.

Senator INOUYE. It will be made a part of the record, sir.

Mr. OLD PERSON. Last fall and earlier this year, I attended some meetings pertaining to the homeland security. At that time, I thought we were going to have a great involvement in this particular act that was taking place. It seemed less all the time, knowing more about it. I began to wonder how far it was going to go and how much involvement we, as Indian tribes, were going to have.

The reason the Blackfeet people are very concerned is we have three border crossings that come into the reservation. The fourth crossing is just off the reservation to the east. There is traffic going back and forth all year long. In fact, other Indian people go through these crossings. We sometimes have problems going across. We have been working with this for many years now, trying to help the border crossing people. How can we help make it easier for people to have access or go into Canada or for people to come into the United States through our reservation. They have been very cooperative and we try to cooperate with them as much as we could.

Within Canada, we have three tribes that are the same with the Blackfeet. We were all together at one time. It is known as the Blackfeet Confederacy. Recently we had a meeting in Canada regarding the border crossing. Again, this homeland security was talked about at that time, what we were doing and how we were involved. We couldn't really give them the kind of involvement we were having with homeland security.

Ms. Johnson and Roland Johnson practically hit every area, the reasons we are here saying we want to be a part of this, that the Indian tribes want to be recognized because these are our homelands, the reservation. We are not just trying to help protect these homelands but also to help protect other lands adjacent and the whole United States. I have never known our young men and

young women to refuse going into the service, going abroad into the combat fields and we know we have been involved in these kinds of things that concern our people that could cause problems, that could damage the kinds of things our people hope to continue.

I was here during 911. I saw what took place and that is why I was concerned. I know other tribal people were here. We are very concerned about what took place. These are the kinds of things we want to help protect. As Indian people on the reservations today, we are having problems in many ways. Our resources are not that great that we can outright begin to deal with things and begin to solve things. That is why we are in need of help. We are in need of help to get together and help with these kinds of programs that are coming into effect so we can be a part of them and help ensure there is going to be protection for our people.

We have a lot of problems, it is true. We have law enforcement we are trying to upgrade but it takes resources to do it. During my course of leadership, which goes way back, I have stressed the fact that in our homelands, our land and our law enforcement, law and order, is the backbone of our homelands. If we don't have the land base, if we don't have the law and order, then we don't have anything. That is why we are very concerned. We have different entities within our law enforcement. We have the Bureau of Indian Affairs, FBI, our tribal law enforcement. They are trying to do things in cooperation on how we can best deal with the things that happen. Our young people are at stake today. We need protection for them, we need to find a way to help them find ways to help with the situation so they can begin to understand they are just as important, that they can help us to try to solve some of the things we are concerned about.

So today I certainly would appreciate if people with the go sign would include the tribes with this particular bill. It is going to help our people, help our country, help everyone concerned. Right now, people back home are concerned about what is going on in Iraq and in countries abroad because we do have people over there. So whatever we can do to come together, this is our country. We are going to be here. No one is going to leave. That is why we are trying to protect it. I know through that joint effort we can put together, those people that want to see things go otherwise, need to understand they are going to be here too. Anything that affects us is going to affect them the same.

That is what we are trying to protect today. I hope this particular bill, everybody comes together and let it go through, let our answers be to where we can better understand one another and we know we can work together and there is protection that is going to help our people.

I see that within the bill and everything set forth. It addresses a lot of things, even to the Public Health Service, the Indian Health Service. We need those people, we need that help.

I appreciate your having me here to testify and to say the things I'm concerned about because we are concerned. The beef producers in Canada came to us trying to get us help them to work out things if we had that mad cow disease that is affecting them. They are trying to work something out even with the Blackfeet Tribe. These kinds of things we know about. If they need our help, how can we

do it? We can do it if we are given the resources and the kinds of things to do it.

I appreciate your having me.

[Prepared statement of Mr. Old Person appears in appendix.]

Senator INOUYE. Thank you very much, Chief Old Person.

Now, may I recognize Chairwoman Juan-Sanders.

STATEMENT OF VIVIAN JUAN-SAUNDERS, CHAIRPERSON, TOHONO O'ODHAM NATION OF ARIZONA

Ms. JUAN-SAUNDERS. I'd like to thank you for this opportunity to testify on this important matter impacting the Tohono O'odham Nation

The Tohono O'odham Nation is located in southern Arizona and is comprised of 2.8 million acres. We have a tribal enrollment of 28,000 enrolled members and approximately 10,000 reside on the Nation.

Prior to contact, the aboriginal land base of the Tohono O'odham Nation extended south to the Gulf of California, east to the San Pedro River, north to the Gila River and west to the Colorado River. In 1848, the Treaty of Guadalupe-Hidalgo ended the war between the United States and Mexico and it placed the first southern boundary at the Gila River and that placed all of our tribal members in Mexico. Six years later through the Gadsden Purchase of 1854, the United States and Mexico further defined the southern boundary and placed it at its present location. Consequently, that cut into the heart of the aboriginal lands of our people and today we have 75 miles of the international boundary which is adjacent to our reservation lands.

On behalf of the Tohono O'odham Nation, we feel that S. 578 are important tribal amendments to the Homeland Security Act of 2002. The amendments will recognize the important role that tribal governments play in defense of our homeland and will help in deterring illegal activities on the Nation's lands.

The Homeland Security Act of 2002 is very comprehensive but it is incomplete because it fails to include tribal governments as eligible entities entitled to participate in Department of Homeland Security implementation. In the act, tribal governments are placed in the local government category, a designation for counties and municipalities. Our understanding of the National Homeland Security Strategy is one, to prevent terrorist attacks; second, reduce our homeland vulnerability to terrorism; and third, minimize the damage and recover from the attacks that do occur.

In reducing the vulnerability to terrorism, the Federal Government must not and cannot ignore the fact that 25 tribal governments have land located on or near Canada and Mexico. For the Tohono O'odham Nation due to our geographic location, we are at the forefront. Please consider the fact that our tribal police has stretched its resources to the limit and now spends half of their tribal budget, an average of $2.5 to $3 million annually in response to border related incidents. On an average day, our police officers spend 60 percent of his or her time working on border-related issues.

In 1999, our officers assisted the Border Patrol with 100 apprehensions per month and in 2002, our tribal police officers recorded

6,000 undocumented immigrants detained pending U.S. Border Patrol pick-up. In 2002 and 2003, 1,500 undocumented immigrants crossed our lands every day and they are not just coming from Mexico; they are coming from Central America, Guatemala, Honduras and any foreign country for that matter. Illegal narcotics seizures have more than doubled in the last 3 years to over 65,000 pounds in 2002 and in 2003, we have had 49 undocumented immigrants die on our reservation lands. Our tribal police pays for autopsies at $1,400 per body.

In Arizona, these types of statistics would require a state of emergency. Currently it is unfortunate that these statistics have brought members of Congress and members of Federal agencies and State agencies and State representatives to the international boundary adjacent to our lands. However, we need to take the next step in providing resources to address these issues.

At our western boundary, we have the Barry Goldwater military base which is an important note as we discuss terrorism and likely targets. The Indian Health Service also spent $500,000 last year for health care for undocumented immigrants. Health care to our tribal members has been seriously compromised. We don't get reimbursed for the dollars spent on foreigners.

We have made a few dents in these problems. For example, a visit by the Washington, DC Homeland Security Telecommunications and Wireless staff member resulted in a $26,000 piece of equipment to allow for operability amongst our tribal law enforcement and certain units of Department of Homeland Security like Customs, Border Patrol and local county law enforcement. It allows them to communicate with one another. We also received a set of night vision goggles. This is the extent of the assistance. Communications is still an issue due to the potential security breach due to airways that do not stop at the border.

We also participate in the Arizona/Mexico Commission which allows us to coordinate our planning efforts in the event of bioterrorism. We are in direct communications and have scheduled one on one meetings with our health counterparts in the State of Senora, Mexico to collaborate our efforts.

This year, our Chief of Police by exercising our tribal sovereignty, accompanied the U.S. attorney to Mexico City to begin discussions with their law enforcement counterparts in Mexico regarding collaboration efforts.

The issues we bring today are the lack of government to government consultation with the Tohono O'odham Nation regarding the restructuring of Federal law enforcement entities that have functioned on the Tohono O'odham Nation for over 20 years. We believe that since 2002 with the Federal policies regarding the restructuring of the Department of Homeland Security, we were never consulted about the restructuring and how that would impact the Tohono O'odham Nation. U.S. Customs has operated on the Tohono O'odham Nation since 1985 and Border Patrol for 20 years.

One of the concerns we have is the transfer of an elite unit known as the Shadow Wolves which has 21 Native Americans whose primary focus was drug interdiction. Now they have been transferred to Customs and Border Patrol who have a different mission with regard to immigration. While the GHS has stressed

the mission in terms of the Shadow Wolves will not change, we still remain cautious. Some of our tribal members are Customs agents.

Because of the lack of consultation and the restructuring, the Tohono O'odham Nation took a formal position on Federal activities and functions on the Nation. We requested and demanded respect for government to government consultation, respect for our people, respect for our lands and respect for sacred sites.

In order for us to be eligible for equipment and training, we must lobby local counties. In June, I approached the Arizona Director for Homeland Security when they announced that $3 million was available for Pima County for homeland security efforts. I asked how much of the $3 million would come to the Tohono O'odham Nation and the response was none. When I asked how to access the funds, the response was we would have to lobby the Pima County Board of Supervisors for funding.

The Tohono O'odham Nation is in three counties, Pinal, Pima and Maricopa. We do not have the staff nor the resources to send our people to three different planning sessions for emergency preparedness. We request the funds come directly to the Tohono O'odham Nation.

I would just like to conclude by saying that terrorists don't distinguish between jurisdictions and people. That is our concern. The Tohono O'odham Nation is at the forefront already. We already detain foreigners as they come through our Nation while we await Federal entities. It is important for us to continue to have the authority necessary.

Our common goal is national security and tribal governments must be at the table. We believe that the tribal amendments to S. 578 will allow us to participate in the Department of Homeland Security activities including information analysis and infrastructure protection, science and technology, the Directorate of Boarder and Transportation Security and emergency preparedness and response. Passing this legislation together with better communication and sharing of ideas, coupled with direct Federal funding for manpower and resource support are effective first steps to deterring these activities on the Nation's lands.

By working together and continuing to identify and implement solutions, we can better protect U.S. interests and enhance government to government relations.

Thank you.

[Prepared statement of Ms. Juan-Saunders appears in appendix.]

Senator INOUYE. Thank you very much, Chairwoman Juan-Saunders.

Now may I call upon Chairman Windy Boy.

STATEMENT OF HON. ALVIN WINDY BOY, CHAIRMAN, CHIPPEWA CREE BUSINESS COMMITTEE OF MONTANA

Mr. WINDY BOY. Good afternoon, Senator.

I serve as chairman of the Chippewa Cree Tribe. I am an advocate for Indian issues, especially when the issue impacts our government to government relationship with the United States of America and our right to tribal self determination and self governance on our reservations.

Today, I am here to support the passage of S. 578 which allows tribal governments to actively participate in our national strategy to combat terrorism and to protect our tribal members and tribal homelands.

Mr. Old Person mentioned agriculture. In the great State of Montana, agriculture is the primary source of income. In Montana, we have 3.1 million head of cattle, Indian ranchers are 26.5 percent owners of those cattle, so the industry also affects Indian country on the seven reservations.

If Indian tribes aren't a part of the national strategy, it would leave a huge void in our national security plan. As mentioned earlier, we are patriotic people. Our people certainly have paid the ultimate price for freedom. Now our governments must be involved in retaining that freedom, freedom to accomplish the national objectives of the homeland security plan such as border security, the protection of critical infrastructure on Indian lands, integrated law enforcement and emergency response and medical capacity planning and implementation.

In support of S. 578, I'd like to share with the committee members an experience my tribe had with border security, tribal court jurisdiction over our homelands and the need to access homeland security funding to enhance our ability as first responders and for the protection of our infrastructure.

Last summer my tribe had a horrifying experience with an across the boarder abduction of tribal children into Canada. Our inability to do anything was a most frustrating experience. Upon learning that our tribal children were abducted and taken across the border to Canada which is approximately 50 miles from the reservation in extreme, north central Montana, we contacted all the Federal and State law enforcement agencies for assistance and no one could help us. It was outside the jurisdiction of every Federal and State entity. The FBI did not have the jurisdiction because of the international border crossings. The State of Montana couldn't help us because it was out of their purview. Finally, we contacted the State Department here in Washington, DC and they referred us to the Child Abduction Bureau. They gave us sound advice but couldn't do anything to get our tribal children back to the United States and onto our reservation.

Where they lived, every governmental agency we spoke said because we are an Indian tribe, they couldn't help us and didn't understand tribal jurisdiction. Basically, we were on our own.

As a self-governance tribe, we are used to taking charge and performing Federal functions to the best of our ability while maximizing the resources we have access to. With the limited resources available to us, we charged the abductor in tribal court for abduction or kidnapping, which is a class III offense in our tribal law and order code, punishable for up to 6 months incarceration and a $500-fine and immediately issued an arrest warrant.

We knew the service of process for the arrest warrant across the border would be a big problem because both State and Federal authorities couldn't help us. This was as far as we could go. Everything at that time came to a standstill. Finally, after weeks of trying to get assistance and access governmental resources to help us locate and return those children, we contacted a barrister in the

Canadian justice system. My tribe spent approximately $15,000 to $20,000 to hire a Canadian attorney to represent us in the Canadian judicial system to locate our children and return them to Rocky Boy in the United States.

After several months of agonizing hearings and countless phone calls, we were successful in getting our tribal children back in the United States and home on our reservations.

This is an experience I will never forget and have vowed not to go through such an ordeal again. The helplessness and lack of coordinated resources is a shame in this day and age and we can't allow this type of void in jurisdiction to carry over into the fight against terrorism.

Our ability to access direct governmental resources and to do so on a government to government basis in order to provide better border security for our tribal homelands is imperative. Today, timing is critical. We must have the ability to immediately access and evaluate any situation we are confronted with, especially when the protection of our homelands and members is at issue.

All Indian tribes, especially the tribes bordering international borders, need to be a part of the comprehensive maintenance of the homeland security of the United States. We already have the tribal laws, the tribal court system, law enforcement personnel and governmental infrastructure. What we need is the ability to work together as Mr. Old Person mentioned and coordinate with our Federal counterparts and have access to the various resources available to all agencies involved with law enforcement and border security.

It is my hope that S. 578 will assist us in strengthening our ability to deal with those who intrude on our lands for the purpose of committing terrorist actions. My tribe, like many others, is not immune to drug traffic. There were several Mexican nationals arrested for pedalling drugs on Rocky Boy only to have them deported and in a very short time, back in Rocky Boy.

We have created expulsion orders for them to stay off the reservation but if it is that easy for them to come onto a little reservation in north central Montana, they have the whole country. Without S. 578, there is a void and we are limited in our ability to protect our homelands, our resources and our people from these relatively new threats to our health, safety and welfare.

In support of section 13 of the act which supports our ability to exercise jurisdiction over any terrorists entering our lands, closing the current jurisdictional gap is imperative to protecting our homelands. We currently exercise as much jurisdiction over our lands that the law allows but there are jurisdictional gaps that cannot be allowed to continue unless we want Indian reservations to become the points of entry and activity for terrorist cells. Section 13 will allow us to close those jurisdictional gaps and to be more responsive to everyone, tribal and non-tribal, within our jurisdiction.

In terms of law enforcement and judicial capabilities, we realize it is limited for purposes of the act and should not be viewed as an access to the broad expansion of tribal jurisdiction. The Federal authorities have been extremely helpful with certain law enforcement cases but they are overburdened. They cover several reserva-

tions in our area as well as other Federal cases off the reservation as well.

Tribes can help offset their enormous load and work together in a more direct capacity than we currently do. We can perform law enforcement and judicial duties in a limited capacity. Section 13 will allow us to work together in a true government to government relationship and to jointly utilize our resources to get the job done expeditiously and more thoroughly.

Unless you have committed some sort of terrorist criminal act as defined in the Homeland Security Act of 2002 within our reservation's boundaries, you have nothing to fear from the enactment of S. 578. Every American should be supporting this effort to work together to make the reservation environment as safe as the off reservation environment. The effort to combat terrorism cannot be a game plan full of loopholes.

In addition to law enforcement on reservations, my background is in law enforcement but as far as local law enforcement, I find we are not to capacity as the Federal system is. Our current funding level certainly needs to be beefed up, particularly on reservations with large land bases.

With that, Senator, thank you. I would be glad to answer any questions.

[Prepared statement of Mr. Windy Boy appears in appendix.]

Senator INOUYE. Thank you very much, Chairman.

Governor, when the Memorial Day train derailment happened and you were informed, did you hesitate before you gave assistance?

Mr. JOHNSON. No; we responded immediately.

Senator INOUYE. The train company was not grateful for that?

Mr. JOHNSON. Eventually, they did acknowledge our response and thanked us for the response we made but we had people onsite within a matter of minutes after the incident occurred.

Senator INOUYE. But they do not want to pay for it?

Mr. JOHNSON. Apparently not.

Senator INOUYE. We hope this measure will in some small way be helpful to you.

Mr. JOHNSON. It will help us, Senator.

Senator INOUYE. Chief Old Person, we have been told that BIA has decreased the number of law enforcement officers protecting the northern border of the reservation that is on the Canadian border. Is that correct?

Mr. OLD PERSON. No; right now we are having some problems but we are trying to come together at this time to work this out, the BIA, the tribal law enforcement.

Senator INOUYE. So you are trying to work this out now?

Mr. OLD PERSON. We are trying to work it out right now.

Senator INOUYE. I hope they will increase their presence there.

Do you have the same sort of problem that Chief Windy Boy has with his tribe?

Mr. OLD PERSON. Yes; we all have this.

Senator INOUYE. Drugs also?

Mr. OLD PERSON. Drugs. That is why I said our young people are being affected. We are trying to get them to realize that they need

to be a part of what we are trying to do and that we are trying to help them. So they are very much affected.

Senator INOUYE. You said you support S. 578?

Mr. OLD PERSON. We certainly do.

Senator INOUYE. We will try to do our very best, sir.

Mr. OLD PERSON. Thank you.

Senator INOUYE. Chairwoman Juan-Saunders, you testified your police department spends about $3 million annually to respond to border related incidents. How do you pay for this?

Ms. JUAN-SAUNDERS. Through tribal dollars.

Senator INOUYE. And there are no Federal funds for this?

Ms. JUAN-SAUNDERS. No; there is no reimbursement. We have made attempts and we bear the cost. We have over 70 tribal police officers and a seven-member investigative unit.

Senator INOUYE. With the assurance provided during the first panel to share Federal funds with you, I hope they will recognize your problem. Have you requested reimbursement?

Ms. JUAN-SAUNDERS. Yes; we have and no response.

Senator INOUYE. No response?

Ms. JUAN-SAUNDERS. No.

Senator INOUYE. Can you send us a copy of your communication?

Ms. JUAN-SAUNDERS. Yes; in the audience, we have our chief of police, Richard Saunders, and legislative council member, Verlon Jose. We are very much concerned about the issues you raised today.

Senator INOUYE. You will send us a copy of that communication and we will see what we can do.

Ms. JUAN-SAUNDERS. Thank you.

Senator INOUYE. Chairman Windy Boy, you are going to have a new campus there. What are you going to name it?

Mr. WINDY BOY. Stone Child College.

Senator INOUYE. It has been a long time since I have been there.

Mr. WINDY BOY. We would welcome you back.

Senator INOUYE. You indicated you have good working relationships with your local FBI agents but how long does it take the FBI to respond to calls?

Mr. WINDY BOY. Fortunately in the last year or so, they have located parts of the Great Falls office which is 130 miles to the west, located them to service both the Chippewa Cree Tribe and the Gros Vent Tribes.

Senator INOUYE. But it takes a couple of hours for them to drive down?

Mr. WINDY BOY. Yes.

Senator INOUYE. They cannot respond immediately even if they tried to?

Mr. WINDY BOY. No.

Senator INOUYE. Has the FBI refused to investigate or pursue a crime committed by a non-Indian because of lack of adequate resources?

Mr. WINDY BOY. Depending on the situation. Drugs, which is getting predominant in our area, they have been helpful in that arena. The problem that I see, and I will use Rocky Boy as an example, we have trained a number of officers and a number of our officers

have left tribal service to work for the Bureau of Indian Affairs where the pay is better and stability with other fringe benefits.

Senator INOUYE. There are ICBM stations near you?

Mr. WINDY BOY. Yes.

Senator INOUYE. How close are they?

Mr. WINDY BOY. The closest one would probably be 9 miles from the nearest reservation boundary.

Senator INOUYE. Have you ever been called upon to respond to any problem there?

Mr. WINDY BOY. In reference to?

Senator INOUYE. Some sort of security problem? Have they ever called you?

Mr. WINDY BOY. No.

Senator INOUYE. Once again, I thank all of you for your testimony.

Now may I call upon my colleague, Senator Akaka.

Senator AKAKA. Thank you, Mr. Chairman.

STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

Senator AKAKA. I want to compliment you and commend you for having this hearing which is important to our Indian nations being that the Homeland Security Act is to ensure that the local tribal governments are consulted and involved in homeland security.

From what I gathered from your testimonies here, that is not happening that way. Section 13 helps to ensure that and I am glad to also hear that you are supporting that section in the bill.

The Government folks who were here earlier answered the questions and seemed to indicate that these procedures are working. As you know, we are modifying the Homeland Security plan to meet States' needs. The Chairman has asked you about reimbursements. From what I gather, that has not come through but I'd like to ask you about grants, whether any of you have received any grants from homeland security at this time?

Mr. WINDY BOY. One that I'm familiar with was through the Department of Agriculture for $20,000. I believe each of the tribes in Montana and Wyoming received those but $20,000 was limited and was acquired through the Montana and Wyoming Indian Stock Growers Association that I chair.

Senator AKAKA. Governor Johnson.

Mr. JOHNSON. As best as I can recall, we have not received any funds directly from the Department of Homeland Security though we have received a limited amount of assistance from the State and various other Federal agencies that also have involvement in homeland security activities.

Senator AKAKA. Chief Old Person.

Mr. OLD PERSON. As Chairman Windy Boy indicated, some of that we were involved in but there were units built along one of the border crossings that we tried to get into without success. We were unable to be a part of those units being built under the Homeland Security. There really hasn't been anything we could recognize that was coming to us. Yet we are still trying to work with them to be involved. They are wanting to build more units on one of the other border crossings and we are hoping to work out

something that we could be involved in because we have people that can build too. We thought we should be given that chance to work with them.

Senator AKAKA. Chairwoman Juan-Saunders.

Ms. JUAN-SAUNDERS. Other than the equipment I referred to in my testimony, no we have not received any grants at all.

Senator AKAKA. I also wondered whether any grants were offered to you at all. I guess not.

I also understand from the officials here before you that they have done some out reach and day to day contact, training and intelligence, Border Patrol training. My question to you is has that happened as far as you know with your tribes? Governor.

Mr. JOHNSON. I am not aware of any direct contact by the Office of Homeland Security. In the forum that was held yesterday, the representative from the Department of Homeland Security, I believe her name is Sherry Rowe, indicated that she had been to Acoma, the community adjacent to ours. I am not sure she stopped by to speak with any of our personnel there. So as far as I know, we have not had any direct contact with the Department.

Senator AKAKA. Chief Old Person, has there been any involvement of the tribe?

Mr. OLD PERSON. I attended a meeting in Helena, MT at the Fort Harrison Veterans Hospital. It was within the National Guard unit. At that meeting, we were told by the people working with the State that the tribes were given a chance to be a part of $7 million offered and no one responded with the exception of one. Myself, we did not receive notification. I don't know about Chairman Windy Boy. If you are not notified of anything like that, you cannot be involved or you cannot respond. That was one thing brought out to us.

At the same time, there is a second go round of $2 million but that never has happened. That is why I said we begin to see less and less involvement or anything saying we can be a part of this.

Senator AKAKA. You are correct. Dr. Raub did mention there was a second go round of money and I wondered whether you received any of that.

Chairwoman Juan-Saunders.

Ms. JUAN-SAUNDERS. Just a few discussions. The Arizona tribal leaders and law enforcement officials expressed concern to the State of Arizona about our lack of involvement and access to funding sources. Consequently, the Arizona Department of Homeland Security scheduled a meeting with the Arizona tribal leaders and law enforcement.

In terms of the Tohono O'odham Nation, our police chief currently serves on the Homeland Security Directors Advisory Committee. I was invited by the border mayors to a meeting with the Governor of Arizona to discuss these issues with the Arizona director of Homeland Security. I expressed my concern that we still, as a tribal nation were not receiving direct funding and I am pleased to note that the border mayors is at least supporting our efforts. We are continuing to work in collaboration with them but we still have not seen any direct resources come to the Tohono O'odham Nation.

Senator AKAKA. Chairman Windy Boy.

Mr. WINDY BOY. Certainly the communications as Chief Old Person mentioned need to be strengthened. I have been involved to the extent of sending one of my staff persons to those homeland security meetings in Helena. My thoughts are government to government and it is very hard as chairman to have to sit down amongst non-policymakers, State employees, trying to figure out what is in the best interest of my tribe. I would like to deal with someone that is going to create positive change with me as chairman of a sovereign nation.

Senator AKAKA. Thank you for your response.

Mr. Chairman, I have an opening statement that I would like to have entered into the record.

Senator INOUYE. Without objection, so ordered.

[Prepared statement of Senator Akaka appears in appendix.]

Senator AKAKA. And also some questions for the first panel.

Senator INOUYE. Thank you all very much.

I would like to call the last panel which consists of: Tex Hall, president, National Congress of American Indians; Gary Edwards, chief executive officer, National Native American Law Enforcement Association; and Tim. Sanders, emergency operations coordinator of Gila River Indian Community, Office of Emergency Management, Gila River Indian Community.

Mr. Hall.

STATEMENT OF TEX HALL, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. HALL. Thank you very much for giving us the opportunity to testify.

I was very concerned about the government officials leaving the room after they finished with their panel. If that is any indication of working with tribes, I don't think it is working very good. I found out there is a Tribal Homeland Security Director and she left. So I don't know how they are going to effectively work with tribes when they don't stick around to listen to the testimony of tribes.

I also want to comment that during 9/11, members of tribes told me that you were on the Hill during that time, and, as mentioned tribal leaders were meeting here in Washington, DC. You took the time to come off the Hill and go down to the Grand Hyatt and tell the tribes that 9/11 had happened and a tragedy had happened to our country. I want to just recognize you for that. You didn't have to do that, but you did and that tells a lot about who you are and your relationship with Indian tribes. So thank you very much, Mr. Chairman, for that.

For the record, my name is Tex Hall, president, National Congress of American Indians and chairman of the Mandan, Hidatsa, and Arikara Nation in west central North Dakota located on the Fort Berthold Indian Reservation.

I want to acknowledge the strong role of this committee's chairman, Chairman Campbell, yourself as Vice Chairman, and members of the committee, and all of the other sponsors of S. 578. We thank them for their sponsorship and protecting the sovereign rights of Indian nations and our friendships over the past years.

I also would like to thank the committee for conducting this hearing on tribal government amendments to the Homeland Security Act of 2002.

I am here to express our strong support for the bill and the committee's effort to correct the troubling exclusion of tribal governments from nearly all aspects of homeland security to date. S. 578 will change the Homeland Security Act's incorrect definition of tribes as local governments and thus close a critical vulnerability gap in our Nation's homeland security network.

NCAI has three important recommendations to the committee regarding S. 578. First, we recommend the bill be amended by the committee to include Alaska Native Tribal Governments. Second, we recommend the inclusion of language to strengthen the jurisdictional provisions in section 13. We have provided the committee with language for both these recommendations. Third, for tribes to receive direct Federal services. Tribes should be provided additional funding to alleviate the budgetary strains caused by homeland security related problems such as patient overload in tribal hospitals and clinics created by illegal immigrants on borders.

In order to give context to my remarks, I want to first demonstrate how the issue of homeland security impacts my tribe in Fort Berthold. As you mentioned, hundreds of Minute Men missile launch sites are located throughout North Dakota. The Minute Man has played a strategic role in our homeland security defense system for over 40 years. What you may not know, Mr. Chairman, is there are up to 18 missile silos located on our reservation, only 3 miles from the city of New town, the headquarters for our tribal administration.

Our police officers are regularly called to investigate trespass calls on or near these U.S. Air Force-controlled sites, especially when these incidents happen outside of the Air Force patrols 9 to 5 shift. Despite these services, my tribe did not receive any funds from the U.S. military or from the Department of Homeland Security.

The Garrison Dam sits near our reservation and when it was built, it decimated our remaining tribal land base and nearly destroyed our culture. The impacts on our loss of life and property if the dam was to be destroyed by a terrorist attack is unthinkable. Now it is over 100 miles in distance to our most southern community from our headquarters.

With regard to State funding, my home State of North Dakota received over $13.2 million for homeland security. Just under $73,000 of this amount was earmarked for all of the Indian reservations in North Dakota. That means just a little over $14,000 went to my reservation and the other tribes. That is less than 1 percent of our State's contribution. We were never consulted about any formula for appropriations or any formula for determining our unmet needs for securing our tribal homeland borders. None of that was done.

The $73,000 is going to be spent for an additional State Homeland Security Liaison to work with Indian tribes. The net result is that none of these actual monies in the State of North Dakota will be spent to educate or train tribal law enforcement concerning domestic terrorism in our State.

Even more disturbing is the fact that the tribes will not receive any money to coordinate with the State and Federal law enforcement authorities, which is critical. Coordination is crucial if events were to happen on or near our reservation.

I have spoken with other tribal leaders throughout the Nation and the failure of States to consult with Indian tribes and include them in their homeland security efforts appears to be the rule rather than the exception.

I want to finally point out that many tribes, such as mine, are becoming more inviting to terrorism because of the presence of our casinos our tourist attractions, and economic development. The Lewis and Clark Bicentennial, which started this year from 2003–06, will draw millions of people to reservations in Indian country from St. Louis to the West Coast. Homeland security funding and training is critical to ensuring tourist safety.

As my fellow tribal leaders have attested, tribal lands nationwide host similar sensitive sites. Tribal lands include over 300 miles of international borders and 28 tribes are located on or within 5 miles of an international border. These tribes face serious immigration issues that have been widely reported and documented. What is less known is the extensive nature of infrastructure located on or near tribal lands that is critical to our Nation's security. These include nuclear power plants, hydroelectrical dams, pipelines, transmission lines, railroads, airports, highway corridors, nearby military installations, and huge populations centers. Like all other governments, tribal governments need the necessary resources to develop the capacity to respond to threats of terrorism. The bottom line is that our national defense system is only as strong as its weakest link.

Many of you have hundreds of thousands of constituents who like it or not have to count on tribal law enforcement to protect these sites. Your constituents will have to count on tribal first responders to take action in the event of the unthinkable. Yet, for some reason Indian tribes have been left out of the planning efforts that this Nation has taken to date to secure our homeland. S. 578, we believe, will correct these defects.

The Homeland Security Act of 2002 established the Department of Homeland Security as the principal agency to develop the national effort through a system of counter terrorism analysis, preparedness and information sharing. Yet the Act has a glaring weakness. It fails to include tribal governments as full-fledged participants in the Department of Homeland Security's program implementation. Instead, the Act regulates tribal governments to the local government category, a designation used for counties and municipalities with an entire different level of responsibility for ensuring public safety.

This has to change. The Department of Homeland Security is not the first agency to encounter problems with Federal program delivery and tribal consultation, but I hope it will be the last. The bottom line is tribes need adequate funding to do the job in protecting against terrorist threats. For decades, States and local governments have received hundreds of millions of dollars for developing and enhancing their emergency management infrastructure, including emergency response.

As I testified, tribes have been largely ignored when it comes to funding and technical assistance from Federal agencies. We have been forced to ask for funding from States and counties counter to the Federal policy supporting the government to government relationship.

Adding to our frustration is the Department of Homeland Security's lack of communication and consultation with Indian tribes. The Department has assembled various work groups and task forces but have not invited tribal leaders and representatives to sit at the table. S. 578 is the right bill at the right time to do this. It is almost 2 years since 9/11.

The President of the United States, President Bush, recently said we have an obligation to future generations of America to make sure this country is secure and we will keep that obligation. This measure is a decisive measure and a smart investment that will fulfill that commitment for our tribal families and for our future tribal generations.

I would like to add in closing that the jurisdictional problems that were talked about previously created by the *Oliphant* decision denies tribal people the opportunity to protect our tribal people and that must change. I greatly appreciate the candid comments made by Mr. Heffelfinger. The Homeland Security Act is an important vehicle for discussing this problem because it highlights the very real issues that tribes face every day, not just in terrorist attacks.

We are interested in having a broader discussion about jurisdiction in Indian country but this cannot wait forever. Tribal police need the tools to address crimes committed by non-Indians in Indian country. Domestic violence and alcohol and drug crimes are our biggest problems in sheer volume alone. The most important civil right we all have is the right to be safe in our homes.

In closing, we would like to have the same opportunity as the Department of Justice to work on the language with the committee on section 13.

Thank you very much for giving me the opportunity to testify.

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

Senator INOUYE. Thank you very much, President Hall.

Now may I recognize Chief Executive Officer Gary Edwards.

STATEMENT OF GARY EDWARDS, CHIEF EXECUTIVE OFFICER, NATIONAL NATIVE AMERICAN LAW ENFORCEMENT ASSOCIATION [NNALEA]

Mr. EDWARDS. Vice Chairman Inouye and distinguished members of the committee, my name is Gary Edwards. I am appearing and testifying today as the chief executive officer of the National Native American Law Enforcement Association.

As many of you may be aware, NNALEA is a not-for-profit organization that promotes and fosters cooperation between American Indian law enforcement officers, agents, their agencies, tribes, private industry and the public. NNALEA recently published its Tribal Lands Homeland Security Report which details many of NNALEA's current findings and views on the importance of tribal lands and tribal governments in the furtherance of the mission of homeland security. We also have an upcoming Homeland Security

Forum in November of this year wherein we will further pursue vital homeland security issues.

I appreciate the opportunity to appear before you to discuss some of NNALEA's views on S. 578 and perhaps even earmark certain issues that need to be pursued in more detail at our upcoming conference.

I have prepared a written copy of my testimony, along with a copy of the NNALEA Tribal Lands, Homeland Security Report and ask that it be accepted into the record.

Senator INOUYE. So ordered.

Mr. EDWARDS. Generally, NNALEA supports the tenets of sections 1–12 of the tribal government amendments to the Homeland Security Act of 2002. I will refer to these sections further in this testimony as "the amendments." In pages 6–9 of the NNALEA Tribal Homeland Security Report, we set forth an outline of many of the vulnerabilities located on tribal lands that pose a threat to the homeland security of our entire country. These vulnerabilities include border security, critical infrastructure, integration of law enforcement, lack of jurisdictional clarity, and emergency response and medical capacity planning and implementation.

Obviously as these vulnerabilities are located on tribal lands, Indian tribal governments have invaluable insight into them and the best means to safeguard them against terrorist attacks. Accordingly, Indian tribal governments must be included, consulted and involved in carrying out the mission of the Department of Homeland Security.

Such inclusion, consultation and involvement should occur directly between the United States and each Indian tribe on a government to government basis. Indian tribal governments possess inherent sovereign authority.

With regard to section 13 of "the amendments," NNALEA generally agrees with the tenet that the inherent sovereign authority of Indian tribal governments as recognized in section 2 of the amendments include the authority to enforce and adjudicate its applicable criminal, civil and regulatory law violated by any person on tribal lands within certain limitations.

It appears that most everyone agrees these limitations should include at a minimum those set forth in any treaty between the United States and an Indian tribe as well as those set forth in any applicable act of Congress. NALEA is, however, aware there are certain rights in the enforcement and adjudication of applicable criminal, civil and regulatory laws that are at present guaranteed on non-tribal land and by non-tribal governments but that are not guaranteed on all tribal lands and by all tribal governments thereby creating a discrepancy in the enforcement and adjudication of certain laws.

Such discrepancies invoke a number of concerns such as due process which probably require a further coming together and balancing of an Indian tribal government inherent sovereign rights, the rights of all citizens and the resources available to the Indian tribal governments to enforce and adjudicate applicable laws. Such discrepancies will ultimately be encountered by the legislature and/or by the judicial system should section 13 be enacted as currently drafted.

Therefore, NALEA suggests that in considering section 13, the discrepancies of the rights referenced above should be evaluated in detail along with the lack of parity in resources provided to non-tribal governments versus those provided to tribal governments for the purposes of enforcing and adjudicating applicable laws.

After consideration of such, it might be surmised that section 13 should be crafted in a way that better ensures both the present discrepant rights in whole or in part and in a way that provides for Indian tribal governments to receive an influx in resources which allow them to bring their authorities that enforce and adjudicate the laws into parity with those of non-tribal governments.

In conclusion, NALEA supports the general tenets of the amendments. However, there are certain specific details of the amendments, especially regarding section 13, that probably require further examination and clarification.

Thank you and I am happy to answer any questions you may have at the appropriate time.

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

Senator INOUYE. Thank you very much, Mr. Edwards.

Mr. Sanders.

STATEMENT OF TIM SANDERS, EMERGENCY OPERATIONS COORDINATOR, GILA RIVER INDIAN COMMUNITY OFFICE OF EMERGENCY MANAGEMENT, GILA RIVER INDIAN COMMUNITY

Mr. SANDERS. Good afternoon.

On behalf of the Gila River Indian Community of Arizona, I would like to thank you for allowing us to testify here today.

My name is Tim Sanders and I am the manager of the Gila River Indian Community Office of Emergency Management. In the interest of time, I would like to submit my full written testimony and highlight a few parts for you this afternoon.

We are pleased to be here to discuss S. 578, the Tribal Government Amendments to the Homeland Security Act. We think this is an important first step in the attempt to clarify the roles and responsibilities of tribal governments in the Homeland Security Act. I want to share with you some of the experiences we have had with emergency management and homeland security type issues that I think may be helpful as we further the discussion.

It has been an honor for me to listen to the tribal leaders discuss the problems they have and hear about their concerns for the people for whom they are ultimately responsible. I am here as the person charged with implementing the Homeland Security Act and other emergency management measures in our community. It is a big responsibility. I take it very seriously. We have some issues that I think S. 578 will help resolve as we go along.

The Gila River Indian Community is located just south of Phoenix, Arizona, is home to about 14,000 of the 18,000 enrolled members of the community. It is the largest reservation in the Phoenix metro area.

We have worked very hard over the past several years to establish and build a very respected and successful emergency management program at Gila River. The community also operates a fire department, a police department, emergency medical services, de-

partment of public health, a hospital and these are parts of the Arizona State homeland security network.

I think our current emergency management capabilities demonstrate that tribes can and do play an important role in homeland security in a regional concept and a State concept of homeland security.

We are here to support S. 578. The bill makes important changes to the Homeland Security Act that recognizes the sovereignty of tribal governments. It proposes to establish a more direct government to government relationship. We just received a letter from the Governor of Arizona that supports S. 578 and I think that letter was sent to the committee yesterday. We have worked very hard with the State on some of these issues.

In the broader context of homeland security, however, there are certain other issues about the treatment and role of tribes that are unclear. S. 578 only corrects one of several omissions with regard to tribal treatment and tribal sovereignty for both homeland security and emergency management.

In recent years, we have worked closely with the Federal Emergency Management Agency to address an omission in their authorizing legislation, the Stafford Act, which has the same problem the Homeland Security Act does with regard to defining tribal governments as local government. This means tribes cannot directly request disaster declarations, they can't enter a direct government to government relationship with FEMA and many of their programs.

I want to talk about some examples we have worked on with FEMA to work around this issue that needs to be fixed. FEMA worked very well with us on some of these issues. They have established tribal liaisons in each one of their regions. We worked with them to develop a measurement instrument that is now available as software to help tribal emergency management programs set goals and objectives for their programs and measure their program capabilities. We also worked with FEMA to develop a specific tribal emergency management training course that is available to tribes. They present it twice a year at their Emergency Management Institute in Emittsburg, MD.

We think homeland security could probably follow the same lead as FEMA working with tribes that have developed the capability that can serve as a model to help other tribes. Unfortunately, we still have that problem that doesn't properly recognize the role of tribal governments. When the rubber meets the road sometimes, those Federal agencies will fall back on that law as a stumbling block to providing the proper technical assistance, funding assistance and things like that.

While we are excited about the prospects of amending the Homeland Security Act, we would urge the committee to keep in mind the Stafford Act is still out there and I think the same changes may need to be made to that bill as well.

S. 578 doesn't do anything for the funding mechanisms for tribes. The majority of homeland security funds are distributed through the States and we have heard several examples of having to lobby county governments and things like that and have tribal leaders sit down with staff members from counties to try to lobby and negotiate for pieces of funding that should be going to the tribes.

The Department of Health and Human Services has funding for hospitals and public health departments. That funding goes through the State and tribes must sit down at the table with various local governments to negotiate the terms of what if any kind of assistance they are going to get for this.

None of the programs really direct that grant funding would go directly to the tribes. It is a matter of how you negotiate and what kind of relationships you have been able to establish with your State and local governments. Obviously this is unacceptable for our community and probably many other Indian communities in the Nation.

A bill currently under consideration in the Senate, S. 1245, aims to consolidate a lot of the grant funding programs for the Department of Homeland Security. That bill also has no provisions for addressing the tribal funding needs. Instead, the tribes would have to depend upon the States and upon those counties and local jurisdictions to compete for those funds they need.

We would urge the committee also to take a look at S. 1245 and see what kind of language may be developed for that bill that would address some of those issues. We would be glad to assist with developing some of that language to make sure that even if we get S. 578 and the Stafford Act changed, if there is still no funding mechanism, we will still be back to square one on some of those issues.

We do have some recommendations. We don't come here with our hands out today. We have invested considerable resources at the Gila River Indian Community to establish a program to take care of the needs of our community in the absence of some of the Federal assistance we should be getting. We are proud we have a sophisticated program that can take care of some of those needs that allows us to get out there and build working relationships with our counties, with the State counterparts.

I think from this experience we can bring some recommendations that will help strengthen tribal emergency management programs and perhaps give some other recommendations for strengthening the homeland security package that you are considering.

The first recommendation is the same amendment needs to be made to the Stafford Act that is made to the Homeland Security Act. I think it makes sense now to bring that under consideration while S. 578 is under consideration.

Our second recommendation is that we believe that tribal governments should be given the option of being a reporting jurisdiction in a State's homeland security plan. Right now Arizona has made the administrative decision to designate their 15 counties as reporting jurisdictions for the threat assessments and needs assessments. That means that Gila River and several other Indian reservations in Arizona must artificially divide their needs and threat assessments and try to make it fit into both or three counties they are in and that complicates things for the counties as they relay that information to the State. It doesn't give a clear picture of what the threats and needs are on the reservation. I think it leaves gaps in the State's homeland security assessment as well.

Congress should stress to DHS and HHS that tribes should be given an option if they have the administrative ability to manage

those grants and things like that. We have sent a letter to our State Director of Homeland Security requesting they give tribes the option to do that in Arizona. I think we might see some movement on that in the future.

Third, I think Congress must recognize that tribes have some unique homeland security issues and needs. Traditionally, they will come to the table with much less emergency preparedness infrastructure. I think it is unfair to burden States that do have tribes with having to dilute their funding. It may be possible somewhere down the road to have a set aside amount that goes to States that have tribes set aside specifically for tribal homeland security needs.

Fourth, despite the relative disadvantage with respect to emergency management infrastructure, tribes must be given the opportunity to participate as full partners. I think the amendments to S. 578 will help local and State governments realize tribal governments do exist. They are there and should be treated as equal partners at the table. I think it will enhance our capability to enter into relationships with them and work out some of these issues.

Finally, we concur with other colleagues in the emergency management community that an all hazards approach to emergency management should be maintained. We see a lot of emphasis on the law enforcement side, the surveillance side and things like that. I think based on our experience, it is very important that the all hazards approach be maintained. I think there is another bill under consideration, S. 930, that seeks to amend the Stafford Act to include terrorism aspects under their umbrella of Federal assistance. There are some vehicles out there to address some of the concerns and some of the recommendations we have.

In conclusion, I would like to thank you again for allowing us to testify. We are encouraged by the attention that some of these issues have been getting. We have been involved in trying to get some action on these for many years. We would like to offer any assistance we can with language, with serving as a model community, with assisting, whatever we can to help tribal governments become more active and more participatory in the homeland security arena.

We look forward to working with you on this bill and any other homeland security issues we can help you with.

Thank you very much.

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

Senator INOUYE. Thank you very much, Mr. Sanders.

As noted by you, we have received a letter in support of this measure from the Governor of Arizona, Janet Napolitano, and that will be made a part of the record.

Her letter is in support of S. 578.

President Hall, you made a very interesting observation that North Dakota received $13.2 million for homeland security purposes and yet only $73,000 was set aside for Indian tribes and all these limited funds could enable the hiring of a liaison officer with the result that no actual funds were allocated to the tribes.

Mr. HALL. I got my notice last Friday. It was just under $73,000 and they are going to use it to hire a liaison. We really didn't get any money.

Senator INOUYE. How much did you get, $3?

Mr. HALL. It really is embarrassing. You can't defend your homeland with that kind of dollars.

Senator INOUYE. This measure will address that.

Mr. HALL. This would be a tremendous help to us. As I mentioned, there are strategic missile silos, and hydroelectric dams located on Fort Berthold, a mere $14,000 for homeland security is embarrassing. There is no way it can cover any amount of surveillance that is needed.

Senator INOUYE. We intend to use S. 578 as a legislative vehicle to amend the Stafford Act as far as the definition is concerned. I presume all of you are in favor of that?

Mr. HALL. Yes, sir.

Senator INOUYE. I do not think the Administration would oppose that. After all, Justice has said they can go along with that.

President Hall, I am certain you have heard concerns expressed by certain non-Indians on this measure that it will create a lot of chaos in reservation communities and authorize broad civil and criminal jurisdiction over non-Indians. Is there any reason for them to be concerned?

Mr. HALL. Not at all. If they read the legislation, it is pretty straightforward, it is limited to the acts of terrorism. I think people are jumping to conclusions. I think radicals are jumping to conclusions and those radicals have never been in Indian country. They don't understand the vastness of Indian country. Indian country is 56 million acres of trust land as you know, Senator. There are strategic initiatives, military installations, airports, railroad, hydroelectric dams located on Indian land. You put all that together, there is no way we can defend our homeland for only $14,000 for each tribe?

If there is an attack, heaven forbid, that would be on a reservation, the tribal government is the closest thing within hundreds of miles in many rural parts of America. Non-Indian communities are going to call our reservation because of the communication system, because of the law enforcement, the ambulance, the fire system. They are going to call our tribal governments and we are going to respond as Governor Johnson indicated when the railroad had their incident, they responded. They didn't get a thank you until quite some time later but nevertheless that happens throughout Indian country in the interest of protecting human life. A terrorist doesn't care whose jurisdiction it is.

No, those are radical statements that are ill founded and haven't led to legislation. The legislation is limited to acts of terrorism and tribes have to have that ability. If our law enforcement, our emergency response is there, if there is an act of terrorism, we have to have the ability to move quickly to protect human life. So we have thought about that and are ready to assist the committee in any manner whatsoever, but I believe a lot of those are not really thought out statements. Those are radical statements by anti-Indian groups that don't like Indian people for whatever reason. They are very discriminatory and racist towards our people and they are not focused on this piece of legislation which is the Tribal Homeland Security. It amends the Homeland Security Act to include tribal governments' ability to have direct funding and to have the

authority and jurisdiction to protect all people, all races if an act of terrorism occurs.

Senator INOUYE. Mr. Edwards, has the Department of Homeland Security had any official contact with your organization?

Mr. EDWARDS. Yes, sir; they have.

Senator INOUYE. What was the nature of that?

Mr. EDWARDS. To work together to reach out to various Indian organizations and tribes to work with us on our homeland security summit. I might add that probably most of that was initiated by NALEA seeking and looking for help and support from the Department of Homeland Security.

Senator INOUYE. Have members of your organization had the opportunity to work with the law enforcement officials, and the Federal Bureau of Investigation on matters of homeland security?

Mr. EDWARDS. Yes, sir; we have. NALEA is about partnerships, it's about building relationships. We work extremely closely with the FBI. As a matter of fact, just 2 weeks ago we worked with them to develop a plan with missing and exploited children in Indian country, to take that program to Indian country. So we work with almost all Federal agencies as well as tribal, State and local.

Senator INOUYE. You think this measure will enhance that?

Mr. EDWARDS. Yes, sir; I definitely do.

Senator INOUYE. Mr. Sanders, thank you for your testimony. As you know when we report out a measure for consideration by the full Senate, we accompany that with a committee report. In that committee report, I will advise the staff to make certain the provisions are clearly set forth that by this measure or perhaps another measure, we will make certain that Gila River will become a reporting jurisdiction and furthermore, we would like to include clarifying language to assure that when funds are appropriated, they will not go through the State but go directly to tribal governments.

Mr. SANDERS. That would be excellent.

Senator INOUYE. I do not suppose you would oppose that. We do respond to testimony, believe me. I hope the measure we report to the full Senate will be one that will address some of your concerns. We realize that this is not a cure all but I think as some of you have indicated, it is a good first step. We hope this will become not just a first step but will serve as a foundation on which we may add many more steps.

With that, I thank all of you for your participation today. We will now get to work and report out a bill.

The hearing is adjourned.

[Whereupon, at 4:22 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF WILLIAM F. RAUB, PH.D., PRINCIPAL DEPUTY ASSISTANT SECRETARY, OFFICE OF PUBLIC HEALTH EMERGENCY PREPAREDNESS

William F. Raub is the Principal Deputy Assistant Secretary of the Office of Public Health Emergency Preparedness, Office of the Secretary of Health and Human Services [HHS]. He has also served as the Principal Deputy Assistant Secretary of the Office of Planning and Evaluation, also within the Office of the Secretary.

Dr. Raub was the HHS Deputy Assistant Secretary for Science Policy from 1995 to 2001. He was the Science Adviser to the Administrator, United States Environmental Protection Agency from 1992 to 1995 after a 1-year assignment as Special Assistant for Health Affairs in the Office of Science and Technology Policy, Executive Office of the President of the United States. Prior to that, he was the Deputy Director of the National Institutes of Health [NIH] in the Department of Health and Human Services from August 1986 through November 1991. From July 1989 through March 1991, he was the Acting Director, NIH.

From 1978 to 1986, Dr. Raub served first as Associate Director, and later Deputy Director, for Extramural Research and Training at NIH. He was Associate Director of the National Eye Institute from 1975 to 1978 and Chief of the Biotechnology Resources Branch in the Division of Research Resources from 1969 to 1975. Dr. Raub was Acting Chief of the Special Research Resources Branch, Division of Research Resources, in 1968-1969, and was a Health Scientist Administrator in the Division of Research Facilities and Resources from 1966 to 1968. From 1966 through 1979, Dr. Raub led the development of the PROPHET system, the first integrated array of computer-based tools for the study of the relationships between molecular structures and biological effects.

Dr. Raub has received numerous awards from external organizations for his government service—including the Society of Research Administrators' Award for Distinguished Contribution to Research Administration, the American Medical Association's Nathan Davis Award, and election as a fellow of the National Academy of Public Administration. In addition, within HHS, he has twice been presented the Distinguished Service Award and has received the Presidential Meritorious Executive Rank Award and the Presidential Distinguished Rank Award.

Born in Alden Station, Pennsylvania, Dr. Raub was graduated summa cum laude with the A.B. degree in Biology from Wilkes College in Wilkes-Barre, Pennsylvania. He received the Ph.D. degree in Physiology from the University of Pennsylvania, where he also was awarded a National Science Foundation Graduate Fellowship and was a Fellow of the Pennsylvania Plan. During 1965-1966, Dr. Raub was an instructor and post-doctoral fellow at the University of Pennsylvania Medical School.

PREPARED STATEMENT OF AUDREY BENNETT, PRESIDENT, PRAIRIE TRIBAL COUNCIL

Good afternoon Mr. Chairman and committee members. My name is Audrey Bennett, and I'm president of the Prairie Island Indian Community. Thank you for inviting me to testify today.

I'm here to offer this committee a perspective that is unique to my community but emblematic of the homeland security issues with which many tribal governments in this country must contend.

For your reference, I've provided an aerial photo of Prairie Island, which is located between the Mississippi and Vermilion Rivers in southeastern Minnesota, about 50 miles south and east of Minneapolis-St. Paul.

Prairie Island is sacred land. Our people have lived there for countless generations. It is my home as well as the final resting place for my ancestors.

As you can see, our reservation is bordered by a nuclear powerplant and nuclear waste storage site. Two nuclear reactors and 17 large storage casks filled with highly radioactive nuclear waste sit just 600 yards from our homes, church, community center, and business.

In fact, our community is believed to be the closest in the Nation to both a nuclear powerplant and nuclear waste storage site—yet we have no special role in helping to protect these facilities, or for that matter, ourselves.

For decades, well before terrorism became the issue that it is today, our tribe had to fight to be properly recognized by the State of Minnesota and our utility neighbor. In 1979, when the plant was evacuated after a steam generator leaked radiation into the atmosphere, no one even bothered to inform our people about the incident. Most tribal members realized something was wrong only after witnessing numerous cars speeding away from the plant. Many of us wisely followed.

Today we are better prepared for a similar incident, and we have a reasonably cooperative relationship with the plant and the State. But in this age of catastrophic terrorism, conventional emergency planning and tangential communication seems grossly inadequate. While we participate in the State's radiological drills and exercises, we have no formal role in helping to prevent an attack, and our involvement in responding to such an event is, at best, ill-defined.

Imagine every time you leave your house or look out your window, seeing a nuclear powerplant and being reminded of your vulnerability. Imagine in this day of color-coded warnings and credible threats, fearing the worst every time an airplane flies by or a news helicopter hovers over the neighboring nuclear plant. Imagine, and this happened recently, driving down your road only to see military Humvees stationed at your intersection without any explanation or notice.

This is what we live with every day. We are uninformed. We are victims in waiting.

Even in disaster recovery, should the worst occur, under the existing system we have little to no independent recourse; instead, we are largely subject to State authority. This was evidenced recently when our community was affected by major flooding, and we had to go though the State to access Federal resources.

While there, of course, needs to be cooperation between tribal and State governments, it is not appropriate for States to be in the position of deciding what tribes need to prepare for or recover from a disaster—natural or otherwise.

Our tribal government, not the State, is ultimately responsible for the health and safety of as many as 10,000 people, including our tribal members, employees and visitors. But we also have a responsibility to scores more that live in the area by virtue of our proximity to a potential terrorist target and our obligation as Americans to help protect the homeland.

According to a January 2003 poll, nearly 60 percent of Minnesotans are concerned that the State's nuclear powerplants could be targeted for terrorism. And 54 percent say that they would need to live at least 50 miles from a nuclear powerplant to feel safe.

Having lived much of my life in the shadow of a nuclear facility, I share their concern. I share their concern because I know more can be done to ensure our safety.

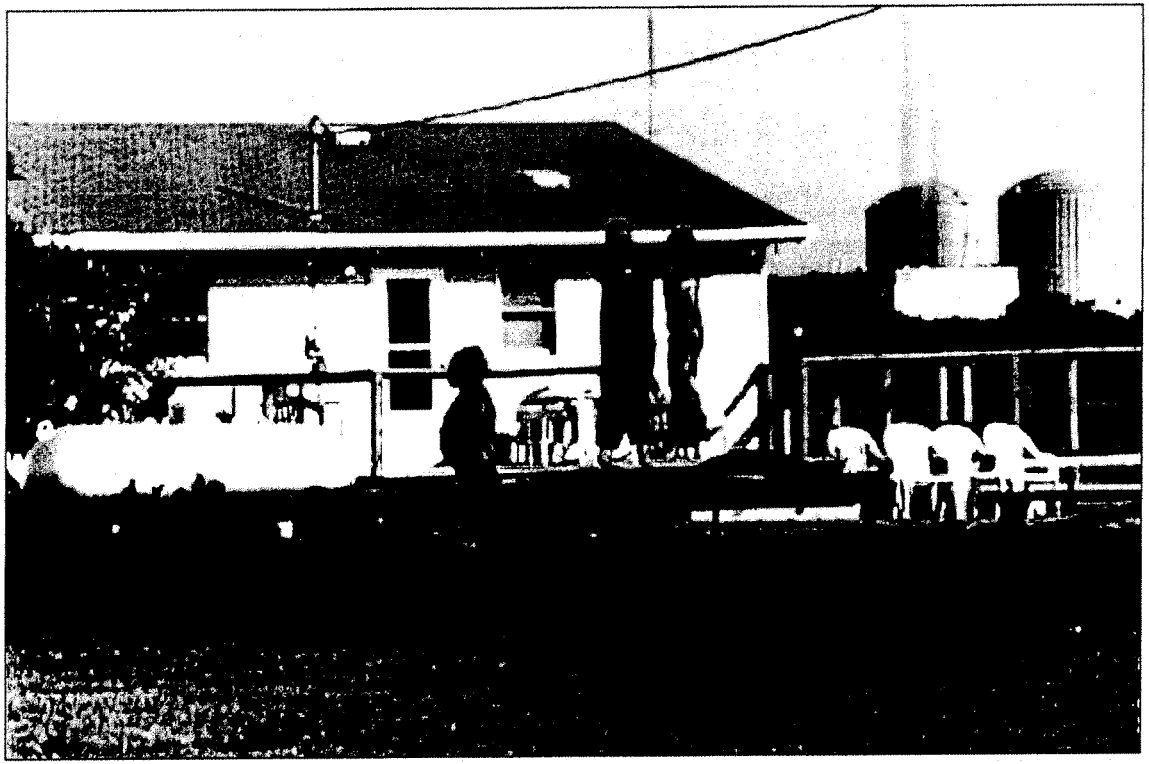
Reservation lands located along our nation's borders and near critical infrastructure such as dams, hydroelectric facilities, and nuclear powerplants are vulnerable. Tribal governments should be given the mandate and resources needed to help keep these areas safe. Furthermore, in keeping with the Federal Government's trust responsibility to tribes, the Department of Homeland Security should be required to deal with tribes on a government-to-government basis—just as any other Federal agency would.

Clearly, if it is going to be effective, the Homeland Security Act must involve tribes and be inclusive of tribal interests. It should recognize tribal governments

and demand the same vigilance of tribes that is expected from others charged with protecting this Nation.

On behalf of my community and tribal council, thank you again for the opportunity to, testify here today. We pledge our full cooperation in this matter and we look forward to further dialog and prudent action.

Mr. Chairman, I'd be happy to answer any questions.



The Prairie Island Indian Community is located less than 600 yards from Xcel Energy's nuclear power plant and nuclear waste storage site.

Statement of Gary L. Edwards

Chief Executive Officer for the National Native Law Enforcement Association

Before the

United States Senate Committee on Indian Affairs

February 26, 2003

Hearing on the President=s FY 2004 Budget for Indian Programs

Mr. Chairman, Mr. Vice-Chairman and members of the Committee, my name is Gary L. Edwards. I am the Chief Executive Officer of the National Native American Law Enforcement Association (NNALEA). I also serve as the Vice-Chairman, of the Native American National Advisory Committee for Boys and Girls Clubs of America and I am a National Advisory Committee member for the Helen Keller Worldwide, ChildSight program.

My testimony today will focus on three categories of Indian programs. The program categories are: Native American Youth programs; Native American Law Enforcement Training programs; and Tribal Lands Homeland Security Training programs.

Native American Youth Programs

To date, the Boys and Girls Clubs of America (BGCA) have opened 140 clubs in Indian Country. These 140 clubs provide a positive place for our Native American youth, serving over 60,000 Native American youth on tribal lands across the country.

In January of this year, the BGCA hosted the A2003 Summit for Clubs Serving Youth in Native America.@ The Summit, entitled AExpanding the Circle: Continuing the Legacy for Our Children,@ infused those in attendance with the hope of opening 200 clubs in Indian country by the year 2005, and imbedded within their hearts and minds the urgency to sustain existing clubs.

The senior leadership of the BGCA, such as Robbie Callaway, and their many partners are dedicated to sustaining each Boys and Girls Club in Indian Country. Partnerships, like the one described below, help to support and strengthen the Indian Country Boys and Girls Clubs and at the same time produce reciprocal benefits.

The National Native American Law Enforcement Association has developed partnerships with the following organizations:

-- Boys and Girls Clubs of America;
-- United States Secret Service;
-- Department of Justice B Office of Community Oriented Policing
-- Bureau of Indian Affairs B Office of Law Enforcement Services; and
-- Bureau of Alcohol, Tobacco, Firearms and Explosives.

These partners are collaborating in the development of a pilot program to address the growing problem of youth gangs on tribal lands. Six Indian Country Boys and Girls Clubs comprise the pilot group for the ATF-sponsored AGang Resistance, Education, and Training@ (GREAT) program. Preliminary reports on the pilot program indicate promising results. The GREAT program also brings Indian Country law enforcement officers into the clubs, to work hand in hand with the children. By bringing tribal law enforcement officers into the clubs and interacting with the club members, we have created an entirely different and accepting relationship between the officers and the community. Our Native youth see the officers in a positive light rather than the traditional adversarial role. They see the officers as part of the community and a solution to some of the daily obstacles they face, as well as a role model for what they can become. The GREAT program in Native American Clubs should continue, and be expanded to more Boys and Girls Clubs throughout Indian Country.

The Helen Keller Worldwide, ChildSight Program will be introduced to Indian Country youth this spring as a direct result of the assistance and support of many of the partners previously mentioned. Over the next three years, the ChildSight program will administer approximately 32,000 free eye exams and issue free designer eyeglasses to children in need. The ChildSight program has earmarked 60% of those eye examinations and eyeglasses for Indian Country youth. The ChildSight program is designed to be a sustainable vision health care program in the communities it serves. The first ChildSight program in Indian Country is scheduled for April of 2003, to be held at Luguna Pueblo, New Mexico. If additional funding becomes available, this program can be further expanded.

With the support of the Congress and the White House, additional partnerships and programs to serve America=s youth can be developed that can produce significant dividends for our children and our communities.

Native American Law Enforcement Training Programs

The National Native American Law Enforcement Association has provided national training for Indian Country law enforcement professionals for the last ten years. In October of 2002, over 400 participants attended the NNALEA ANative American Law Enforcement Training Conference@ and the NNALEA ATribal Lands Homeland Security Summit@ in Reno, Nevada. The Conference and Summit brought federal, state, local, and Tribal law enforcement personnel together with private sector business representatives, community leaders and national officials. The dynamics of

the group produced quality training, collaboration on missions, projects, and objectives, and built partnerships that will last well beyond the events of the week. These training events produced a better understanding and cooperative spirit throughout Tribal lands and the Nation.

Building upon this successful model, NNALEA is currently in the planning stages of developing a national AAcademic Center for Excellence in Tribal Law Enforcement Training.@ Realizing the need for a comprehensive approach to education and training in Indian Country Law Enforcement, NNALEA is pursuing partnerships with a number of organizations and academic institutions, including East Central University of Oklahoma, Fort Lewis (CO) College, Western Oregon University, Excelsior College of New York, the Federal Law Enforcement Training Center (FLETC), COPS Office Regional Community Policing Institutes in Washington State, Oregon and Oklahoma, various Tribal Colleges and Universities, most Federal law enforcement agencies, various state law enforcement agencies, select Native American law enforcement training centers, Boys and Girls Clubs of America on Tribal Lands, and other educational and training groups.

NNALEA is exploring the development of a uniquely Native American approach to law enforcement training, called AWearers of the Shirt@. The AWearers of the Shirt@ concept of Tribal law enforcement comes from the historical Native American tradition of keeping Tribal order through guidance from the leaders and elders of Tribal lands. This proposal will require a study of current Indian Country law enforcement training curriculums as well as Tribal law enforcement standards, practices and applicant selection. Elders and Tribal leaders will be brought together to serve on an advisory board that will traditionally shape the AWearers of the Shirt@ law enforcement training concept and program. Special emphases will be placed on determining the causes for the high rate of Native American law enforcement officers leaving current Indian Country law enforcement training programs, prior to graduation. The positives we learn from these studies coupled with the advice of our Tribal leaders and elders will be incorporated into the NNALEA AWearers of the Shirt@ Law Enforcement Training strategy, methodology and curriculum.

NNALEA training will be performed through national conferences, regional training sessions and e-learning techniques. Currently, NNALEA is piloting an e-learning program consisting of over 700 courses available through the FLETC Distributed Learning Program (DLP), now a part of the Department of Homeland Security. This pilot program is offered to all Indian Country law enforcement officers. NNALEA will approach the Boys and Girls Clubs of America and the Citizen Corp to explore offering this program to first responders, Native American youth and other members of Tribal communities.

The NNALEA Executive Board and our members are very excited about the opportunity to develop a distance learning program specifically for Native American Law Enforcement Officers and tribal communities. NNALEA is exploring ways to offer opportunities to obtain certifications, diplomas, university credits and degrees, specialized training and remedial courses through the FLETC - DLP program and its partners. The possibilities are as vast as one can dream. The potential of this e-learning program can be better understood by considering the following information provided by the FLETC/DLP staff:

- Implementation of the NNALEA/FLETC Distributed Learning Program in the Tribal Nations law enforcement and first responder training programs will provide a high level of consistency in the training provided to Federal, Tribal, state, local and rural community representatives. The cognitive skills training provided through the FLETC/DLP will provide a foundation for coordination and collaboration throughout these communities for more effective planning, response, and recovery for incidents, as well as day to day operations.

- The FLETC/DLP is much more than a secure, encrypted, e-learning site. It provides alternate communications, collaboration, and library functions such as research and information. It also serves as a repository for standard operating procedures, checklists and briefing guides. As a collaborative engine, the FLETC/DLP provides an environment that allows geographically-dispersed individuals to work together either in "real time" or by coordinating via threaded discussions and documentation reviews. There is also a synchronous capability that allows live training sessions to occur over the Internet. These sessions are recorded and can be Aplayed back@ for personnel unavailable to participate in the live training.

- The FLETC/DLP provides competency models that can be modified for specific communities. This allows individuals to ensure they understand the skills that are required to meet their job requirements and links them to training that will provide specific training for those skills.

- Customized training is being added to the site at a rate in excess of 100 hours/yr. This training is based on the priorities determined by FLETC working with the entire subscriber community.

- The FLETC/DLP can be made available to the entire Tribal Nations community to help ensure a higher potential for success based on the curriculum support for personal and professional growth in virtually all fields of endeavor.

- Cost of the system is $150 per subscriber per year and provides unlimited access to all capabilities and curriculum at the site. Each subscriber has his/her own Atranscript@ and can print out FLETC certificates of training completion.

- To equip 200 Boys and Girls Clubs with the necessary hardware and software to support a computer laboratory with broadband Internet access would cost approximately $1.5 million for hardware, printers, maintenance and software. Internet access for broadband at current rates will cost approximately $240,000 annually. For this modest amount, virtually the entire Tribal Nations community would have access to the FLETC/DLP and all of its capabilities and support structure.

- FLETC currently provides residential law enforcement training to the Tribal Nations in Artesia, New Mexico.

This opportunity takes Indian Country Law Enforcement through another threshold. A threshold of promise, enlightenment, and the hope of true parity in law enforcement training and education, equivalent to that of any other law enforcement training and education in America. This dream can only be realized through sincerity of purpose, hard work, faith, and adequate, sustainable funding. NNALEA is pursuing this dream for Indian Country law enforcement and the Nation.

Homeland Security

Mr. Chairman and Senator Inouye, I believe our nation, as well as Tribal lands, must have a three-part approach to homeland security. We must *realize* the reality of today, define our *vision* of homeland security for tomorrow, and *act* to make that vision the reality of the future.

Realize the reality of today

A reality that must be realized today is that there are certain vulnerabilities on tribal lands that effect the security of not only the Tribal lands but also our Nation as a whole. Specifically, the primary vulnerabilities on Tribal lands today are: (1) the border and port security on Tribal lands; (2) the critical infrastructure located on Tribal lands {i.e., dams, water impoundments and reservoirs, electrical generation plants, waste systems}; (3) the existence of non-integrated law enforcement; and (4) the minimal emergency response, and medical capacity, planning and implementation.

Unfortunately, these vulnerabilities exist because Tribal communities lack the resources to address these vulnerabilities. The lack of resources is a direct result of inadequate funding. Inadequate funding has created a lack of law enforcement and first responder personnel, giving rise to insufficient training of existing human capitol, and greatly reducing technical assistance and resources. As such, inadequate funding is a major roadblock to the elimination of vulnerabilities on Tribal lands.

Conferees at the NNALEA 2002 Tribal Lands Homeland Security Summit agreed that tribes possess minimum resources to address current law enforcement challenges and homeland security needs. Indian governments are in need of significant outside assistance if tribal lands are to have adequate law enforcement personnel and resources and the ability to adequately protect borders and critical infrastructure on Tribal lands. There was considerable concern among the Summit attendees that tribal targets that appear to be Asoft@ to terrorist groups may be at high risk. Summit participants also acknowledged that the homeland security funding needs in Tribal lands likely will be higher than other communities because of economic conditions on reservation and trust lands. Traditionally, Tribal law enforcement and first responder manpower, equipment and training lag well behind most other American communities. Participants believe that tribes should receive base funding to achieve parity with non-Indian communities law enforcement and first responder capabilities, plus additional funding for specific high-priority protection, and for response and recovery projects. They felt that funding on a per capita basis will not match outlay to measurable security improvement. Further, that funding should be earmarked to bring every community in America to a national minimum standard of law enforcement and first responder manpower, equipment and training.

Further complicating the matter is crime on Indian Reservations and jurisdictional issues that frustrate Tribal courts and the justice system. The International Association of Chiefs of Police (IACP) has called for law enforcement reform in Indian Country in its 2001 summit report entitled, Improving Safety In Indian Country: Recommendations From the IACP 2001 Summit.

Define our *Vision* for homeland security for tomorrow

The President=s Strategy for Homeland Security is a national and not just a federal strategy. For it to work, our entire society must stand together to overcome a new and very complex challenge. Homeland security is a shared responsibility. Therefore, Tribal lands are a critical component to the national homeland defense. The President has identified three strategic objectives in his Homeland Security Strategy:

I. Prevent terrorist attacks within the United States.
II. Reduce America=s vulnerability to terrorism.
III. Minimize the damage and recover from attacks that do occur.[i]

To attain those three objectives, Americans were asked to concentrate on six critical mission areas:

1. Intelligence and Warning
2. Domestic Counterterrorism
3. Border and Transportation security
4. Protecting critical infrastructure
5. Defending against catastrophic terrorism
6. Emergency preparedness and response

Accomplishing these missions at an affordable cost will take time and require all levels of government -- federal, Tribal, state and local – as well as private industry and individual Americans to work together as we have not had to do since World War II. This war against terrorism, at home, will also be very different from World War II. During the NNALEA ATribal Lands Homeland Security Summit,@ Mr. Thomas B. Heffelfinger, U.S. Attorney for the District of Minnesota and Chairman of the Attorney General=s Advisory Committee=s Subcommittee on Native American Issues, put it most succinctly saying that, A{T}his will be America=s first war fought as much by law enforcement and first responders, as by the military.@

There are some concepts that should drive our vision of the future, such as:

- Homeland Security must be a locally-organized grass-roots developed effort that requires people providing the security to know what they are protecting, know what they are protecting it against, and know the local territory.

- Dual-use equipment and services (those that will improve the daily health and safety issues within Tribal lands) should be funded as a priority over single-use items and services.

- Duplicative services should not be funded, but complementary services should be. Every proposal for funding should include the criteria that will be used to determine whether that program has met its objective or not. Programs that have failed or have been completed should no longer be funded. Future funding should be directed to other priority programs.

- Encourage adjacent jurisdictions to partner with their Tribal neighbors to reduce costs and gain the advantage of mutually supporting assets.

- Encourage homeland security planners to think Aoutside the box@ to prepare America for the next terrorist attack, not the last one.

- Teach chemical, biological, radiological operations and decontamination procedures at the local level. Be prepared to respond to denial of service attacks as well as chemical, biological and radiological weapons of mass destruction attacks.

Act to make that vision the reality of the future

During the 2002 NNALEA National Law Enforcement Training Conference and Tribal Lands Homeland Security Summit, more than 400 representatives of the United States Congress, the National Congress of American Indians, Indian tribal governments, federal agencies, state governments and private industry came together with one accord, to prepare this Nation and Tribal Lands to fight crime and to build a seamless defense in the war against terrorism in America. The conference focused on core law enforcement training for community policing, with special emphasis on partnership building. The Summit focused on bringing a wide variety of interested parties together to define the nature of the homeland security threat in Tribal lands and to discuss the level of preparedness to meet that threat. In addition, NNALEA promoted cooperation among all interested parties to help develop an efficient and cost-effective approach for ensuring that tribal lands are fully integrated within the national system of homeland security being developed by the new Department of Homeland Security. The Summit, meeting all its goals, provided a clear picture of the challenges facing Tribal lands.

The fifty million acres of Tribal lands are replete with military, energy, water and other facilities that significantly affect the American economy and Americans living outside the reservations. Potential targets that lie within Tribal lands include dams, oil fields, oil and gas pipelines, coal slurry lines, communication towers, casinos, other tourist attractions, power generation stations and transmissions, railroads, ports and international borders.[ii] These critical infrastructures on Tribal lands, if compromised by terrorists, will produce a devastating impact that will reach far beyond the reservations and trust lands, tearing into the heart of America. We must act to prevent this from happening.

In order to provide the kind of seamless homeland security that the President and Congress envision and that the American public deserves, several federal laws, regulations and procedures dealing with Indian Country jurisdictional issues must be clarified. On July 11, 2002, Mr. Thomas Heffelfinger urged jurisdiction reform and simplification, on behalf of the U.S. Attorneys in testimony before this Committee. NNALEA agrees with and supports and the United States Attorney=s position, as presented. Further, Indian Country law enforcement officers and departments must receive additional specific funding for pay issues, equipment, training, and technical assistance to ensure parity with other law enforcement officers and departments throughout the United States.

The partnering of federal, state and locally adjacent jurisdictions, with Tribal governments and Tribal law enforcement in written memoranda of agreements, will be critical to the success of homeland security efforts. The Nation cannot afford to harden all potential targets or build unnecessarily redundant response capabilities. Cooperation is essential.

Other Conclusions and Recommendations

NNALEA makes the following conclusions and recommendations based upon its research and the information obtained from the participants at the 2002 NNALEA Tribal Lands Homeland Security Summit. The ability of Tribal governments to prepare Tribal lands to fit seamlessly into the fabric of the ANational Homeland Security Strategy@ may greatly depend upon the following recommendations:

For the Department of Homeland Security

- Establish a Coordination Unit within the Department to provide a single point of contact for the Indian Nations. We envision this unit being the conduit for providing the Indian=s share of homeland security funding directly to the Nations involved, thereby recognizing Indian rights of sovereignty and self-determination.

- Develop a comprehensive list of targets within the Indian Nations as well as the rest of the country.

- Apportion homeland security funds based on the cost of reducing specific priority vulnerabilities, not on population or other non-related criteria.

- Develop a homeland security emergency communications system and frequency that all levels of government - federal, tribal, state, and local - have access to and which provides two-way communication of terrorist alerts, notification of natural and manmade disasters, and relevant operational intelligence.

- Encourage state and local jurisdictions to enter into mutual support agreements with Indian nations, to share complimentary resources in times of crises.

- Encourage state and local government to establish cross deputation agreements that provide certified Indian police officers equivalent status as all other police departments.

For the Department of Justice

- Develop legislative language that clarifies the right of Indian Nations to arrest, detain, and prosecute non-Native Americans committing crimes on reservations and trust areas.

- Suggest uniform national standards for law enforcement officer training and certification.

- Actively encourage states to enter in cross deputation agreements to facilitate the mutual sharing and support of peace officers, particularly in times of crises.

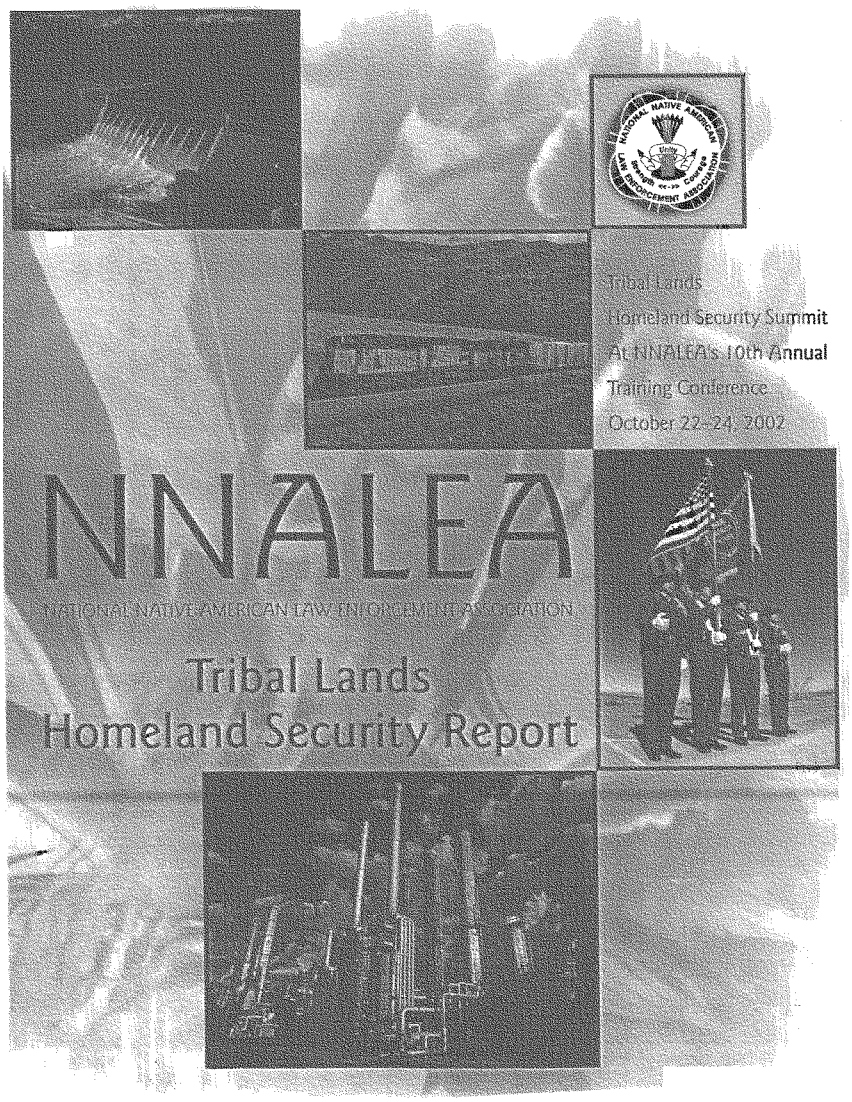
Mr. Chairman, you said it best, ANative people are Americans -- and want to stand shoulder-to-shoulder with the rest of their countrymen in defending America lives and homelands from the threats now before us.@ NNALEA will take its place to provide training, technical assistance, and innovative ways for Native American law enforcement to *lead by service* to our communities and the United States of America.

A NNALEA publication will be forthcoming that will summarize the 2002 NNALEA Tribal Lands Homeland Security Summit. Thank you for opportunity to address this Committee. That concludes my prepared testimony, and I will be pleased to answer any questions that the Committee may have.

End Notes

[i.] Office of Homeland Security, National Strategy for Homeland Security, Executive Office of the President, Washington, DC, July 2002.

ii.. These data were provided by NNALEA member Dr. Martin Topper from a publicly available Environmental Protection Agency data base.


Tribal Lands
Homeland Security Summit
At NNALEA's 10th Annual
Training Conference
October 22-24, 2002
NNALEA
NATIONAL NATIVE AMERICAN LAW ENFORCEMENT ASSOCIATION
Tribal Lands
Homeland Security Report

National Native American Law Enforcement Association

"Tribal Lands Homeland Security Report"

"Tribal Lands Homeland Security Summit"
at NNALEA's 10th Annual Training Conference
October 22-24, 2002

THE NATIONAL NATIVE AMERICAN
LAW ENFORCEMENT ASSOCIATION

Washington, DC
February 12, 2003

Dear Tribal Lands Homeland Security Summit Attendee and Friends:

We are honored to share this report, which summarizes the proceedings of the National Native American Law Enforcement Association's (NNALEA) "Tribal Lands Homeland Security Summit."

Vital homeland security issues confront American Indian and Alaska Native tribes. The Summit and this report are important first steps and the beginning of an ongoing dialogue amongst a wide variety of interested individuals, agencies and organizations, concerning the vital homeland security issues that confront American Indian and Alaska Native tribes. We, at NNALEA, encourage this dialogue to continue. We recommend that you stay in contact with those you met at the "Tribal Lands Homeland Security Summit" and continue to share your insights.

NNALEA is a strong supporter of tribal efforts to ensure the security of Indian people, tribal lands and resources, and America. NNALEA will continue to provide Native Americans with high quality law enforcement, first responder and homeland security training and technical assistance.

Thank you for taking the time from your many responsibilities and commitments to stand "shoulder to shoulder" with NNALEA in defense of our homelands. Your participation and the sharing of your enthusiasm, knowledge, plans, accomplishments, and ideas made the Summit a success and will make our national homeland secure for our future generations.

Sincerely yours,

David Nicholas,
President
NNALEA

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MANY THANKS TO:

Senator Ben Nighthorse Campbell for serving as keynote speaker and a legislative voice for Native American homeland security, to all the attendees who helped develop this "Homeland Security" Report, and to our:

Indian Country "Homeland Security" Summit Sponsors

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Bureau of Indian Affairs
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Mr. Robert Ecoffey, Director

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Senator Ben Nighthorse Campbell
Chairman, Senate Committee
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Jacqueline Johnson'
Executive Director, National
Congress of American Indians

Neal McCaleb
Assistant Secretary (Indian Affairs)
Department of the Interior

Thomas Heffelfinger
U.S. Attorney for Minnesota
Chair, AG-NAIS

Other Key Speakers

R. Perry Beaver
Principal Chief
Muscogee (Creek) Nation

Michael Brown
Undersecretary for EP&R
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Robert Ecoffey
Director, BIA–OLES
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Tribal Chairman
Cheyenne River Sioux

Gustavo De La Vina
Chief, U.S. Border Patrol
Department of Homeland Security

Carl Peed
Director, COPS
Department of Justice

(many thanks, continued)

Distinguished Guest Speakers

John Allen
Union Pacific Railway

Andy Ballenger
Department of Homeland Security

M. Christopher Briese
FBI–Minnesota Division

Chris Castillo
El Paso Natural Gas

Mike Derrick
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R. Perry Beaver
Muscogee (Creek) Nation

Barbara Birdsbill
Fort Peck Tribe

Gregg Bourland
Cheyenne River Sioux

Robin Burdett
Summit Lake Paiute Tribe

Thomas Christian
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Charles Enyart
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Raul Garza
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U.S. Secret Service

Western Community Policing Cent

"Native people are Americans first—and want to stand shoulder-to-shoulder with the rest of their countrymen in defending American lives and homelands from the threats now before us."

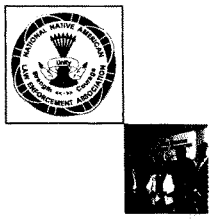
"Make no mistake: whether you are a single mom in an urban area, or a family living out in a rural area, you are potentially targeted because you are American."

"From Valley Forge to the war in Afghanistan, Native Americans have heeded the call to defend our country and way of life in numbers greater than any other group in the history of our great Nation."

"From many, one. "E pluribus Unum." It has never been more true than now . . ."

". . . by including Indian Tribes in our focus on homeland security, Native communities will stand shoulder to shoulder with the rest of America in defending American lives and homelands against the threats now before us."

A collection of "Homeland Security" statements by
Senator Ben Nighthorse Campbell
Northern Cheyenne Tribe



EXECUTIVE SUMMARY

On September 11, 2001, the threat of terrorism became a reality for Native Americans, as it did for all Americans. The security of the very homeland upon which we all live, was breached. For most of us, this devastating day not only left us searching for answers, but it also left us determined to take steps to reduce the threat that terrorism poses to our homeland in the future.

To address the issue of homeland security in tribal lands, NNALEA hosted the "Tribal Lands Homeland Security Summit" (Summit) at its 10th Annual Training Conference in Reno, Nevada, October 22–23, 2003. The main purpose of the Summit was to bring a wide variety of interested parties together to define the nature of the homeland security threat on tribal lands and to discuss the level of preparedness to meet that threat, now and in the future.

More than 400 representatives of Indian tribal governments, federal agencies, state governments and private industry provided a clear picture of the challenges facing tribal lands. Participants reported potential vulnerabilities, funding restrictions, training deficits, communication challenges, and jurisdictional issues.

Gary Edwards, CEO, NNALEA, reported the Summit findings to the United States Senate Committee for Indian Affairs February 26, 2003. According to Mr. Edwards, "Our nation, as well as Tribal lands, must have a three-part approach to homeland security. We must realize the reality of today, define our vision of homeland security for tomorrow, and act to make that vision the reality of the future."[2]

A reality that must be realized today is that there are certain vulnerabilities on tribal lands that affect the security of not only the Tribal lands but also our Nation as a whole. Specifically, the primary vulnerabilities on Tribal lands today are:

1. the border and port security on Tribal lands;
2. the critical infrastructure located on Tribal lands {i.e., dams, water impoundments and reservoirs, electrical generation plants, drinking water, waste systems};
3. the existence of non-integrated law enforcement and lack of juristictional clarity; and
4. the minimal emergency response, and medical capacity, planning and implementation.

Our vision for homeland security includes a locally-organized grass-roots developed effort, dual-use equipment and services, complementary services funding, adjacent jurisdiction partnerships, special operations training, and "outside the box" thinking.

To make our vision a reality, NNALEA pledges to distribute and update the "NNALEA Homeland Security Assessment Model," continue to provide a forum for the discussion of tribal homeland security, lead in the development of a strategic homeland security defense plan for Tribal Lands, and continue to promote partnerships that facilitate Indian tribes' role in the national homeland defense strategy. Please see Tab 2 for recommendations for support to NNALEA's initiatives.

Senator Ben "Nighthorse" Campbell said it best, "Native people are Americans—and want to stand shoulder-to-shoulder with the rest of their countrymen in defending American lives and homelands from the threats now before us." NNALEA will take its place to provide training, technical assistance, and innovative ways for Native American law enforcement to lead by service to our communities and the United States of America.[3]

SUMMIT PREFACE

The primary result of this nation's search for answers and ways to reduce the terrorist threat was the formulation of the National Homeland Security Strategy, which sets forth three strategic objectives:

1. Prevent terrorist attacks within our homeland;
2. Reduce our Homeland's vulnerability to terrorism; and
3. Minimize the damage and recover from attacks that do occur.

These objectives are to be achieved in six initial areas, as defined by the Office of Homeland Security, namely:

1. Intelligence and warning—to detect terrorism before it manifests itself in an attack:
   a. Build new capabilities through the Information Analysis and Infrastructure Protection Division;
   b. Implement the Homeland Security Advisory System; and
   c. Apply dual-use analysis to prevent attacks.
2. Domestic counter-terrorism:
   a. Improve intergovernmental law enforcement coordination; and
   b. Track foreign terrorists and bring them to justice.
3. Border and transportation security.
4. Critical infrastructure protection
   a. Unify America's infrastructure protection effort;
   b. Build and maintain a complete and accurate assessment of America's critical infrastructures and key assets;
   c. Create effective partnerships with tribal, state and local government and the private sector
   d. Develop a National Infrastructure protection plan; and
   e. Guard America's key assets and infrastructure against "inside" threats.
5. Catastrophic terrorism defense
6. Emergency preparedness and response
   a. Create a national incident management system,
   b. Improve tactical counter-terrorist capabilities,
   c. Enable seamless communication among all responders,
   d. Prepare for NBC contamination;
   e. Plan for military support to civil authorities,
   f. Build the Citizen Corps,
   g. Build a training and evaluation system, and
   h. Enhance the victim support system.

To build on the Office of Homeland Security's initiatives, the Summit targeted five goals that were achieved through the active participation of the attendees. These goals are:

Goal 1: Understanding the threat.

Goal 2: Defining the vulnerabilities.

Goal 3: Identifying resources.

Goal 4: Identifying mechanisms for cooperation.

Goal 5: Defining next steps for moving forward.

The results of each goal are set forth in the remainder of this report.

SUMMIT GOALS
Goal 1: Understanding the Threat

The first goal addressed by the attendees of the Summit hosted by NNALEA was to understand the threat that terrorism poses to our homeland. For Native Americans, and for all Americans for that matter, a good place to gain understanding of the threat of terrorism is the target list of Al-Qaeda, which was determined to be responsible for the September 11 acts of terrorism. This list, which was recently uncovered in a raid, states the following:

- Kidnapping and assassinating enemy (i.e., non-Muslim) personnel, "blasting and destroying the places of amusement, immorality and sin" (i.e., casinos, amusement parks, sporting events, tourist attractions, and the like);
- "attacking vital economic centers" (i.e., dams, power plants, energy pipelines, railroads, ports, radio and television stations, communication towers, etc.); and
- "blasting and destroying bridges leading into and out of the cities."[4]

At first glance, many Americans may conclude that this list, and the threat contained therein, only poses a "small threat" to Native Americans and tribal lands, thereby mistakenly overlooking the much larger threat that this perceived "small threat" poses to our homeland as a whole. A closer look reveals that Native American Lands and Tribal Lands may be at the very heart of the threat to our homeland security. Dams, power plants, energy pipelines, railroads, ports, casinos, and tourist attractions that impact entire regions of our homeland are located on tribal lands. Tribal lands also include many miles of our homeland's border, thereby making them a potential conduit through which terrorism has a means to ingress and egress our homeland as a whole.

Further understanding of this threat was also gained from the remarks provided by several of the speakers at the Summit. Specifically, the remarks by Senator Ben "Nighthorse" Campbell, Neal McCaleb, and Tom Heffelfinger, which are summarized below, detailed the threat of terrorism to Native Americans and Tribal Lands, and the potential impact of such to our homeland as a whole.

Senator Ben "Nighthorse" Campbell

Senator Ben "Nighthorse" Campbell was the keynote speaker at the Summit hosted by NNALEA. Senator Campbell is the Chairman of the Senate Committee on Indian Affairs. He is a Native American and one of the 44 Chiefs of the Northern Cheyenne Tribe. He was elected to the Senate a decade ago, and he is the only Native American to chair the Senate Committee on Indian Affairs. Likewise, he is the only Native American presently serving in the United States Senate.

Senator Campbell referred to the "Tribal Lands Homeland Security Summit" as both "timely and critically important."[5] "September 11th," he said, "brought out the need for coordinated and cohesive delivery of law enforcement, medical response, and security services for all Americans." Senator Campbell discussed the expanding challenges to law enforcement in tribal communities. He referenced how, historically, policing efforts focused on fighting violent crime, domestic violence, theft, and a myriad of problems stemming from alcohol and substance abuse; whereas, in recent years, tribal lands have seen an influx of urban and inner city crimes, such as drug trafficking, gang violence, and illegal immigrant smuggling, which are some of the very activities that finance terrorism.

Senator Campbell acknowledged that our enemies have demonstrated their desire and capability to strike America on its own soil. Like state and local governments, Indian tribes have a vital role in defending our country and our way of life. While some Americans have yet to acknowledge the vulnerability to terrorism in their part of the country, others already convinced of the danger, believe the nation has not begun to address homeland security. Neither is correct.

Senator Campbell provided some examples of federal efforts already under way. These include:

- The National Indian County Telecom Infrastructure Consortium initiative of the Bureau of Indian Affairs. The BIA is working with tribes to coordinate an enhanced telecommunications capacity that will improve tribes' ability to communicate and work with other law enforcement agencies and first responders beyond their borders.
- The Federal Emergency Management Agency (FEMA) is distributing $200 million for state and local hazards emergency planning, development of Emergency Operations Centers, and Community Emergency Response Team Training.
- The Customs Service has adopted a $100 million "Northern Border Strategy" to emphasize securing our long-neglected northern border with Canada. This strategy will combine technology, improved infrastructure, hundreds of new personnel, industry and international partnerships to secure that border. Concurrently, a $10 million security upgrade will be deployed to high volume and high-risk ports of entry on the Southwest border to improve its security also.
- Native American Customs agents, the "Shadow Wolves" are patrolling three million acres of isolated land along 70 miles of Mexican border. They are instrumental in tracking and apprehending smugglers in the American Southwest where no one else can penetrate. The Wolves already are responsible for 70 percent of the 40-60,000 pounds of drugs seized each year by this Customs Service section. Their skills are so valued that the Shadow Wolves have been sent to the Baltics and several former Soviet states to teach others how to identify and track smugglers (of drugs, weapons, people) across international boundaries.
- The Federal Law Enforcement Training Center (FLETC) has increased its support to training Indian Police Officers and now trains over 2,000 officers annually, and
- Through the Bureau of Alcohol, Tobacco and Firearms (ATF) GREAT Program, BIA has trained 214 officers and graduated 28,995 Native Americans from this gang resistance program.

Senator Campbell explained that the Senate Committee on Indian Affairs' commitment to improving the security, living conditions and opportunities for Native Americans is truly bi-partisan. It recognizes that, "Indian tribal law enforcement officers are often the first and only responders to crimes committed against Indians and non-Indians on Indian lands." The Committee has held hearings, and in 2003 will review the practical effect of recent Supreme Court decisions on the ability of tribes to enforce the law on their lands. NNALEA and Summit attendees were encouraged to take part in those discussions, which Senator Campbell views as extremely important to effective protection of the U.S. homeland.

Neal McCaleb

Neal McCaleb was the Assistant Secretary of Indian Affairs for the Department of the Interior at the time of the NNALEA Summit.

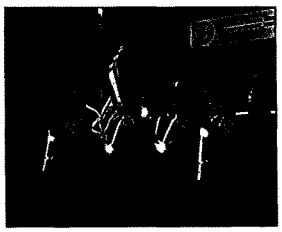
Neal McCaleb noted that America's sense of security was shattered by the September 11, 2001 terrorist attacks in New York City and Washington, DC. Echoing the President's frequent call to action, he described the nation as in the midst of "a war on terrorism." Although the challenges of such a war are becoming clear to all, Mr. McCaleb described this as the "best of times" in one sense. The American public has a new respect, appreciation and admiration for those in public safety occupations as well as a strengthened sense of community, cooperation and unity. He described the Summit as an opportunity to share and compare successes and challenges and to prepare to serve and protect those who depend on us.

Tom Heffelfinger

Tom Heffelfinger is the U.S. Attorney for the State of Minnesota and Chairman of Attorney General Ashcroft's Advisory Committee, Native American Issues Subcommittee.

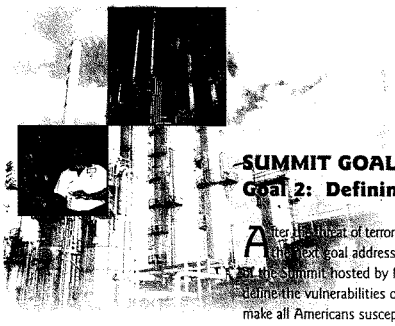
Tom Heffelfinger picked up Mr. McCaleb's theme, adding that this war on terrorism will be the first war in U.S. history that is fought as much by law enforcement and first responders as by the military. He quoted some of the written goals listed in the Al-Qaeda terrorist training manuals, which have been recovered from caves in Afghanistan and raids in the United Kingdom. These manuals urge attacking and destroying vital economic centers such as dams, power plants, energy and transportation centers. Because these terrorists cannot begin to match the nation's military might, they focus on destroying the U.S. economy and our free and open society.

Mr. Heffelfinger believes that the security planning and operations for the Salt Lake City 2002 Winter Olympics should be the model for homeland security public safety operations. He described Olympic security as a "turf free" zone where individuals and agencies gave up their egos and "turf" in the interest of performing a very difficult, dangerous and high visibility mission. While the Secret Service was in charge of planning the security for this National Special Security Event, it needed communication with Olympic organizers, athlete chaperones, intelligence, federal, state and local law enforcement and medical personnel, the military, FEMA and a myriad of other organizations. Procedures for post standing, credentialing, communications, supervision, logistics for housing and feeding law enforcement, security and first responders and an infinite variety of other details required people to work together to make Olympic security successful. The Olympics were confined to a limited area and operated for a reasonably short period of time. These factors made that mission easy compared to securing the American homeland against foreign and domestic terrorists for an indefinite period of time.



Presentation of Colors by U.S. Border Patrol, NNALEA President Jim Wooten, NCAI Executive Director Jackie Johnson, and honored guests.

Jurisdictional procedures and laws should be considered for Tribal Police to become full partners in protecting the homeland. Jurisdictional issues include Tribal Police detaining and prosecuting non-Indians, Tribal Police terrorist training, and cross-deputization agreements.



SUMMIT GOALS
Goal 2: Defining the Vulnerabilities

After the threat of terrorism was understood, the next goal addressed by the attendees of the Summit hosted by NNALEA was to define the vulnerabilities on tribal lands that make all Americans susceptible to that threat. It was determined at the Summit that Native Americans and tribal lands have at least four primary vulnerabilities relevant to the security of our Homeland as a whole. These vulnerabilities, which were consistently reiterated by the attendees of the Summit, are as follows:

1. Border Security;
2. Critical Infrastructure;
3. Integration of Law Enforcement and Lack of Juristictional Clarity; and
4. Emergency Response and Medical Capacity Planning and Implementation.

Each of these vulnerabilities is summarized in more detail below.

Border Security

Twenty-five tribes have land located on or near approximately 200 miles of U.S./International borders. Most of these borders are not adequately patrolled due to limited resources, which make tribal lands, and in turn, our homeland as a whole, subject to undetected terrorist infiltration.

For example, located on one Indian Reservation, there are 76 miles of international border, with numerous unmanned border crossing points. In 2002, the U.S. Border Patrol apprehended 222 illegal immigrants from special interest countries. Even more alarming is the U.S. Customs estimate that numerous undocumented illegal aliens enter our homeland everyday through our borders. Many of these undocumented illegal aliens could be terrorists.

Critical Infrastructure

There are over 100 million acres of tribal and Alaskan Native lands that are replete with dams, water impoundments and reservoirs, electrical generation plants, oil and gas fields/pipelines, transportation lines, and waste systems, among others, that are critical to the infrastructure of our Homeland. A sampling of these resources critical to our infrastructure located on Tribal and Alaskan Native lands are set forth below:

Dams, Water Impoundments, Reservoirs, and Electrical Generation Plants:

- The 2nd largest producer of hydroelectric power in the United States;
- The 4th highest dam in the United States;
- The 12th highest dam in the United States;
- Over 145 other critical dams in located on Tribal and Alaskan Native Lands.

Oil and Gas Fields/Pipelines:

- Oil Fields on many Tribal lands;
- Gas Fields on many Tribal lands;
- Bulk Petroleum Plants on some Tribal Lands;
- Hundreds of miles of pipelines on several Tribal lands;
- Natural Gas Companies on several Tribal Lands.

Transportation Lines:

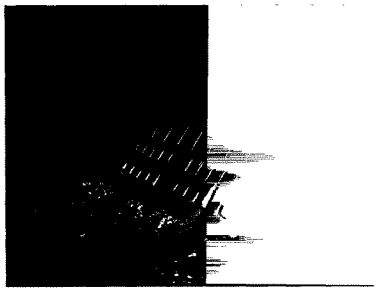
- Hundreds of miles of railroads run through Tribal and Alaskan Native lands;
- Hundreds of miles of Interstate Highways and many other critical highway systems run through Tribal and Alaskan Native lands.

Others:

- Communication Towers and Water Resources;
- Tourist/Casino Attractions;
- Coal mines, power transmission lines, and slurry pipelines;
- Tourist Attractions on Tribal and Alaskan Native lands are numerous across the United States;

Each of these resources are critical to the infrastructure of our homeland, but each is also a vulnerability should it be compromised by a terrorist attack. For example, one major dam located on an Indian Reservation is over 100 feet high and nearly one mile long. A two-lane highway runs across the crest of the dam, and the dam itself is made of enough concrete to build a 60 foot wide, four-inch thick highway covering the 3,000 miles from Los Angeles to New York City.[6] This dam regulates flood control of a river and forms a large lake, a reservoir and recreational area, holding nine million acre feet of water, and extending 150 miles. The dam's hydro-electric power plant is the largest producer of electricity in the United States, and the third largest in the world. It is the major supplier of electricity to a large number of states. The 6.5 million kilowatts annual generation capacity equates to $130 million of power at wholesale levels. It also irrigates more than one-half million acres of otherwise arid land,[7] and forms the a national recreation area, which contains a seasonal habitat for 24 Bald Eagles, seven scenic and historical trails, and fishing areas. Tourist business provides millions of dollars and hundreds of jobs to the local economy and small business owners.

With the background of the above described major dam in mind, the effects of a successful terrorist attack on it are easily conceivable. Such effects could include loss of power (brownouts or blackouts) for citizens, businesses, hospitals and government agencies in several states, flooding (of a major United States City as well as other smaller cities and communities) and loss of thousands of lives (both people and animals) in communities and businesses situated in the major river's flood plain,



This dam's hydroelectric power plant is the largest producer of electricity in the United States, and the third largest in the world

and, the development of filth-based diseases such as cholera due to human and animal cadavers and the flooding of sewage systems The down river destruction of other dams could multiply this devastation. Hundreds of millions, perhaps billions, of dollars in property and business destruction could be expected, in addition to the cost of rebuilding the massive dam.

Integration of Law Enforcement and Lack of Jurisdictional Clarity

Many Native American communities do not have formal agreements with local, state, and federal officials regarding law enforcement, which has created gaps in safeguarding tribal lands, critical resources located thereon, our

homeland as a whole, and all Americans, Native American and non-Native American alike.

"At the onset, every disruption or attack is a local problem. Regardless of who owns and operates the affected infrastructure, each requires an immediate response by local authorities and communities who must support the initial burden of action before the incident escalates to a national event."[8]

State and local jurisdictions should enter into mutual support agreements with Indian nations to share complementary resources in times of crises. In addition, state and local governments should be encouraged to enter in cross deputization agreements to facilitate the mutual sharing and support of peace officers, particularly in times of crises. These cross deputization agreements should provide certified Indian Police officers equivalent status as all other police departments.

Jurisdictional impediments will need to be removed for tribal police to become full partners in protecting the homeland. Both procedures and laws will require changes. For example, tribal police and tribal courts must have broader authority to detain and prosecute Indians and non-Indians committing crimes on Tribal lands. These changes will make tribal law enforcement more effective and aid to close the parity gap in law enforcement between Tribal communities and non-Tribal communities.

Emergency Response and Medical Capacity Planning and Implementation

Communities look to local leadership to assure safety, economic opportunities and quality of life. Public confidence, therefore, starts locally and is dependent upon how well communities plan and are able to protect their citizens, respond to emergencies, and establish order from chaos. Local communities play critical roles in preparing their citizens for emergencies and engaging their public and private leadership in the development of coordinated local and regional plans to assure the protection of residents and businesses.[9]

The Federal Emergency Management Agency (FEMA) is distributing $200 million for state and local hazard emergency planning, development of Emergency Operations Centers, and Community Emergency Response Team Training. FY-2002 funding was provided to states on the basis of population alone. Summit participants believe that funding should be prioritized and provided to both states and tribes according to a risk model based on the need for basic emergency response staffing and infrastructure.

FEMA expects that FY-2003 funding will be allocated by a formula that will provide a set amount of base funding to each state. Funding above this base will be allocated based on population. Therefore, without legislative intervention, tribal lands do not appear to be in line for direct funding for FEMA support until FY-2004 at the earliest.

Current funding for tribal law enforcement and first responders lags well behind that for non-tribal law enforcement and first responders. The result is that many Tribal law enforcement and first responder programs lack personnel, and the personnel they do have may need training, education, certification, experience, and sufficient technical assistance, while many experience burn-out resulting in low retention rates. Therefore, the cost will be higher to attain parity in law enforcement and first responder programs on Indian lands.

According to Senator Campbell, "Indian tribal law enforcement officers are often the first and only responders to crimes committed

against Indians and non-Indians on Indian lands." In addition, Tribal lands have critical unmet needs for medical capacity, emergency response planning, and emergency service implementation.

For example, Tribes are looking more and more to the private sector for health care services that the Indian Health Service does not have the resources to provide. In addition, one Tribal Nation employs only four full-time emergency managers to provide technical and short-term planning assistance to 110 units of local government, covering an area the size of West Virginia. On this same reservation, the Tribe employs only eight full-time fire and rescue staff to serve a population greater than 250,000. Due to inadequate funding, most fire emergency response services are provided by volunteers.

In oral remarks at the Indian Health Service, National Councils Combined Annual Conference, a senior Indian Health Service official made the following statements regarding funding levels in the Indian Health Service 2004 budget for Indian Health Programs:

- As a provider, I know that there will be some (health) services I can provide and others that will have to be delayed or denied.
- The (2004) budget includes $25 million for Contract Health Costs, an amount that will support the purchase of approximately 511,000 outpatient visits, an increase of 17,000 from FY 2003.
- Almost 8 percent of Indian homes still lack a safe indoor water supply, compared to 1 percent of all U.S. homes.

If a weapon of mass destruction was used in a terrorist attack on or near a reservation, resource limitations like those described above would effect emergency response, communication, transportation, public works, firefighting, health and medical services, information analysis, urban search and rescue, the proper identification and containment of hazardous materials, food and water availability, as well as energy supply, public safety, and clean-up. All these elements listed need to be coordinated in a pre-planned organized manner on Tribal lands.

With respect to Tribal coordination with emergency assistance from federal agencies, the Department of Health and Human Services (HHS) is the primary agency responsible for the health and medical response under FEMA's Federal Response Plan. The Department of Health and Human Services is prepared to respond to terrorist attacks on a national basis. The HHS Center for Disease Control (CDC) coordinates the building of the Health Alert Network (HAN) and the National Electronic Disease Surveillance System (NEDSS). Both programs are next generation national public health communications and disease surveillance programs utilizing internet connectivity.

However, tribes may have trouble integrating their response activities with such sophisticated systems because of infrastructure limitations. Almost a quarter of rural Native Americans lack basic telephone service and 8 percent lack a safe indoor water supply. The Indian Health Service must purchase over 500,000 outpatient visits from the private sector, and some health services for Tribal people will either have to be delayed or denied. Given these disparities, homeland security preparedness would dictate that funding for Tribal emergency response, medical capacity planning, and implementation programs should be reevaluated, and access to adequate funding for basic infrastructure support be made available.

. . . this war on terrorism will be the first war in U.S. history that is fought as much by law enforcement and first responders as by the military.

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SUMMIT GOALS
Goal 3: Identifying Resources

The third goal pursued and achieved by attendees of the NNALEA Summit was to identify the resources of Native Americans relevant to homeland security. This goal is very important, as it takes resources to safeguard vulnerabilities from attack by terrorists. Accordingly, at the Summit, attendees were requested to help identify both the resources available to Native Americans on tribal lands to safeguard against the vulnerabilities identified in Goal 2, set forth above, and those resources that are needed by Native Americans to safeguard tribal lands, and our Homeland as a whole. The results of the identification of the available resources, and the needed resources are each discussed in more depth below.

Available Resources

1. **Tribal law enforcement and first responder services.** A large number of Indian nations do have tribal law enforcement and first responder services. NNALEA has provided national training for tribal lands law enforcement professionals for the last 10 years. In addition, in 2002 NNALEA presented the "Tribal Lands Homeland Security Summit" and NNALEA is in the process of coordinating the development of the "Academic Center for Excellence in Native American Law Enforcement Training."

2. **Private Industry.** At the Summit hosted by NNALEA, the Union Pacific Railroad, El Paso Natural Gas Corporation, homeland security and emergency management officials representing companies with holdings in many states made presentations on their security efforts and how they interact with Indian Nations. The Union Pacific representative detailed how the railroad industry responded after the terrorist attacks of September 2001. The railroad industry, like the airlines, shut down. Railroads ceased operating for 72 hours while engineers, police and security officials examined every major structure, bridge, fueling station and other vital structures. Within a month, the Union Pacific determined that it had 265 tunnels, 762 bridges, 138 fueling centers and 33 data distribution centers among its vital structures.

The industry adopted four states of heightened alert—near normal; heightened; credible threat; and confirmed threat/actual attack. Within each of these states, specific security enhancements were defined and agreements were made with federal, tribal, state and local officials for necessary public safety assistance. The railroad industry also formed five Critical Action Teams around the five core functions related to terrorist threats: hazardous material transportation and storage, operations security, critical infrastructures, information technology, and military liaison.

El Paso Natural Gas has $47 billion in annual revenue and 14,000 employees. It owns 48,000 miles of natural gas pipelines, 95 power generating stations, 21,000 miles of gathering pipelines, slurry lines, and oil drilling platforms. Its pipelines cross six states and 12 tribal nations. Its pipelines are monitored around the clock for flow and pressure, and emergency response crews are on stand by. The safety of its employees, customers, and citizens near its right of ways is of primary importance to the company. In addition to automated monitoring, El Paso checks its pipelines by helicopters, ground vehicles

and foot patrols. Like Union Pacific, it has extensively tested and improved its emergency response plans. It also relies on Indian Nation resources for security and public safety protection during emergencies and potential emergencies. For example, the Gila River Indian Police recently provided security at an El Paso facility, pending arrival of the company's emergency response personnel.

3. **California State Security.** At the NNALEA Summit, California Governor Gray Davis' Special Advisor for State Security briefed the conferees on how the nation's most populous state approaches homeland security. He informed us that the state health department was now closely integrated with California's security planning. He believes the anthrax killings opened eyes to the notion that homeland security requires more than security professionals. As a former supervisory agent with the FBI, he believes that terrorists are nothing more than criminal enterprises which employ fanatical and suicidal agents. The same steps law enforcement has applied to shutting down criminal enterprises will ultimately work against terrorists. This makes the war of terrorism a winnable one, although it might take some years to bring to a close.

4. **Arizona Division of Emergency Management and Military Affairs.** At the NNALEA Summit, the head of the Arizona Division of Emergency Management and Military Affairs discussed her efforts to integrate Arizona's 22 tribes into the state vulnerability and risk assessment process. She explained that Arizona is a "delegating state" that pushes resources and responsibility to the county level for program implementation. After the state's first iteration of offering workshops to community leaders and first-line domestic preparedness officials, only 50 percent of cities and towns and 23 percent (5 of 22) of the Indian Nations had received training. Communication from the state to these governments was identified as the reason for the low rate of training participation. After making some improvements to that process, 80 percent of cities and towns and 55 percent (12 of 22) Indian Nations had received training by the end of the program's second year.

5. **Idaho Emergency Preparedness Program.** At the Summit hosted by NNALEA, the head of Idaho's Emergency Preparedness Program explained that emergency planning doctrine recognizes 10 key hazards: agricultural; arson; assassination of high profile personnel; biological; chemical; cyber; explosives, narcotics, nuclear and radiological terrorism.

6. **Border Patrol.** The Border Patrol's mission is to secure and protect the external boundaries of the United States, preventing illegal entry and detecting, interdicting and apprehending undocumented entrants, smugglers, contraband and violators of other laws. There are 8,000 miles of U.S. borders to patrol including 4,000 miles of northern border with Canada, 2,000 of southern border with Mexico, and 2,000 of coastal borders. The Border Patrol divides itself into 21 sectors throughout the United States. Indian reservations are part of 12 of those 21 sectors. Besides the Border Patrol, there are few law enforcement resources along the borders beside the Indian Police Officers. The relationship that has been established with Native American

Border Patrol Chief Gustavo De La Vina and Summit participants view a Border Patrol Surveillance Helicopter.

law enforcement and the U. S. Border Patrol is a valuable conduit in detecting and apprehending illegal immigrants.

7. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The ATF, and about 90 percent of its personnel, are moving from the Department of the Treasury to the Department of Justice. This is part of the same government reorganization which created the Department of Homeland Security. "Explosives" has been added to the agency name, reflecting its long history in regulating explosives and investigating bombings. The agency will continue to use the ATF moniker.

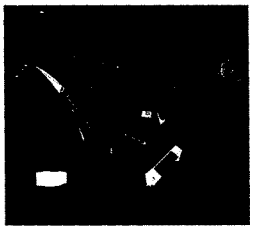
"The Spirit of Cooperation"—Actor/Singer Branscombe Richmond, Border Patrol Officers, and a Bureau of Alcohol, Tobacco, Firearms and Explosives Incident Response Vehicle.

Five to six billion pounds of explosives are used lawfully in the United States each year. Regulating that volume is a huge task. ATF is the primary Federal agency responsible for responding to fires, bombings and explosives incidents.

Fighting Terrorism is the number one priority of the ATF. Suppressing black marketing in cigarettes is an important facet of the war on terrorism. Many states have raised taxes on cigarettes as a way to discourage people from smoking as well as a method of raising revenue. As a result, a lucrative black market has arisen in trafficking cigarettes. More particularly, cigarettes are purchased at cheap prices in tobacco growing states then transported by truckloads to industrial states where prices and taxes are much higher. States including Kentucky, Oklahoma, North Carolina and Texas are part of a crime pattern that directly supports terrorism. In a recent case, ATF traced the purchase of cigarettes in North Carolina to their delivery to the black market in Detroit, Michigan. The money from that transaction was traced to the Hezbollah Middle Eastern terrorist group.

Project Safe Neighborhood, an integrated violence reduction program that removes violent criminals from society, is the second highest priority of ATF. United States Attorneys throughout the United States are a vital part of the program. They make prosecuting violent offenders, and getting them the longest sentence allowable, a high priority in their offices.

8. Bureau of Indian Affairs (BIA). The BIA warned that homeland security funding must be both cost effective, based on risk management methodology (similar to the design included in the NNALEA Homeland Security Assessment Model) and linked directly to the National Homeland Security Strategy. Summit participants were urged to design, create, and implement holistic programs that embody improved communication and cooperation throughout the various levels of government.



Senator Ben Nighthorse Campbell Chairman, Senate Committee On Indian Affairs.

The BIA commented that many tribes are located on or near international boundaries and waterways. Casinos, dams, communications towers and other infrastructure

are viable targets of the type terrorists prefer. Recently, an attempted kidnapping was foiled on the Passamaquoddy Indian Reservation. This incident and the examples NNALEA has presented in this report provide "hard evidence" that terrorist threats apply as much to tribal lands as to any other part of America.

The BIA is developing a database of tribal points of contact for homeland security issues. It hopes to make this information available in the Internet. Several issues will be addressed by Department of Homeland Security working groups. These include: information and intelligence sharing and plans for addressing border vulnerabilities, digital connectivity, funding equity and operations security issues. BIA believes that DHS must and will receive tribes as equal partners in deciding how best to protect the American homeland.

9. **Drug Enforcement Agency (DEA).** The DEA has 200 offices in the U.S. and 70 offices worldwide in 56 different countries. Its principal role in homeland security is the suppression of narco-terrorism. The DEA offers classes to law enforcement officers in how to respond to methamphetamine labs. This class has great applicability to dealing with bioterrorism and is essentially a mini Hazardous Materials (HAZMAT) class. DEA also offers a longer clandestine laboratory certification course at its headquarters in Quantico, Virginia. This is important because prior to the U.S. campaign against Al-Qaeda and the Taliban government, Afghanistan produced 70 percent of the world's opium supply. The sale of narcotics internationally was a significant means of funding terrorist activities. The drugs most often abused in the U.S. are methamphetamines, including pseudo ephedrine, its precursor. In addition, the nexus between drugs and terrorism has led the DEA to begin asking separate lines of questions dealing with terrorist plans and activities. These questions have been added to its existing list of drug related questions that it asks its operatives and prisoners. Information gathered from the debriefings is shared throughout the intelligence and law enforcement systems.

10. **Environmental Protection Agency (EPA).** The mission of the EPA is to protect human health and the environment. Chemical attacks by terrorists may first present themselves as hazardous material incidents. EPA maintains a national counter-terrorism evidence response capability as well as a national environmental forensic center with expertise in radiological and chemical weapons of mass destruction. It also has emergency response programs, drinking water protection programs, and chemical industry regulatory functions that are vital to homeland security. EPA has a criminal enforcement program that focuses on prevention and training as well as the investigation of environment crimes.

EPA maintains a smooth working relationship with Indian nations and tribes on a government to government basis. It has many grants and agreements with tribes and provides training, technical expertise and other assistance, as requested. The EPA believes that joint training and joint operations are essential before disasters occur. Its training serves the dual purpose of detecting environment crimes as well as preparing first responders for terrorist attacks using chemical, radiological and other environment contaminants.

11. Federal Bureau of Investigation (FBI). Presidential Decision Directive (PDD) 39, signed by President Clinton in 1995, defines the FBI's role in counter-terrorism. The Bureau is assigned roles in preparedness for, prevention of, and response to terrorist attacks. The FBI has the lead role for crisis management in these events. Leading the federal consequence management effort is the Federal Emergency Management Agency (FEMA).

The Bureau has a long history in counter-intelligence and has been working for well over a decade on terrorism. According to a recent *Washington Post* report, "in 1991, when the U.S. began its bombing campaign in Operation Desert Storm, Iraq's intelligence agencies attempted unsuccessfully to carry out terrorist bombing against U.S. embassies and other facilities,"[10] the FBI worked alongside the CIA and their peers in other nations to interdict the agents before they could damage worldwide U.S. owned facilities. The FBI has reduced its workload in some areas where heavier coverage could be provided by other federal law enforcement agencies. This has freed additional agents for assignment to the critical counter-terrorism function. Recently, the PATRIOT Act and other legislation have enabled the Bureau and federal intelligence agencies to share more information, more rapidly than in the past.

The Bureau has 56 field offices and over 400 resident agencies that have significant counterterrorism capabilities. For example, each field office has an Evidence Response Team, with law enforcement and forensic expertise, and a HAZMAT Response Team, with HAZMAT and explosive expertise which are available to deploy when and where needed. Similarly, each field office has an anti-terrorism task force, and Infoguard (computer intrusion program), key asset and weapons of mass destruction contingency planning coordinators. These special agents are available to advise and assist all law enforcement agencies, and calls are encouraged. The FBI also has an Indian Country Unit at its Washington, DC, headquarters. Its principal functions are providing training and support to law enforcement officers (FBI agents, BIA-OLES, and tribal officers) working in Indian Country. The unit is

United States Customs Service Recruitment and Information Booth.

headed by Supervisory Special Agent, Ernst H. Weyand, who attended the Summit. The FBI Indian Country Unit can be contacted at (202) 324-3802.

As part of the recent federal reorganization of law enforcement and security agencies, the National Infrastructure Protection Center, a cooperative effort among several federal agencies, is moving from FBI headquarters to the Department of Homeland Security.

12. Federal Emergency Management Agency (FEMA). FEMA has a long history of dealing with Indian nations and tribes on a government to government basis. However, depending on the focus and funding authority for certain programs, this is not always possible.

For example, the Fiscal Year (FY)–2002[11] funding for improvements in first responder capabilities is authorized through the Stafford Act which precludes direct government to government funding.[12] While Indian nations are not directly eligible for this funding they are urged to consult the October 1, 2002 edition of the Federal Register for grant guidelines. FEMA hopes that future legislation will permit direct funding to Indian nations and tribes.

Upgrading Emergency Operations Centers (EOCs) and updating emergency response plans are key FEMA goals; $56 million has been earmarked for upgrading EOCs. Those in the worse shape will be funded first and every EOC will receive a secure communications suite. However, the receipt of secure communications will require EOCs to increase the physical security afforded these sensitive communication centers. FY-2002 funding was provided to states on the basis of population alone. The more sparsely populated western states have objected to that formula believing that the perceived level of risk should be the principal determining factor for funding. FEMA expects that FY–2003 funding will be allocated with a certain base funding amount provided to each state, for example, $5 million. Funding over this base will be allocated based on population. Thus, without legislative intervention, tribal lands do not appear to be in line for direct funding of homeland security improvements until FY–2004, at the earliest.

13. Indian Health Service (IHS). Under the Federal Emergency Response Plan, which coordinates disaster response, the IHS supplies a broad variety of health and emergency medical services. The IHS is part of the Public Health Service which has 6,000 uniformed officers that are ready to deploy at any time, to any place, where they are required to alleviate public health emergencies. IHS is looking for tribes to develop Tribal control of the emergency medical response capabilities on tribal lands. It is also working to improve State/Tribal coordination.

United States Secret Service Uniform Division Officers keep a vigilant watch for well-qualified applicants.

Recently, States were asked to address the inclusion of tribes in their planning. Fourteen of the 35 states with Indian reservations did so. Of these 14, only one was willing to provide funds to tribes for staffing improvements in Indian response capabilities.

The IHS has no plans for mass inoculations of Native Americans against smallpox. Neither will there be mass inoculations in the rest of the nation. That decision was made based on a determination that the current vaccine has significant health risks. IHS expects significant reduction in the vaccine's side effects over the next twelve months. IHS has signed memoranda of understanding with Health Canada and its Mexican counterpart to provide support in times of national disaster. It is also looking at the role of the National Guard and Reserve Forces in bio-terrorism response in America.

14. Department of Veterans Affairs (VA). The VA's over riding mission is providing medical care to veterans. It also provides back-up support to both the Public Health Service (in the form of medical personnel) and to the Department of Defense (in the form of supplies and logistics). The VA's medical assets are

stationary fixed facilities. For that reason, victims will be brought to VA facilities rather than the VA going to disaster sites. Because the VA lacks trauma centers to treat violently caused wounds, patients normally will be treated at another medical facility first. Once their condition is stable they can be transported to a VA hospital.

Veterans Affairs is developing emergency response capabilities in the area of decontamination of medical facilities, personnel and patients. However, national authorities are redefining its precise role in the Federal Disaster Response Plan. As part of the National Disaster Management System, the Salt Lake City, Utah VA Hospital has signed cooperative agreements with 22 area hospitals that will provide additional bed space in emergencies. Each VA facility will have different capabilities. When making homeland security plans, the VA Office of Policy and Planning (Washington, DC) should be contacted to determine exactly what capabilities are available at local VA facilities. The Policy and Planning Office can be reached at: (202) 273-5033.

Needed Resources

1. **Funding.** Most Native American communities do not have adequate funding to protect the critical infrastructure located on Tribal Lands. Current funding for Tribal law enforcement and first responders lags well behind that for non-Tribal law enforcement and first responders. The result is that many Tribal law enforcement and first responder systems lack personnel. In addition, some of the personnel they do have lack training, education, certification, experience, and sufficient technical assistance. Many others experience burn-out resulting in low retention rates. Lack of funding has also left many Native American communities without Tribal fire departments and health services. With an influx in funding, many of the above obstacles to eliminating the vulnerabilities located on Tribal Lands can be overcome.

Summit participants believe that tribes should receive base funding to achieve parity with non-Indian communities for law enforcement and first responder capabilities, plus additional funding for specific high-priority protection, and for response and recovery projects. They felt that funding tribes on a per capita basis will not produce sufficient security improvement. Instead, funding should be sufficient to bring tribes up to a national minimum standard of law enforcement and first responder manpower, equipment and training.

Participants said it is also critical that federal agencies include Tribal Nations in law enforcement and first responder grant funding as they do State and local governments. They said, Tribal Nations should be included in the Department of Homeland Security grants for homeland security and the Department of Justice grants administered by the Justice Assistance Grants program, which includes the Byrne and Local Law Enforcement Block Grants programs. The Department of Justice, COPS Office grants program is an excellent example of a grants program that includes Tribal governments in the grant access language. Participants strongly supported the concept of a legislative change that would allow the Department of Homeland Security to directly fund tribes on a Government-to-Government basis.

In short, much vulnerability exists on Tribal lands because Tribal communities lack the resources to address these vulnerabilities. The lack of resources is a direct result of inadequate funding. Inadequate funding has created a lack of law enforcement and first responder personnel, and has also given rise to insufficient training of existing human capitol, as well as greatly reducing technical assistance and resources. As such, inadequate funding is a major roadblock to the elimination of vulnerabilities on Tribal lands.

2. **Training.** Native American communities need more training and specific guidance regarding their role in the National Homeland Security Strategy and Defense. The 2002 NNALEA Tribal Lands Homeland Security Summit was just a starting point for such training and guidance. Although, in 2003 NNALEA will include a tract on "Homeland Security" training at its national conference, many other training programs are needed. When assessing homeland security training needs, the following should be taken into consideration:

⇨ Trainers and planners need to think outside the box, in order to prepare America for the next terrorist attack, not the last one.

⇨ Communities need to receive specific training to clarify missions, develop a collaborative strategy, and to identify goals and objectives. In addition specific training is necessary to establish performance measures in preparation for attacks that utilize chemical, biological, radiological and other weapons of mass destruction.

⇨ Decontamination procedures training needs to be conducted at the local level incorporating the tabletop exercise approach in the curriculum.

⇨ Communities need to train and plan to respond to denial of service attacks.

⇨ For a community homeland security plan, to be implemented successfully, it requires high-quality management training that is focused on key proven success factors. Some of these factors requiring specialized training include human capitol management and strategy, risk management, information technology management, strategic planning and many other critical management processes. These key success factors will vary from community to community as will specific community homeland security plans. Therefore, strong consideration needs to be given to using an academic training consortium specializing in Tribal law enforcement, first responder, and homeland Security training. The Academic Center for Excellence in Native American Law Enforcement Training is a NNALEA partnership with Fort Lewis College, East Central University of Oklahoma, the Federal Law Enforcement Training Center–Distance Learning Program, and the Boys & Girls Clubs of America. The partnership is dedicated to bringing quality law enforcement, first responder, and homeland security training to Tribal communities.

3. **Equipment and Technical Assistance.** Community homeland security plans vary greatly from one community to another. Specific national standards have not been established to indicate what specialized equipment and technical assistance a community needs to have to achieve an acceptable level of homeland security preparedness. Tribal

communication systems, as well as the equipment of Tribal law enforcement, first responders and fire departments generally lack parity with their non-Tribal counterparts. Therefore, most Tribal Nations need additional basic law enforcement and emergency response equipment and technical assistance.

Summit participants made the following comments regarding Tribal homeland security equipment and technical assistance:

Equipment:

- Many Tribal Nations have volunteer fire departments which must meet both their fire emergency and chemical emergency response calls. These departments are generally in need of a broad variety of equipment including, but not limited to, personal safety equipment, protective suits and respiratory equipment.
- Tribal lands generally are in need of basic communications equipment. Tribal communities' homeland security planning calls for a communication system that will enable integrated communications with and between on-reservation and off-reservation fire and police agencies, of which most Tribal communities need.
- Most Tribal Fire Departments need basic response and fire equipment, from hoses and nozzles to pump trucks.
- Tribal law enforcement, first responders, medical providers and incident clean-up teams need a complete range of emergency equipment from personnel protective gear to biohazard identification equipment and disposal devises.

Technical Assistance:

- Tribal Nations generally do not have large bureaucracies with embedded scientists/experts or university communities which can provide on-site technical assistance in the more sophisticated management, forensic, security and scientific skills needed to develop well-rounded tribal homeland security programs. Therefore, obtaining a means for the technical assistance and expertise necessary for Tribal communities' homeland security planning and program development is needed.
- Technical assistance needed by Tribal Nations can be provided through contract sources.
- On-site Tribal homeland security needs for specialized expertise can be provided by circuit-riding experts who can visit individual Tribal Nations and inter-Tribal organizations to assist in the development of homeland security capacity-building.
- Tribal Nations need contract resources familiar with Tribal governance and agencies to develop both written and electronic educational and program implementation resources for distribution to the community. The Academic Center for Excellence in Native American Law Enforcement Training is an excellent resource for these Tribal homeland security needs.

4. Jurisdictional Cooperation and Clarification. Providing homeland security and protecting critical infrastructure and assets on Tribal lands is complicated by crime and jurisdictional issues that frustrate law enforcement personnel, as well as the Tribal, state and federal judicial systems. Indian Country jurisdiction, law enforcement and first responder issues need to be clarified.

Within the context of Homeland security, the significance of Native American sovereignty lies in the manner in which the Department of Homeland Security should interact with Indian Nations. Indian leaders feel a deep sense of responsibility for the well being of members of their Nation. This is a cultural inheritance inseparable from being Indian.

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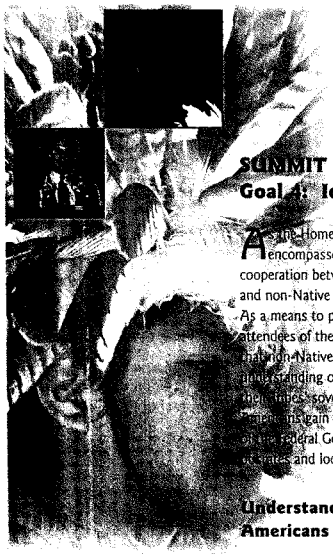
Jurisdictional cooperation and clarification may, in part, be achieved by the following:

- Development of legislative language is needed that clarifies the right of Indian Nations to arrest, detain, and prosecute non-Native Americans committing crimes on Tribal reservations and trust areas.
- Uniform national standards are needed for law enforcement officer and first responder training and certification.
- States need facilitation and encouragement to enter into cross deputation agreements with Tribal Nations to facilitate the mutual sharing and support of peace officers, particularly in times of crises.
- Legislation with adequate funding is needed to bring Tribal courts, law enforcement, and first responders to parity with their non-tribal counterparts relative to pay, equipment, education, technical assistance, technology, and jurisdictional authority.
- Legislation is needed that gives clarification of the Government to Government relationship between Tribes and the Federal government on issues relating to the National Homeland Security Strategy and Defense.



SUMMIT GOALS
Goal 4: Identifying Mechanisms for Cooperation

As the Homeland Security strategy encompasses our entire country, cooperation between Native Americans and non-Native Americans is essential. As a means to promote cooperation, the attendees of the NNALEA Summit suggested that non-Native Americans gain a better understanding of Native Americans and their tribes' sovereignty rights, while Native Americans gain a better understanding of the Federal Government and the roles of states and local governments.

Understanding Native Americans

Who are Native Americans?

Native Americans (often called American Indians) are Americans who trace their heritage to the original people of North America. Each tribe sets its own criteria for membership. There are 561 federally recognized tribes.[13] Native Americans have fought in every war in which the United States has been involved. No fewer than 16 Native Americans have been awarded the Medal of Honor, America's highest military decoration.[14]

Native Americans [are] 1.5 percent (4.1 million) of the U.S. population of 281.4 million,[15] which has grown 110 percent since the 1990 census, compared with 13 percent for America as a whole. Native Americans live in cities and towns throughout America in addition to the four percent of the American land designated as reservations and trust areas. Native Alaskan corporations own an additional 40+ million acres in Alaska.

How do Native Americans differ from the rest of America?

Native Americans are not a single group. Each tribe has its own unique governments whose goals, objectives, financial status and problems differ one from another. Some tribes are relatively affluent, others are very poor. Tribal members' goals, dreams, and aspirations also differ as do their living arrangements. Some Native Americans live on reservations and trust lands while others are integrated into America's neighborhoods.

According to the Census Bureau, Native Americans differ from the U.S. population generally by being younger, having higher fertility rates, being poorer, and being subject to more violent crime than any other U.S. minority group. Thirty-nine percent of the Native American population is under 20 years old with a median age of 26. The corresponding figures for the nation as a whole are 29 percent and a median age of 33, respectively.[16] Over the last decade the percentage of Americans claiming Native American ancestry has increased from 1 to 1.5 percent of the population.

Native Americans, as a group, have low incomes. The median family income is about $13,500 or 38 percent less than the median $35,335 of the average American family. Thirty-one percent of Indian families live below the poverty line compared to 13 percent of American families as a whole.[17] Within the Native American community, those who live on reservations and trust lands administered by the Bureau of Indian Affairs have the lowest incomes and a standard of living that would be unacceptable to most Americans. For example, the average per capita income for all Native Americans was $8,328. For Native Americans residing on reservations and trust

land that average was $4,478, varying from about $3,100 per person on the Pine Ridge (SD) and Tohono O'Odham (AZ) Reservations to $4,718 per person on the Blackfeet (MT) Reservation. These differences in wealth will require relatively higher federal homeland security funding for poorer tribes.

President Richard Nixon summarized the status of Native Americans as, " . . . the most deprived and most isolated minority group in our nation. On virtually every scale of measurement—employment, income, education, health—the condition of the Indian people ranks at the bottom."[18]

Where do Native Americans live?

About half of the Native American population live in neighborhoods throughout the United States, while the other half lives on reservations and trust lands that are administered by the Department of the Interior through its Bureau of Indian Affairs (BIA). Although there are 314 reservations and trust lands in the U.S., half the reservation population live on just 10 of these. They are: Navajo Reservation and Trust Lands (AZ, NM, UT); Pine Ridge (SD); Fort Apache (AZ); Tohono O'Odham (AZ); Gila River (AZ); Rosebud (SD); San Carlos (AZ); Zuni Pueblo (AZ-NM); Hopi (AZ); and Blackfeet (MT).

Housing is of much poorer quality on tribal lands than throughout the rest of America. Twenty-six percent of the housing in these communities lacks piped water, a toilet and a bathtub or shower. While most of the country is using the internet and preparing for high speed digital access, 23 percent of rural Native Americans lack basic telephone service.[19] In 1995, the Census Bureau concluded that American Indians living on Indian reservations "were as likely to lack complete plumbing facilities in 1990 as all U.S. households were *in the 1950's (sic)*."[20] (Italics are from the Census Report).

Understanding Tribal Sovereignty

Indian Tribes are Sovereign Nations

Sovereignty is an international concept that recognizes the power of a people to establish political structures to govern themselves. It means, according to Webster, "supreme and independent political authority."[21] Tribal sovereignty is the history and current practices that American Indian tribes have of managing their own affairs.

Native American mother and child from the Nez Perce Indian Reservation.

It is vital that both federal and state leaders understand the sovereignty inherently possessed by federally recognized Native American nations and tribes. It is unique in our Nation. Without understanding the Constitutional, treaty, statutory and judicial basis for this sovereignty, elected and appointed homeland security officials will be hard pressed to effectively communicate with or understand the tribal governments with which they must deal. Certainly, they risk being unable to harmoniously and effectively carry out their responsibilities.

All Americans learn that, under the Constitution of the United States, a federal relationship exists between the United States and state governments. The federal government is supreme and obtains its power from the consent of the citizens it governs.

Indian Nations "Higher Status" with the Federal Government

Indian tribes are the original Americans. They populated America well before European explorers and settlers arrived. **The Constitution recognizes Indian tribes as separate, distinct and unique governments.** Article 1, section 8, clause 3, authorizes Congress to regulate

commerce with "foreign nations, among the several states, and with the Indian tribes."

According to the court in McClanahan v. Arizona Tax Commission, "Indian tribes have inherent powers deriving from a sovereign status. Their claim to sovereignty long predates that of our own government."[22] Thus, the relationship between the U.S. government and Indian tribes is unique because Indian tribes derive their powers from their sovereign existence as well as through delegation of power from the federal government.[23] As the Ninth Circuit declared in 1965, "Indian tribes are, of course, not states; they have a status higher than those of states. They are subordinate and dependent nations, possessed of all powers as such, and limited only to the extent that they are expressly required to surrender their powers by the superior sovereign, the United States."[24]

Children embrace their Native heritage through tribal costume and dance.

Felix Cohen, wrote an extensive and authoritative tome entitled, *Handbook of Federal Indian Law* for the Department of the Interior. According to Cohen:

The most basic principles of Indian law supported by a host of decisions . . . is the principle that those powers which are lawfully vested in an Indian tribe are not, in general delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty that has never been extinguished. What are not expressly limited remains within the domain of tribal sovereignty *(emphasis in the original source)*.

The Constitution of the United States, 371 Nation-to-Nation treaties (between the federal government and Indian tribes), federal statutes, case law, executive orders and other administrative policies protect the government-to-government relationship between the federal government and federally recognized tribes. Cohen explains that, "Each Indian tribe begins its relationship with the federal government as a sovereign power, recognized as such in treaty and legislation. The powers of sovereignty have been limited from time to time by special treaties and laws."[25] Case law establishes that tribes reserve the rights they have never given away.

The Government-to-Government Relationship

Over the years, various Indian tribes (hereafter referred to as Indian Nations in recognition of their status as sovereigns with the right of self-determination and self regulation) entered into agreements with the federal government. Sometimes, these agreements limit some external powers of the Indian Nation, for example, its power to enter into treaties with foreign governments, in return for the U.S. government providing something to the Indian tribe. Examples include guarantees of protection, peace, recognition of borders, continued rights of self governance, land rights, etc.

The Chippewa and Sioux Nations of Minnesota, for example, were never conquered and yet entered into treaties of peace and protection with the United States. In Worchester v. Georgia, Chief Justice Marshall said,

". . . settled doctrines of the law of nations is that a weaker power does not surrender its independence—its right to self government—by associating with the stronger and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government and ceasing to be a state. Examples of this kind are not wanting in Europe. The Cherokee nation, then, is a distinct

community occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the government of the United States."[26]

Tribal sovereignty is more than of historical interest. Over several decades, the U.S. Supreme Court and lower federal courts have applied the principles of Indian sovereignty to determine: the authority of tribal courts, criminal jurisdiction, extradition, licensing, sovereign immunity and taxation. Tribal sovereignty, in short, means four things:

1. Tribes are sovereign nations possessing the right of self governance,
2. Native American tribes have a Government-to-Government relationship with the federal government,
3. Only Congress has the power to regulate Indian affairs and change agreements and the conditions affecting Native American nations, and
4. State governance within Indian Country is limited.

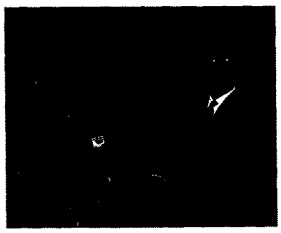
Presidential Support of Native American Self Determination

In 1970, President Richard Nixon recognized that past federal Indian policy vacillated between the two extremes of paternalism and forced termination of the federal trustee relationship with Native American Tribes. He felt that it," . . . must be the goal of any new policy toward the Indian people to strengthen the Indian's sense of autonomy without threatening his sense of community." He suggested, "a policy in which the federal government and the Indian community play complementary roles," and states that "Most importantly, we have turned from the question of whether the federal government has a responsibility to Indians to the question of how that responsibility can be furthered.[27]

Beginning with the administration of President Nixon, the federal policy toward tribes has been to support tribal sovereignty and tribal self determination. President George W. Bush has continued this time-honored policy.

Tribal Sovereignty and the Department of Homeland Security

Within the context of Homeland security, the significance of Native American sovereignty lies in the manner in which the Department of Homeland Security should interact with Indian Nations. Indian leaders feel a deep sense of responsibility for the well being of members of their Nations. This is a cultural inheritance inseparable from being Indian.



Presentation from Summit President Jim Wooten to Brad Buckles, Director of BATF.

Therefore, NNALEA recommends that the Department of Homeland Security open channels of communications directly with Native American nations. Through these channels, it must discuss how to improve homeland security on tribal lands. Successful application of this approach will result in producing seamless security at low cost. Both the Department of Homeland Security and

the Indian nations have the same goal—improved homeland security at reasonable cost. The Department's strategic leadership will be strengthened by receipt of the detailed knowledge of Indian lands and their vulnerability, possessed by the Indian Nations.

The alternative, attempting to communicate, fund or interact with Indian communities through states will take longer and possibly create unnecessary roadblocks, such as:

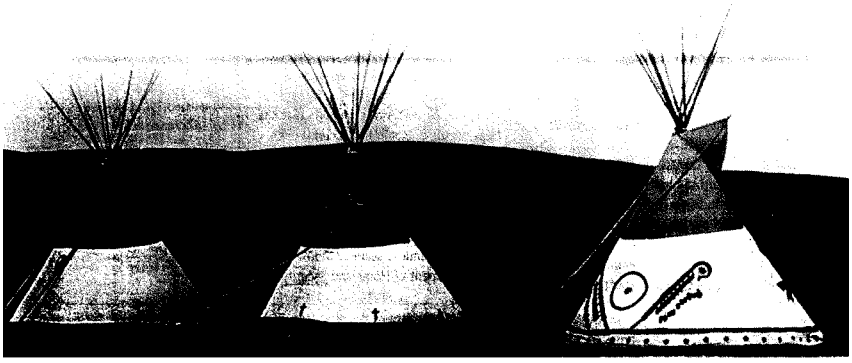
- legal issues regarding lack of state authority on Tribal lands, and
- insensitivity to the legal and cultural history of Indian sovereignty.

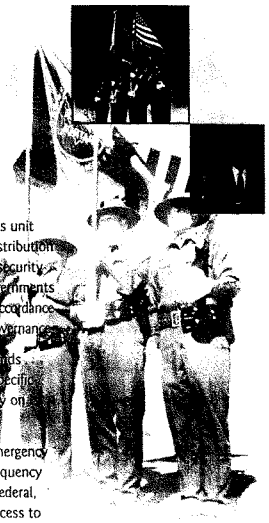
In sum, NNALEA advises that homeland security planning and funding not be passed through states to Indian nations, but be provided directly to Indian nations either individually or in regional consortiums or similar groupings. The Indian nations are eager to work with state and local governments to reduce duplication and expense and to provide America with seamless homeland security.

However, it will be difficult for Indian nations to work through these entities. Although this difference may appear small, it may be the difference between success and failure in providing effective homeland security for Native American communities.

Funding homeland security improvements in states but not on Indian lands is not a viable alternative to working with Indian nations for two reasons:

1. The potential of a catastrophic impact (beyond just the reservation) of successful attacks on vital targets on Tribal lands.
2. Every successful effort to harden sites outside Tribal lands will increase the vulnerabilities of people, assets and infrastructure on Tribal lands as they remain softer targets easier for terrorists to successfully attack.





SUMMIT GOALS
Goal 5: Defining Next Steps for Moving Forward

The final goal targeted and achieved by the attendees of the NNALEA Summit, was to determine the next steps for moving forward with homeland security on Tribal lands. The attendees made numerous recommendations, several of which are set forth below. In addition, this report concludes with a summary of NNALEA's Homeland Security Summit Assessment Model.

General Recommendations

For seamless communications between federal, state, and local governments when working with tribal governments on homeland security issues:

1. View Indian nations as separate entities because each is unique.
2. Communicate directly with Indian nations.
3. Provide funding directly to Indian nations.
4. Strengthen lines of communication between tribal governments and non-tribal emergency and law enforcement agencies.
5. Address liability and jurisdictional issues that limit the ability of state, local and Tribal law enforcement groups to work together.

Recommendations for the Department of Homeland Security:

1. Develop a comprehensive list of potential terrorist targets within the Tribal lands as well as the rest of the United States.
2. Establish a coordination unit within the Department to provide a single point of contact for the Indian Tribes. This unit should be the conduit for the distribution of the tribal share of homeland security funding directly to the Tribal governments involved. Such would also be in accordance with the principle of tribal self-governance.
3. Apportion homeland security funds based on the cost of reducing specific priority vulnerabilities, not solely on population or other criteria.
4. Develop a homeland security emergency communications system and frequency that all levels of government—federal, tribal, state, and local—have access to and which provides two-way communication of terrorist alerts, notification of natural and man made disasters, and relevant operational intelligence.
5. Encourage state and local governments to enter into mutual support agreements with tribal governments to share complimentary resources in times of crises.
6. Encourage state and local jurisdictions to establish agreements with tribal governments that cross deputize and provide certified Indian Police Officers equivalent status to other police officers.

Recommendations for the Department of Justice:

1. Develop legislative language that clarifies the right of Indian nations and tribes to arrest, detain, and prosecute non-Native Americans committing crimes on reservations and other Tribal lands.
2. Develop uniform national standards for law enforcement officer and first responder training and certification.

3. Encourage States to enter into agreements with Tribal governments to cross deputize and to facilitate the mutual sharing and support of peace officers, particularly in times of crises.

Recommendations for NNALEA:

1. Distribute and update the "NNALEA Homeland Security Assessment Model."
2. Assist Indian Tribes with the NNALEA homeland security assessment process.
3. Develop and provide tribal law enforcement and tribal first responder homeland security training.
4. Continue to provide a forum for the discussion of tribal homeland security.
5. Lead in the development of a strategic homeland security defense plan for Tribal lands.
6. Post links on the NNALEA website to pertinent homeland security websites.
7. Provide technical assistance to Indian Tribes relative to homeland security.
8. Continue to promote partnerships that facilitate Indian Tribes' role in the National Homeland Defense strategy.

Recommended Next Steps: Strategic Planning for Tribal and Non-Tribal Communities:

The National Homeland Security Strategic Plan needs to be flexible and fully implemented at all levels of government and the private sector. Development of the National Strategic Plan is an ongoing iterative process that requires a great deal of patience and hard work. Collaboration clarifies priorities, focus, funding levels, formulas and other key proven success factors. NNALEA recommends that communities mirror the evolving National Homeland Security Strategic Plan when developing their respective community homeland security strategic plan. The following examples will assist in the process:

1. The July 2002 National Homeland Security Strategic Plan is but a start. From its five-year perspective, the national annual plan is designed to incrementally improve homeland security. Planning extends to individual communities which can then develop their own five-year strategic plans. These plans incrementally improve local homeland security and defense by defining annual goals and objectives.
2. The National Homeland Security Strategic five-year Plan has been disseminated by the federal government to tribal, state and local governments. Likewise, communities can disseminate their respective five-year strategic plans to federal, state, and local governments, law enforcement, first responders, and citizens within their respective boundaries.
3. The National Homeland Security Strategic Plan should at a minimum be evaluated at a national level biannually through embedded accountability criteria. In addition, it is important for communities to embed similar accountability criteria into their respective homeland security strategic plan. These criteria will enable evaluators to regularly monitor and report the progress and compliance with the National Homeland Security Strategic Plan.
4. National accountability criteria data is collected through exercises, experiences, intelligence, and accomplishments. The data provides feedback enabling adjustment to the National Homeland Security Strategic Plan in a timely fashion. As milestones of the plan are achieved,

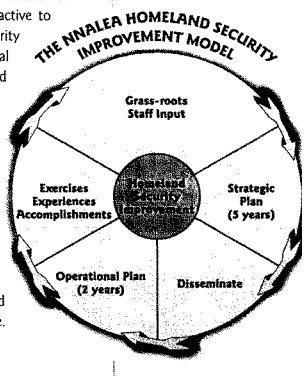
funding is freed to improve other vital needs. Similarly, communities with accountability criteria designed into their respective homeland security strategic plan will collect data through local exercises, experience, intelligence, and accomplishments. Thereby, enabling adjustments to the communities' homeland security plan in a timely manner, freeing funding for other vital needs.

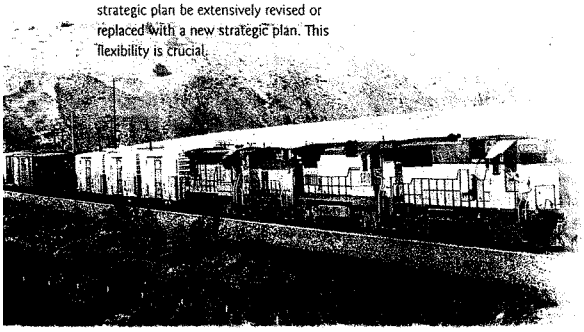
5. During the five-year tenure of a National Homeland Security Strategic Plan, staff from all levels of government continuously monitor, review and evaluate the national plan. Based upon input from federal, Tribal, state, and local governments, agencies, the private sector, national and international intelligence sources, world events, and non-governmental organizations, the National five-year Strategic Plan continually evolves. The five-year tenure of a respective community homeland security strategic plan, will utilize national guidance along with grassroots input to develop and evolve their respective plan.

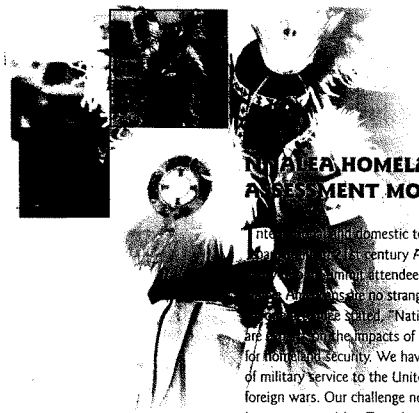
6. At the end of a five-year strategic plan, the process normally begins anew. However, a variety of national or world events may require that a national and/or community five-year homeland security strategic plan be extensively revised or replaced with a new strategic plan. This flexibility is crucial.

The NNALEA Homeland Security Improvement Model

The NNALEA Homeland Security Improvement Model was designed to assist communities in the development and improvement of their respective community homeland security strategic plan. The NNALEA model is flexible, adaptive, timely and reactive to the National Homeland Security Strategic Plan. As the national strategic plan evolves and changes based upon collaborative analysis and changing world events, the use of the NNALEA Homeland Security Improvement Model will empower a community to be in step with the National Homeland Security Strategic Plan and to fit seamlessly into the fabric of the National Homeland Security Strategy and Defense.







NNALEA HOMELAND SECURITY ASSESSMENT MODEL

International and domestic terrorism is a [illegible] 21st century America. As [illegible] Summit attendees pointed out, [illegible] Indians are no strangers to terrorism. [illegible] stated, "Native Americans are [illegible] the impacts of losing the war for homeland security. We have a long history of military service to the United States in foreign wars. Our challenge now is at home, in our communities. To maintain our freedom and liberty, both the United States and our Indian Nations must remain open, but we must increase our preparations and vigilance."

We cannot provide, let alone afford, 100 percent protection for every possible terrorist target. Our challenge is to develop interconnected, reinforcing and complementary systems, both within and outside tribal lands that protect our communities and ensure that essential requirements and services are provided that avoid unnecessary duplication. This security model provides a process for enhancing emergency services and securing our communities while cooperating with local, state and federal governments, as together we strive to protect our Homeland.

NNALEA drafted this five-part "Homeland Security Assessment Model" to provide structure to the Summit and to provide Tribal leaders a beginning point from which security needs could be assessed and improvements made. Its ultimate purpose is to assist tribal leaders, emergency response planners, law enforcement officials, and owners and operators of likely targets in working together to provide safety and security for Tribal lands, and in turn our country as a whole. We believe that completion of an assessment, like this model, assists tribes and communities in taking stock of both their resources and needs. The assessment model will help simplify the process of requesting funding for specific improvements. It will also provide the information to strengthen the case for why specific efforts should be funded. The overall goal is to assist tribal governments in preventing terrorist attacks. Where that is impossible, the goal is to provide a method to reduce vulnerability, limit damage and speed recovery from successful attacks.

As discussed throughout the "Tribal Lands Homeland Security Summit," which refined this model, the evaluation process is simple in its construction, but complex in its details. Only by following a structure where we understand the threat and our vulnerabilities, assess and prioritize our risk, inventory our equipment and strengths, and seek cooperative agreements with others to share resources in emergencies, can we develop and price a list of the capabilities that are needed. This process leads to a prioritized list of necessary capabilities that is easily defended to federal and state officials seeking to best distribute homeland security funding.

I. Understanding the Threat[27]

What is homeland security?

Homeland security is a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks that do occur.

What is terrorism?

Terrorism is any premeditated, unlawful act, dangerous to human life or public welfare that is intended to intimidate or coerce civilian populations or governments. This covers kidnappings; hijackings; shootings; conventional

bombings; attacks involving chemical, biological, radiological, or nuclear weapons; cyber attacks and other forms of violence. Terrorists can be U.S. citizens or foreigners, acting alone, in concert with others, or on behalf of a hostile nation or group.

Who are potential terrorists? What are their motivations?[29]

Public statements and the philosophies expressed by terrorist organizations indicate that the key to understanding the terrorist mindset lies in the terrorists' feelings of exploitation and vulnerability. Generally, terrorists view themselves as oppressed people. Their violent activities appeal primarily to individuals and groups living on the economic and social margins of their societies. Terrorist leaders and followers alike share a sense that people from outside their immediate group have used unfair means to take what is rightfully theirs. They also appear to believe that non-violent means of redressing their grievances are not available to them or would be ineffective. Even though some terrorist leaders are well educated, they and members of their groups espouse a simplistic view of how society operates. To them, society is hopelessly corrupt and their sense of hopelessness turns into rage and hatred and motivates them to seek extreme remedies.

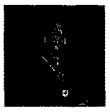
Based on their public statements, terrorists appear to use three psychological defense mechanisms to ward off their feelings of vulnerability and hopelessness. These are projection, rationalization and identification. Projection is attributing a person's feelings to someone else. Thus, terrorists divorce themselves from their own feelings of hatred and rage by ascribing them to their perceived enemies. They falsely believe that their perceived exploiters intend to destroy them. Thus, they believe that they must destroy their exploiters by any means available.

Rationalization allows terrorists to overcome feelings of hopelessness by creating an alternate view of reality that justifies direct violent action. This weltansuang or world view can be either religious or secular. For example, it can take the form of a unique religious interpretation of scripture that promises a return to a purer, holier state or admission to paradise. Alternatively, it can be based on a theory of economic materialism or ecological determinism that promises the creation of a Utopian state. In either case, the use of rationalization provides a goal that energizes terrorists repressing their feelings that life is hopeless.

Identification appears to be the cement that holds terrorist organizations together. All members share, and identify with, the belief that they are persecuted by others who are inherently evil. They also share a Utopian rationalization to justify their actions. Often they identify with symbolic figures, e.g. great religious or political leaders, who overcame persecution and triumphed by using the same rationalization they seek to apply.

The result is groups whose view of the world is markedly divorced from what most would recognize as reality. The leaders of such groups fabricate their world view to justify violent actions. Such leaders are often reclusive, narcissistic and schizoid. Their followers are often young, naive, dependent and eager to share the better life their leaders promise. In this process they accept the leader's view as their reality.

Domestic Terrorists—Within the United States, for example, there have been both left- and right-wing terrorist organizations. These domestic terrorists have tried to use violence against civilians to start a revolution and bring down the government.



Foreign Terrorists—On the international level, Al-Qaeda has developed a powerful clandestine network that has two goals: the removal of Western influence from the Middle East, and the eventual establishment of a fundamentalist Islamic world order.

To many of us, these goals may not be very realistic nor do they justify harming innocent civilians. However, terrorists believe they are battling injustice. Their goals, however unrealistic in the opinion of others, provide them with what they feel is a justification for extreme acts of political violence.

What are likely terrorist methods?

In order to achieve their goals, terrorists normally organize themselves into clandestine cells of a few members each. The cells are connected by a common ideology and by an elaborate, but well disguised, system of communication and finance. Often there are several levels of intermediaries between cells. This prevents members of different cells from knowing one another or knowing the location of other cells. The lack of direct communication between cells makes it very difficult for governments to locate and remove terrorist organizations from society and prevent terrorist attacks. To complicate matters, most terrorist cells are "asleep" most of the time. Their members hold jobs or are students in local communities. They do everything they can to blend into the population. It is only when they are activated by a more-or-less centralized command structure that these "sleeper cells" finalize and implement their violent agenda.

Terrorists will apply the full range of weapons available to them—knives, sharpened objects, guns, improvised explosive devices, shoulder-fired missiles, weapons of mass disruption, attacks on computer systems, and weapons of mass destruction such as chemical, biological and nuclear weapons. Few attacks will be one-on-one; most will be designed to produce mass casualties and carnage. While use of weapons of mass destruction is the goal of the sophisticated terrorist groups with foreign government backing and global reach, most attacks will be by more conventional means. For all its destruction, the attacks on the World Trade Center and Pentagon were conventional—a plane used as a flying bomb or missile.

First responder systems, communications, plans, equipment, training, and hospital support will support the recovery from any weapons producing mass casualties. They also can produce benefits, on a daily basis, in areas under served by the health care system.

What are likely effects?

By unexpectedly attacking civilians through seemingly random acts of extreme and dramatic violence, terrorists hope to use a combination of psychological and economic impacts to accomplish their political goals. Psychologically, terrorists want the target population to become preoccupied with grief and be overcome by the fear of future attacks. They desire the population to live in a state of continual post-traumatic stress, constantly feeling vulnerable, and eventually believing that the battle against terrorism is hopeless and never-ending. By attacking highly visible targets and receiving news media coverage, terrorists hope to multiply the effects of their attack throughout the population.

Terrorists seek to cause three types of economic damage:

1. The direct economic impact of their acts. It's difficult to estimate the economic impact of the attack on the World Trade Center and the Pentagon. There was a significant loss of human life and a clear disruption of business and government which is hard to quantify. However, the

damage to the buildings alone and the cost of cleanup has been estimated at more than $30 billion.

2. The cost of combating future terrorist acts. The Department of Homeland Security, for example, will likely have an annual budget in the tens of billions of dollars. Additional homeland security expenditures by other federal, state, tribal and local agencies and the expense of interdicting terrorists abroad will add to the costs included in the budget of the Department of Homeland Security.

3. The impact on the wider business and financial community. Feelings of vulnerability lead to a lack of confidence and willingness to take risks. These affect business purchases, stock markets and broad sectors of the international economy, leading to a general economic slowdown. The impact of the World Trade Center attack on the airline and travel industries is a powerful example of how fear can create an economic multiplier effect.

Terrorists hope that these combined psychological and financial impacts will exhaust the resources of their targets and lead them to recognize the terrorists, negotiate their demands or capitulate to those demands.

What will it take to secure our nation?

Terrorism can be effectively controlled and eventually defeated by a concerted national effort. The federal (executive, legislative and judicial branches) government, tribal governments, state and local governments, private business and industry, and the American people all have a role to play. The Department of Homeland Security is but a single player. Our country belongs to all of us. It will take each of us working together, helping one another and coordinating our efforts to protect our country at a cost we can afford.

The first step in fighting terrorism is to isolate the terrorist organization from community support. Governments must make it clear, through public statements and actions, that they are pursuing individuals planning and performing violent acts, not ethnic or religious groups or peaceful political organizations.

The second step is to develop cooperation between all levels of government, the private sector and citizens' organizations by implementing an economically feasible and prioritized system of homeland security. Terrorist cells can be activated at any time to attack targets, produce fear and draw the attention of the news media. Trying to protect all potential targets all the time would be prohibitively expensive and, ultimately, impossible. All levels of government must work together with private industry and citizens' groups to protect first those targets that would do the most damage to our people and the economic base, upon which our society depends.

The third step, occurring simultaneously with the first two, is to prevent terrorist attacks. Our best defense is to deter terrorists from attacking us. We seek to disrupt terrorist cells and larger organizations to keep them off balance, degrade their capabilities, and uncover and frustrate their plans. National and international law enforcement agencies, the courts, military, and intelligence organizations have the lead in this effort. They must pursue, arrest, interrogate, and incarcerate members of terrorist organizations. Their financial assets must be seized and communications and supplies disrupted.

Public vigilance and reporting of suspicious acts is an important multiplier for the efforts of these agencies. Muslim citizens, in whose communities some terrorists hide, need to support America by reporting their concerns. As President Bush has said, millions of pairs of eyes being more vigilant and aware as we

"We (Native Americans) have a long history of military service to the United States in foreign wars. Our challenge now is at home, in our communities. To maintain our freedom and liberty, both the United States and our Indian Nations must remain open, but we must increase our preparations and vigilance."

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go about our daily lives inspire fear in terrorists and ultimately prevent attacks on our communities.

As one federal agent attending the Summit pointed out, "Terrorism is just another criminal enterprise. Although its members are dangerous, both fanatical and suicidal, it operates like any other criminal enterprise. It requires logistics and command and control to succeed. Terrorist operators-bombers, pilots or other front-line operatives, appear just before the act is to occur. Intercepting their communications and their logistic support equipment, and destroying their financing will disrupt their attacks and break their organization. Thus, it is a war that can be won even though it may take several years for intelligence and law enforcement to fully adapt and hone their techniques."

Reduce our vulnerability—by a systematic, comprehensive and strategic effort (between governments and the private sector) to identify and protect our critical infrastructure and key assets, detect terrorist threats and augment key assets. We must balance the benefits of reducing risks against both economic costs and infringements on individual liberty that might be entailed. These decisions must be made by politically accountable leaders exercising sound judgment with information provided by top-notch scientists, law enforcement and intelligence sources, medical experts, and engineers.

The SuAnne Big Crow Boys & Girls Club, located on the Pine Ridge Reservation in Pine Ridge, South Dakota.

Minimize damage—We must prepare to manage the consequences of successful terrorist attacks. This involves improving the system and preparing the individuals who will respond to acts of terror. These are police officers, firefighters, emergency medical providers, public works personnel, and emergency management officials and the equipment and systems they depend on.

Recover from attacks—We must build and maintain financial, legal and social systems to recover from acts of terrorism. This includes preparations to protect and restore institutions needed for economic growth and confidence, rebuild destroyed property, assist victims and their families, heal psychological wounds, demonstrate compassion and recognize we cannot always return to pre-attack status.

II. Defining Vulnerabilities

Organize the Process—What has already been done? Who are our local experts?

Involve all interested local parties and agencies, and include private corporations. Be inclusive, not exclusive; the more who become involved, the wider the pool of expertise and information available to assess vulnerabilities and plan actions.

Determine what the state and federal governments are doing, for example, what is the Federal Response Plan and how does it effect your jurisdiction? Is there a state Emergency Operations Plan? Does your state have an Emergency Coordination Center? Does your state have an Emergency Response Commission or agency? (The state of Alaska has a Terrorism Disaster Policy Cabinet that integrates all of these capabilities and more.)[36] Determine whether your jurisdiction has been included or overlooked. What vulnerabilities have already been identified? For example, The Federal Office of Homeland Security within the Executive Office of the President is building a nationwide listing of critical potential targets, and the State of Oklahoma is conducting a statewide threat and vulnerability assessment that will include a needs and capabilities assessment of law enforcement, fire service, public works, emergency medical services, public health systems and

agriculture. The state intends to assist urban and rural first responders in obtaining equipment and training through federal grants.[31]

Consider possible targets

Identify which facilities and locations would produce great loss of life or damage, symbolically attack the government or in other ways make news and gain attention for terrorists. Include:

Commercial Activities

- banks
- communications facilities and towers
- gasoline stations
- natural gas works and major users
- hazardous material storage facilities
- hospitals
- major industrial users of water/potential polluters (paper mills, linoleum factories)
- manufacturing industries (type, location)
- reservoirs and water treatment facilities
- processing industries (types and location)
- retail weapons sales, storage facilities, ammunition caches, dynamite sellers and users
- sports stadiums and facilities

Energy Infrastructure

- dams and hydroelectric power plants
- gas and oil pipelines
- coal, nuclear, solar power generating plants, distribution systems, grids
- power lines
- gasoline, natural gas, oil storage facilities and tank farms

Government Building and Facilities

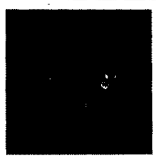
- archives—public, semipublic, ecclesiastical, historical
- historic monuments and sites
- military armories, equipment facilities, reserve centers
- municipal water systems, supplies, filtration plants
- post offices
- public works and utilities plants, line systems, nets and connecting grids
- radioactive waste, garbage and refuse disposal system
- sewage collection systems and disposal plants
- schools
- storm drainage systems
- telephone exchanges, long-line systems and connecting grids
- international/intercontinental wire and submarine cables

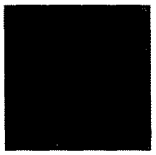
Population Centers

- casinos
- community centers, churches (particularly of minority religions)
- convention centers
- tourist attractions

Transportation Infrastructure

- airports and air fields—location size, runway length and capacities of all
- bridges and overpasses
- harbors and ports, port services and repair facilities





- railroads—locations of switch yards, major terminals, tunnels

Utilities

- power sources, transmission facilities, grids
- radio and TV transmitting stations (number, type, and location), channels, frequencies, trunk lines
- water control and supply
- sewage and waste disposal systems

Inventory and Assess Potential Targets

As targets are identified, the inventory should include information on: what the target is, what its vulnerabilities might be, its location with map references, grid coordinates, or latitude and longitude, what environmental hazards does it represent, what is its size, who owns it, who is the security point of contact, how can they be contacted (i.e. telephone, fax and pager numbers, mailing and e-mail addresses). In addition:

- Assess the potential target by physical visits that catalog vulnerabilities (private facilities may have completed such an assessment)
- Determine causes of the vulnerability, the potential effects exploiting the vulnerability, and any low or no cost "fixes" that might improve its security
- Develop simple emergency scenarios—Conventional attacks (explosives, fire), cyber attacks, biological, and chemical attacks (these will be used in making risk assessments as well as in exercises to test actual responses). As emergency response activities mature, these scenarios can be increased in complexity and coverage area to test inter-jurisdictional communication, coordination and cooperation.

Assess Vulnerabilities and Risks[31]

Determine potential severity and likelihood of damage or attacks. Use a Risk Assessment matrix to gauge the severity of consequence against the probability of attack to help prioritize the most significant vulnerabilities for remediation.

Develop Severity Measures, such as:

- **Severity Level RED**—Serious loss of life, casualties beyond ability of regional hospital system to cope; loss of critical asset or function; significant impairment of health and safety over a wide area.
- **Severity Level ORANGE**—Loss of life in a limited area; large number of hospitalizations within capability of tribal/local/regional government; loss of equipment, capacity or facilities requiring weeks or months to repair or replace; significant disruption to living conditions and commerce in a substantial area.
- **Severity Level YELLOW**—loss of life or severe injury to (insert number) or fewer people; deaths and injuries can be handled locally without straining facilities; limited or minor systems disruptions of fewer than 72 hours; no substantial danger to most of population
- **Severity Level PURPLE**—no loss of life; few serious injuries; no asset loss or system disruption for more than 24 hours; damage covers a small and easily controlled area

Develop Probability Categories, such as:

- **Frequent**—Possibility of repeated incidents
- **Probable**—possibility of isolated incidents
- **Occasional**—Possibility of occurring sometime
- **Remote**—not likely to occur
- **Improbable**—practically impossible

	RED	ORANGE	YELLOW	PURPLE
(A) Frequent				
(B) Probable				
(C) Occasional				
(C) Remote				
(E) Improbable				

LEGEND:
Level RED: *Implement countermeasures to reduce to ORANGE or lower*
Level ORANGE: *Not Acceptable without re-evaluation by top leaders*
Level YELLOW: *Acceptable with review by mitigation panel*
Level PURPLE: *Acceptable without additional review*

Analyze Counter Measures, Costs, and Technical Tradeoffs

This analysis works best when the team has a variety of skills represented (for example, a team might consist of an engineer, analyst, law enforcement officer or security specialist, local political official, business leader, health care professional, etc.)

- Develop solutions to reduce identified vulnerabilities.
- Determine costs (money, manpower, equipment).
- Decide to accept risk, eliminate it, or control it.
- Prioritize efforts (highest impact efforts first)—For example, the state of Alaska recognizes that the immediate threat of the terrorist use of nuclear and radiological devices is lower than the threat of the use of chemical, biological, explosive and incendiary devices. Thus it has prioritized its financial resources to upgrade its response abilities to reduce these dangers first.[33]

III. Identifying Resources—Available and Needed

Resources probably available include:

- maps of the area with key facilities noted
- aerial photography—available on the U.S. Geological survey website
- completed civil defense plans

Discuss planning and resources with, as many key officials and leaders as possible, including:

- local police and fire departments and those in adjacent localities; explore possibility of mutual support agreements
- utility owners (water, electricity, gas) including their security plans
- public work offices
- public sanitation officials
- local FEMA representative
- hospitals, emergency care and emergency response personnel
- school officials
- church officials and clergy

- state homeland security officials
- officials at local armories or military reserve centers

Calculate the shortfall, if any, between what is available and what is needed. Develop a list that matches the vulnerable target and proposed method for reducing its vulnerability with the resources that are needed, but unavailable. Ensure these resources are defined in detail, e.g., type radio or response vehicle needed and priced. By preparing this prioritized list, funding sources can more readily understand the improvements expected for the funds expended. Anticipate that, for example, federal agencies may be unwilling or unable to fund the tribe's highest priority need. Your list will facilitate obtaining funding for other needs, which may free tribal resources for its higher priority project.

IV: Identifying Mechanisms for and Roadblocks to Cooperation

The presence of tribal and non-tribal lands within a state presents many jurisdictional concerns and communication challenges to the law enforcement community. To address these concerns and maximize law enforcement resources, cross-deputization agreements should be considered between tribal governments, the Bureau of Indian Affairs, and local city/county governments. Cross-deputization agreements permit the signatories to commission or deputize a law enforcement officer of another signatory, thereby granting them the same law enforcement authority as officers of the commissioning department or agency. This has been especially successful in Oklahoma where its Indian Affairs Commission has facilitated 89 separate cross-deputization agreements since 1992. According to the Commission, which celebrated its 35th anniversary in May 2002, "the agreements have been instrumental in increasing law enforcement protection, especially in rural areas of Oklahoma."[34]

Other entities to consider include:

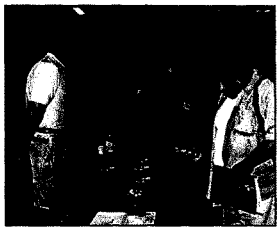
- Task Forces and Working Groups to facilitate emergency planning and coordination
- Public health entities
- County-wide or regional disaster planning task forces (training, assessments, exercises, emergency resources)
- Emergency response teams

V. Future Steps

- Collect information on federal and state programs, grants and funding sources.
- Involve as many departments and community members as possible.
- Determine how volunteer efforts can relieve first line responders from administrative tasks.
- Establish relationships with key federal and state homeland security officials.
- Develop a plan for what you need with justification and costs; include efforts to obtain the capabilities elsewhere or why that is impractical.
- Review and critique plan and revise where necessary.
- Are there mechanisms for resources sharing, including: Cooperative Agreements? Joint Plans? Joint Exercises?
- Have officials review in light of budgetary realities.
- Develop grant applications and approach federal and state funding sources.

⇨ Conduct exercises, critique exercises; identify weaknesses and prioritize fixes.

Conferees considered the need to establish personal relationships between Indian officials and federal, state, and local homeland security



Smith & Wesson representatives displays modern weaponry to conference participants.

officials, emergency planners, law enforcement, fire, public utility, corporate safety and security officials and others in key leadership positions, as vital. One conferee advised the Indian Nations not to wait to be invited. Show up at, for example, emergency planning meetings and ask how Indian Tribes are included in the plans being formed.

At the Summit, there was a general sense that since the 9-11 attacks, Americans have become closer and more willing to work together. This is a theme echoed throughout the President's Homeland Security Strategy. All levels of government must work together to provide complementary capabilities to thwart, respond to and recover from terrorist attacks. Cooperative efforts are all the nation can afford as it solves other problems such as Social Security and Medicare financing while fighting international terrorism, educating our youth, and maintaining other programs of national importance.

Address the Need for Accountability

It is undeniable that even the most prosperous tribes will require some public funding to improve their security, response and recovery capabilities. Whenever public monies are used, those spending them must ensure that they are properly used and accounted for. Determine early, how funds will be accounted for and who will audit the spending to ensure public monies are not mismanaged, wasted or misdirected.

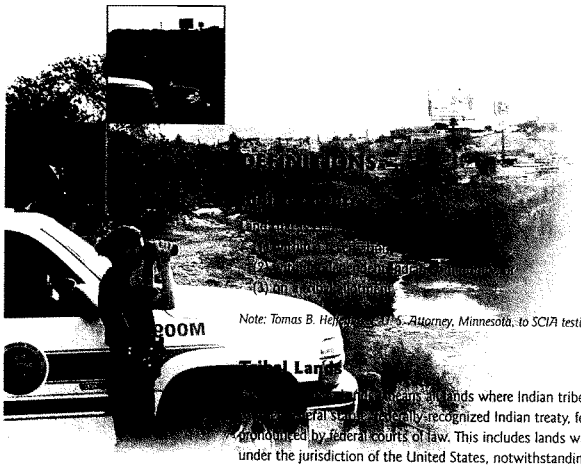
⇨ Decide on evaluation criteria (what things will you measure?)

⇨ Determine how you will measure where you are now?

⇨ Determine how to measure progress or success against your baseline?

⇨ Devise a system to match costs to your measures of success.

⇨ Collect data on those measures to match level of success, level of efforts with costs.



Note: Tomas B. He[illegible] U.S. Attorney, Minnesota, to SCIA testimony 07/11/2002.

[illegible]

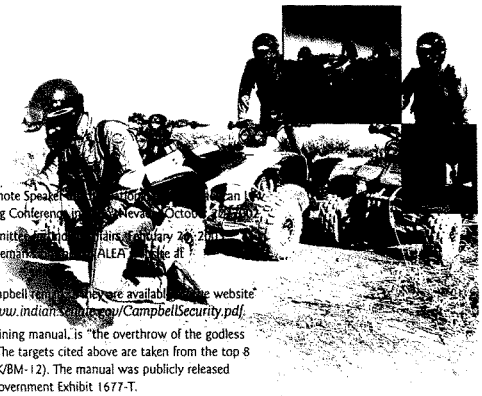
[illegible] lands where Indian tribes or tribal members retain rights [illegible] federally-recognized Indian treaty, federal executive order or judgments pronounced by federal courts of law. This includes lands with the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all dependent Indian communities within or without the limits of a state; all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; all lands owned by federally-recognized tribes in Alaska or Alaska Native Corporations established under the Alaska Native Claims Settlement Act; all Indian lands held in trust or restricted status by the United States for member of a federally-recognized Indian tribe; and all lands where federally-recognized tribes have treaty rights to hunt, gather, fish or perform other traditional Indian activities.

Note: Dr. Martin Topper—email 2/18/2003

Indian Tribe

"Indian Tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U. S. C. A. & 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Explanation: This definition is the same definition used in the Indian Self Determination and Education Assistance Act, 25 U. S. C. & 450b, without the reference to regional or Village Corporation. The reference to the regional and village corporations was deleted because the activities in the proposed homeland security reorganization are government functions that are performed by the Alaska Native villages.



ENDNOTES

[1] NCAI Executive Director Jaequeline Johnson was the Keynote Speaker [illegible] Enforcement Association's 10th Annual National Training Conference in [illegible] Nevada October [illegible]

[2] Gary L. Edwards. Testimony before the U.S. Senate Committee [illegible] Affairs February 26, 2[illegible] Readers are invited to read the full text of Mr. Edwards' remarks [illegible] NNALEA website at: *http://www.nnalea.org/PDF/Gary's%20Testimony.pdf.*

[3] Readers are invited to read the full text of Chairman Campbell [illegible] they are available [illegible] website of the Senate Committee on Indian Affairs at: *http://www.indian.senate.gov/CampbellSecurity.pdf.*

[4] The Al Qaeda main mission, according to its military training manual, is "the overthrow of the godless regimes and their replacement with an Islamic regime." The targets cited above are taken from the top 8 targets listed in the translated military manual. (page UK/BM-12). The manual was publicly released during the embassy bombing trial in New York City as Government Exhibit 1677-T.

[5] Readers are invited to read the full text of Chairman Campbell remarks. They are available on the website of the Senate Committee on Indian Affairs at: *http://www.indian.senate.gov/CampbellSecurity.pdf.*

[6] These data were compiled from various infrastructure websites. Please contact NNALEA at *www.info@nnalea.org* for specific information on this material.

[7] These data were compiled from various infrastructure websites. Please contact NNALEA at *www.info@nnalea.org* for specific information on this material.

[8] The National Strategy for the Physical Protection of Critical Infrastructures and Key Assets, p. 19. You may download this document from the White House website at *http://www.whitehouse.gov/pcipb/physical.html.*

[9] The National Strategy for the Physical Protection of Critical Infrastructures and Key Assets, p. 19. You may download this document from the White House website at *http://www.whitehouse.gov/pcipb/physical.html.*

[10] Walter Pincus, "CIA, Allies Tracking Iraqi Agents—Agencies launch efforts to foil terrorist attacks," in The Washington Post, February 4, 2003, p. A17.

[11] The federal fiscal year is the basis for congressional appropriations, running from October 1st to September 30th. Thus Fiscal Year 2002 is the period October 1, 2001 to September 30, 2002.

[12] The Robert T. Stafford Disaster Assistance and Emergency Relief Act, 42 U.S.C. 5121 et seq., PL 93-288, defines "any Indian tribe or authorized tribal organization, or Alaska Native village or organization." 42 U.S.C. 5122 (6). Under this definition Indian Nations are not eligible for direct funding. Any funding they receive must come through a state. Thus tribes are given a federal status similar to that of a subordinate local government (town, county, village etc.). Besides the sovereignty issue, previously discussed, there are two other problems with tribes receiving funding this way, 1) several reservation cross state boundaries, for example the Navajo reservation crosses four states, which state, if any should provide funding to the Navajo? and 2) since states have no authority on Indian reservations, many governing authorities look upon Indian reservations as a federal responsibility. As a result, they do not allocate any funding to the tribes. Creating a vicious circle in which neither federal nor state governments are including Indian lands in their programs and funding decisions.

[13] Cheryl Simrell King and Casey Kanzler, The Impact of tribal Gaming on Indians, Tribes and Their Surrounding Communities in the State of Washington, 2002, p.2. An Indian Tribes is a group of people with a shared culture, history, and tribal government. To be federally recognized, the tribe must have a continuing relationship with the federal government. This relationship must have been created through a treaty, executive order, or legislation.

[14] COL Jerome T. Moriarty, unpublished, draft paper on Native American Medal of Honor Recipients. Twentieth Century recipients are listed on the Naval Historical Center website at *http://history.navy.mil/faqs/faq61-3.htm.*

[15] Stella U. Ogunwole, The American Indian and Alaska Native Population, Census 2000 Brief C2KBR/01-15, The Department of Commerce, U.S. Census Bureau, Issued February 2002, p.3.

(endnotes, continued)

[16] These data are taken from, The American Indian, Eskimo and Aleut Population, by Edna L. Paisano, U.S. Department of Commerce, Economics and Statistics Administration, U.S. Bureau of the Census. This document is accessible via the Internet at: *http://www.census.gov/population/www/pop-profile/amerind.html*.

[17] In 1989 the poverty threshold for a family of four was $12,674, the same, in 1989 dollars, as it was a decade before in 1979. Ibid., pp. 1-3.

[18] President Richard M. Nixon, Special Message on Indian Affairs, (to the Congress of the United States), July 8, 1970.

[19] Tex Hall, "The State of Indian Nations Today—Mapping a Course for the Next Seven Generations," a state of Native America address by the President of the National Congress of American Indians, January 31, 2003.

[20] Department of Commerce, Economics and Statistics Administration, Bureau of the Census, Statistical Brief: Housing on American Indians on Reservations—Plumbing, SB/95-9, Issued April 1995. Once again data show wide variations, between reservations, in the percentage of homes lacking complete plumbing. While the average is 20.2 percent, the percentage ranges from .5 percent on the Colville Reservation in WA to 49.1 percent on the Nez Perce Reservation in ID, and 46.7 percent on the Hopi Reservation and Trust Lands in AZ. (See the 3rd section of the table on page 2).

[21] Jean L. Mckechnie, Webster's New Twentieth Century Dictionary of the English Language (Unabridged), Second Edition, Simon and Shuster, New York, NY, 1983, p. 1736.

[22] *McClanahan v. Arizona Tax Commission*, 411 U.S. 164, 36 L.Ed. 2d 129 (1973).

[23] Chief Justice John Marshall was among the first jurists to clarify the status of Indian nations saying," The very term 'nation,' so generally applied to them (Indians) means 'a people distinct from others.' The Constitution, by declaring treaties already made, as well as those to be made as the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers that are capable of making treaties. The words 'treaty' and 'nation' are words of our own language, selected in our diplomatic and legislative proceedings by ourselves, and have a definite and well-understood meaning. We have applied them to the other nations of the earth. They are applied to all in the same sense." (Quoted in Levanthal)

[24] *Colliflower v. Garland*, 342 F 2d. 369 (1965).

[25] Felix Cohen, Handbook of Federal Indian Law, Department of the Interior, 1942, p.123, quoted in Levanthal.

[26] *Worchester v. Georgia*, 6 Pet. 515 (1832).

[27] President Richard M. Nixon, Public Papers of the Presidents of the United States: Richard Nixon, 1970, pp. 564-567, 576.

[28] These definitions and goals are taken from the National Strategy for Homeland Security, Executive Office of the President, Office of Homeland Security, July 16, 2002. (This document is reproduced in its entirety and in executive summary format on the CD-ROM accompanying these Proceedings.)

[29] This section is extracted from a NNALEA copyrighted paper, "The Terrorist Mindset," by Dr. Martin D. Topper. A longtime NNALEA member, Dr. Topper is Co-Director of the Indian Country Homeland Security Summit. Dr. Topper is employed by the Office of Criminal Enforcement, Forensics and Training, of the Environmental Protection Agency. The opinions Dr. Topper expresses in this paper are his own and do not reflect the official position of any government agency.

[30] Maj. Gen. Phillip Oates, Adjutant General and Commissioner, Department of Military and Veterans Affairs, STATE OF ALASKA TERRORISM DISASTER POLICY CABINET: Executive Summary and Financial Information, November 12, 2001.

[31] Executive Office of the President, Office of Homeland Security, State and Local Actions for Homeland Security, July 2002, p.83.

[32] The NNALEA would like to acknowledge its debt to the Exxon Corporation, the United States Secret Service and United States Army, and its security and civil affairs doctrine for the ideas we have incorporated into this risk assessment process.

[33] Oates, p.4.

[34] For more information consult the web site of the Oklahoma Indian Affairs Commission at *http://www.oiac.state.ok.us/oaa.html*

NATIONAL HOMELAND SECURITY STRATEGY OUTLINE AND OBJECTIVES

The primary result of this nation's search for answers and ways to reduce the terrorist threat was the formulation of the National Homeland Security Strategy, which sets forth three strategic objectives:

1. Prevent terrorist attacks within our homeland;
2. Reduce our Homeland's vulnerability to terrorism; and
3. Minimize the damage and recover from attacks that do occur.

These objectives are to be achieved in six initial areas, as defined by the Office of Homeland Security, namely:

1. Intelligence and warning—to detect terrorism before it manifests itself in an attack:
   - a. Build new capabilities through the Information Analysis and Infrastructure Protection Division;
   - b. Implement the Homeland Security Advisory System; and
   - c. Apply dual-use analysis to prevent attacks.
2. Domestic counter-terrorism:
   - a. Improve intergovernmental law enforcement coordination; and
   - b. Track foreign terrorists and bring them to justice.
3. Border and transportation security.
4. Critical infrastructure protection
   - a. Unify America's infrastructure protection effort;
   - b. Build and maintain a complete and accurate assessment of America's critical infrastructures and key assets;
   - c. Create effective partnerships with tribal, state and local government and the private sector;
   - d. Develop a National Infrastructure protection plan; and
   - e. Guard America's key assets and infrastructure against "inside" threats.
5. Catastrophic terrorism defense.
6. Emergency preparedness and response
   - a. Create a national incident management system,
   - b. Improve tactical counter-terrorist capabilities,
   - c. Enable seamless communication among all responders,
   - d. Prepare for NBC contamination,
   - e. Plan for military support to civil authorities,
   - f. Build the Citizen Corps,
   - g. Build a training and evaluation system, and
   - h. Enhance the victim support system.

GENERAL RECOMMENDATIONS OF THE SUMMIT ATTENDEES

For seamless communications between federal, state, and local governments when working with tribal governments on homeland security issues:

1. View Indian nations as separate entities because each is unique.
2. Communicate directly with Indian nations.
3. Provide funding directly to Indian nations.
4. Strengthen lines of communication between tribal governments and non-tribal emergency and law enforcement agencies.
5. Address liability and jurisdictional issues that limit the ability of state, local and tribal law enforcement groups to work together.

Recommendations for the Department of Homeland Security:

1. Develop a comprehensive list of potential terrorist targets within the tribal lands as well as the rest of the United States.
2. Establish a coordination unit within the Department to provide a single point of contact for the Indian tribes. This unit should be the conduit for the distribution of the tribal share of homeland security funding directly to the tribal governments involved. Such would also be in accordance with the principle of tribal self-governance.
3. Apportion homeland security funds based on the cost of reducing specific priority vulnerabilities, not solely on population or other criteria.
4. Develop a homeland security emergency communications system and frequency that all levels of government—federal, tribal, state, and local—have access to and which provides two-way communication of terrorist alerts, notification of natural and man made disasters, and relevant operational intelligence.
5. Encourage state and local governments to enter into mutual support agreements with tribal governments to share complimentary resources in times of crises.
6. Encourage state and local jurisdictions to establish agreements with tribal governments that cross deputize and provide certified Indian Police Officers equivalent status to other police officers.

(recommendations, continued)

Recommendations for the Department of Justice:

1. Develop legislative language that clarifies the right of Indian nations and tribes to arrest, detain, and prosecute non-Native Americans committing crimes on reservations and other Tribal Lands.
2. Develop uniform national standards for law enforcement officer and first responder training and certification.
3. Encourage States to enter into agreements with tribal governments to cross deputize and to facilitate the mutual sharing and support of peace officers, particularly in times of crises.

Recommendations for NNALEA:

1. Distribute and update the "NNALEA Homeland Security Assessment Model."
2. Assist Indian tribes with the NNALEA homeland security assessment process.
3. Develop and provide tribal law enforcement and tribal first responder homeland security training.
4. Continue to provide a forum for the discussion of tribal homeland security.
5. Lead in the development of a strategic homeland security defense plan for Tribal Lands.
6. Post links on the NNALEA website to pertinent homeland security websites.
7. Provide technical assistance to Indian tribes relative to homeland security.
8. Continue to promote partnerships that facilitate Indian tribes' role in the national homeland defense strategy.

National Native American Law Enforcement Association Homeland Security Pre-Assessment Meeting Outline For Tribal Nations and All Communities

This outline is based on the model used at the NNALEA Homeland Security Summit. It also can be used as a starting point for initial meetings of community leaders on local homeland security.

Purpose:

To help tribal, federal, state, local and private industry representatives develop a fundamental understanding of the potential threat to homeland security from domestic and foreign terrorist activities and to promote a cooperative effort to address that threat.

Goals:

1. Understand the threat
2. Define the vulnerabilities
3. Identify the resources, both available and needed
4. Identify mechanisms for cooperation
5. Define further steps

Format:

The format is a facilitated discussion between all representatives of tribal, federal, state, local and private industry organizations. Each block is somewhat different in format, depending upon the nature of its subject matter. Each block builds on information developed from the previous blocks to develop a "broad brush" understanding of the issues surrounding homeland security in a specific community or jurisdiction. Two facilitators work in tandem, and a recorder uses an easel to emphasize major points. A discussion leader works to keep the process moving forward.

Blocks

Block 1

Overview: "Terror and Homeland Security"

This block begins with an introduction by the leader, who welcomes participants to the and presents an overview of the meeting and its goals. The block continues with a presentation on terrorism and homeland security, which sets the tone for the working session. The presentation will discuss the nature of the terrorist threat, both foreign and domestic, and describe what the Nation is doing to meet that threat. The presentation will be followed by a brief question and answer period.

Block 2:

"Vulnerabilities and Impacts"

This block is an audience participation facilitated discussion. The facilitators use the following questions to generate discussion from the floor (other questions may be added):

- ⇨ Who might initiate a terrorist incident in our area? Foreign? Domestic?
- ⇨ What would their motives be?
- ⇨ What might they target? Casinos? Energy infrastructure? Information Infrastructure? Business enterprises? Government facilities?
- ⇨ What would they gain from attacking these various facilities?
- ⇨ Do you have these facilities on your lands?

The block ends with the facilitators summarizing and identifying the vulnerabilities.

(outline. continued)

Block 3:

"Addressing Identified Vulnerabilities"

This block is an audience participation facilitated discussion. The facilitators use the following questions to generate discussion from the floor (other questions may be added later): For each vulnerability identified in the previous section, the following questions should be asked:

- If terrorists detonate a bomb or take other violent action at a facility (tourist attraction, power line) in our jurisdiction, who would respond?
- What are the differences between our jurisdiction and surrounding areas?
- What types of response plans do we have in place?
- Are there plans in place to identify threats and prevent attacks before they occur?

The block ends with the facilitators summarizing the complexity of addressing the vulnerabilities and stressing the importance of jurisdiction-specific planning and prevention.

Block 4:

"Resources"

This block is an audience participation facilitated discussion focused on resources. The facilitators will use the following questions to generate discussion (other questions may be added later).

- What types of resources are available to implement the plans described in Block 4?
- Are these plans and resources adequate to respond to the types of homeland security vulnerabilities defined in previous blocks? If not, what's needed?
- Are the plans and resources adequate to identify and prevent terrorist activities? If not what's needed?

The block ends with the facilitators summarizing the strengths and potential weaknesses of homeland security preparedness in the jurisdiction or community being evaluated.

Block 5:

"Cooperation: Federal Level"

This block involves a panel presentation and a facilitated discussion from the audience. The panel will be composed of representatives from invited federal agencies including, but not limited, to:

- Office of Homeland Security
- U.S. Secret Service
- FBI
- ATF
- DEA
- EPA
- FEMA
- BLM
- Customs Service
- Border Patrol
- VA

Each panelist will be introduced by the facilitators and asked several questions:

- What is the role of your agency in responding to and preventing terrorist incidents?
- How can that role assist our community/jurisdiction in their homeland security preparedness efforts?

(outline, continued)

- What cooperative efforts do you currently have in place with our community/jurisdiction?
- What area of cooperation needs to be developed?

At the conclusion of the questioning by the facilitators, the floor is opened for further questions from the participants in the audience. The block ends with the facilitators summarizing the various types of cooperation that have been established between the federal agencies and the community/jurisdiction under consideration, and defining areas that may be in need of further development.

Block 6:

"Cooperation: State/Local/Private Sector"

This block involves a panel presentation and a facilitated discussion from the audience. The panel is composed of representatives from states, localities and private sector companies that do business in the community/jurisdiction under consideration. Each panelist is introduced by the facilitators and asked several questions.

- What is the role of your organization in responding to and preventing terrorist incidents?
- How does that role relate to the homeland security issues faced by the community/jurisdiction under consideration?
- What types of cooperative relationships do you have in place with our community /jurisdiction at the present time?
- What areas of cooperation need to be developed?

At the conclusion of the questioning by the facilitators, the floor is opened for further questions from the participants in the audience. The block ends with the facilitators summarizing the various types of cooperation that have been established between the federal agencies and the community/jurisdiction under consideration, and defining areas that may be in need of further development.

Block 7:

"What Have We Learned and How Can We Apply It?"

This block involves a review by the facilitators. They summarize what has been learned in each block and identify the strengths and weaknesses of the overall status of homeland security preparedness in the community/jurisdiction under consideration. The audience is asked to provide input on this summarization. The facilitators work with the audience to build a consensus view of the vulnerabilities created by this threat, the level of local community/jurisdiction planning and preparedness, the existing resources, the level of cooperation on all levels of the public and private sector, and the need for the development of future resources and cooperative efforts. The facilitators then help the community/jurisdiction develop an action plan for applying what has been learned and initiating the further development of the community/jurisdiction's homeland security system.

Block 8:

"Begin the NNALEA step by step Homeland Security Assessment Model"

This block ends the pre-assessment meeting phase. Apply the action plan developed in Block 7 above to the "Homeland Security Assessment Model" described on pages 28 through 36 of the "Tribal Lands Homeland Security Report."

Statement of Mr. Josh Filler
Director, Office of State and Local Government Coordination
Department of Homeland Security
Before the Senate Committee on Indian Affairs
On
"S.578, Tribal government Amendments to the Homeland Security Act of 2002"
July 30, 2003

Mr. Chairman, Senator Inouye and distinguished members of the Committee. Good afternoon and thank you for the opportunity to appear before you today to discuss the Department of Homeland Security's views on S.578. We support S.578's goal of enhancing coordination and cooperation between the Department and tribal governments regarding homeland security.

I am Josh Filler and I currently have the privilege of serving in the Department of Homeland Security as Director of the Office of State and Local Government Coordination.

The Department of Homeland Security recognizes and appreciates the critical role that tribal governments play in enhancing our homeland security. With tribal lands adjacent to hundreds of miles of both our northern and southern land borders, including readily accessible coastline, and containing numerous pieces of critical infrastructure, tribal governments are essential partners in the work of the DHS. That is why we have created a position specifically for coordination with the tribes —the Director for Tribal coordination who participated in panel discussions hosted by this committee yesterday.

Since it was created, the DHS has been actively undertaking outreach to tribal interests to build the relationships necessary for successful coordination of homeland security activities within tribal lands. These efforts have included;

- The creation of a specific position responsible for tribal coordination. Through this office American Indian Tribes, Alaska Native Villages, tribal organizations and associations have a dedicated point of contact for tribal concerns.

- The U.S. Border Patrol currently has (since January 2002) liaison officers at each sector and at headquarters, specifically focused on tribal law enforcement coordination with their Native American counterparts. Coordination includes sharing training, intelligence, equipment and participating in joint operations. For example, along the northern border, Native American tribal law enforcement has been and is included in ongoing Integrated Border Enforcement Teams (IBETs).

- We have met and coordinated with numerous tribal governments regarding DHS functions, activities and programs.

- DHS has met with the Navajo Nation which spans the states of Arizona, New Mexico and Utah. We discussed a variety of Homeland Security related issues and greatly appreciate their willingness to share their time and perspectives.

- We are currently working with the National Congress of American Indians on tribal issues. We were pleased to attend the recent NCAI Conference where DHS participated in a workshop on creating Emergency Preparedness Plans. The workshop covered what resources are available from DHS, training opportunities, and emphasized the need for Tribal Emergency Preparedness plans.

- We are participating with the National Native American Law Enforcement Association and are providing presenters for Homeland Security related training at the upcoming annual training conference. The U.S. Border Patrol is providing specialized training seminars for this November conference, as well as technical displays of current hardware being employed by the border patrol and an Honor Guard.

- DHS is currently planning the second US Border Patrol - Native American Border Security Conference, tentatively scheduled for the first week in October. The aim of this conference is identify mechanisms to better the Patrol's working relationship with Native American Law Enforcement to further our shared goal of securing the nation's borders.

- DHS is in discussion with other Executive Branch Departments, like those represented here today to ensure coordination of DHS missions in Indian Country.

- We have been pleased to include tribes in the consultation process for upcoming discussions on the National Incident Management System and the National Response Plan required by Homeland Security Presidential Directive Number 5.

- DHS is a participant in an informal Inter-Agency Indian Country Working Group which includes the exchange of information and presentations on Indian country programs and program support. This is a very positive, ad hoc forum where Federal Indian Country representatives get together to exchange information and provide briefings on different programs.

DHS is a young department and we view these accomplishments as simply a good start to ensuring that tribal governments are integrated into the Department's efforts to better secure our borders, protect our critical infrastructure and be prepared to respond to a terrorist attack. As indicated, we support the S.578's objective of improving the Department's coordination with tribal governments in the area of homeland security, and we welcome the opportunity to work with the Committee regarding the particulars of the bill.

We would look forward to working with the committee to further our shared goal of homeland security. I thank you for your support of the Department and would be happy to answer any questions you might have.

Testimony of Tex Hall
President, National Congress of American Indians and
Chairman, Mandan, Hidatsa and Arikara Nation on
Tribal Governments and the Homeland Security Act of 2002
Before the
Senate Indian Affairs Committee
July 30, 2003

Dosha, Mr. Chairman, Members of the Committee, and my distinguished colleagues. My name is Tex Hall, President of the National Congress of American Indians and Chairman of the Mandan, Hidatsa and Arikara Nation. I want to acknowledge our friendship and the advocacy work this has committee has done to protect the sovereign rights of Indian nations. I also want to thank the Committee for conducting this hearing on the Homeland Security Act of 2002, and your desire to hear the concern of tribal leaders regarding exclusion of tribal governments from all matters of homeland security. On behalf of the NCAI, I am also here to express support for Senate Bill 578 which will change the Homeland Security Act's incorrect definition of tribes as local governments.

There are two necessary changes to S.578 regarding the exclusion of Alaska Native tribal governments and the jurisdictional provisions contained in Section 13. We recommend the bill be changed to include Alaska Native tribal governments and that language is added to strengthen Section 13.

I need not elaborate on the daunting circumstances under which we live today. Since September 11, 2003 efforts have been made by the congress and the administration to better prepare and defend all sectors of this country against terrorist threats and activities. The Homeland Security Act of 2002 established the Department of Homeland Security (DHS) as the principal agency to develop a national effort through a system of counterterrorism analysis, preparedness, and information-sharing. The Act is quite comprehensive yet incomplete because it fails to include tribal governments as eligible entities entitled to participate in DHS program implementation. Tribal governments are placed in the local government category, a designation for counties and municipalities.

The DHS is not the first agency, but I do hope it will be the last, to encounter problems with federal program delivery and tribal consultation. For decades states and local governments have received hundreds of millions of dollars

for developing and enhancing their emergency management infrastructure, and for costs associated with training, staffing, and equipment. Only recently have tribal governments begun to receive funding and technical assistance from the Federal Emergency Management Agency (FEMA) and other federal agencies charged with the responsibility of emergency preparedness. FEMA issued its American Indian and Alaska Native Tribal Government Policy in 1999 but has not developed an implementation plan. However, significant progress has been made by FEMA in outreach and consultation to tribes in all matters under its charge.

The dramatic change in the domestic tranquility since pre 9-11, has sparked urgency in implementation of a national strategy in programs and policies geared toward incident and disaster management. Since its creation, the DHS has embarked on a speedy effort to implement homeland security measures involving state and local government officials. Implementation of the Homeland Security Act of 2002 includes current availability of tens of millions of dollars, and in the future potentially billions of dollars, to states, counties and municipalities for developing and enhancing homeland security infrastructure and related programs.

Tribal governments have responsibility for the health and safety of the residents and protection of property within their jurisdictional boundaries regarding homeland security matters. There are many matters of importance contained in the various sections of the Homeland Security Act crucial to tribal governments. Tribes must be treated minimally the same as states and be kept informed of DHS alerts, general notices, and programmatic initiatives. I believe the Indian nations have the right to train our emergency responders and provide them with the training and equipment to respond accordingly to the multitude of incident and disaster scenarios possible on our homelands. Unless the designation of tribal governments is changed within the Homeland Security Act, tribal communities will be at greater risk and a potential Achilles Heal in the fight against domestic terrorism.

Before passage of the Homeland Security Act and establishment of the Department of Homeland Security, NCAI representatives met with White House homeland security officials who stated that tribes would not be left out of DHS program implementation. DHS Secretary Ridge also has been made aware of the troubling, disparate treatment of tribal governments not receiving direct funding.

However, tribes are still on the outside waiting for the DHS to establish an intergovernmental relationship with them. The few tribal governments which have received Homeland Security funds have not received an equitable share. Those tribes fortunate enough to receive funding have either had to either go through the states or through counties, processes which are void of government to government protocols. In a recent supplemental distribution of homeland security grant monies, the states with tribal populations immediately earmarked significant amounts of the grants for their priority projects leaving relatively small amounts for tribes. My home state of North Dakota received over $ 9,000,000 for homeland security. A paltry $75,000 of this amount was earmarked for all the Indian Reservations in North Dakota. Furthermore, North Dakota never even bothered to consult with Indian Tribes to determine the homeland security needs on the Reservations located there. The failure of states to consult with Indian tribes and include them in their homeland security efforts appears to be the rule rather than the exception.

Adding to the frustration of tribal officials is the DHS lack of communication regarding matters pertaining to the health and welfare of tribal communities. The DHS has embarked on assembling various workgroups and task forces to identify needs, provide recommendations, and develop plans to address domestic homeland security threats and other issues. In developing these plans, DHS has invited interagency, state and local government officials to participate in the workgroup efforts as DHS "partners", but has not invited tribal representatives to sit at the table.

A Homeland Security Presidential Directive (HSPD-5) sent out in February to DHS Secretary Tom Ridge instructed the Secretary to develop, submit for review to the Homeland Security Council, and administer a National Incident Management System (NIMS) and develop the National Response Plan (NRP). One of the stated purposes of the NIMS is to provide a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents. In May, state and local government officials were sent a preliminary working draft of the NRP for review and input. The NRP is designed to integrate federal government domestic awareness, prevention, preparedness, response, and recovery plans into a single all-discipline, all-hazards plan.

State and local officials were invited to attend a Homeland Security Partners briefing on the working draft of the NRP and the NIMS. Tribal officials did not receive notification of the development and were not asked for input on the National Incident Management System or the National Response Plan. Nor were any tribal officials invited to the Homeland Security Partners briefing.

Recently, Secretary Ridge created a State and Local Advisory Committee, which will advise the Homeland Security Advisory Council on increasing America's security in consultation with state and local government representatives. The makeup of the 13-member State and Local Advisory Committee includes governors, state legislators, mayors, city officials and a county judge. Again, no tribal representatives have been invited or involved in these critical discussions.

The tribal governmental responsibility to develop an emergency management infrastructure to respond to terrorist activities, natural and technological disasters has been recognized by many tribal leaders and governing bodies. Without federal or state assistance, several tribes have developed sophisticated comprehensive emergency preparedness organizations supported by all segments of the respective tribal communities. In some remote areas of the country, tribal responders are the only trained and qualified personnel serving non-Indian and tribal populations. A few tribes are able to proudly showcase their emergency response capacity with state of the art equipment and highly trained fire-fighters, law enforcement personnel, and emergency medical technicians.

The overwhelming majority of tribes unfortunately are not on the top rung of emergency preparedness capability. The NCAI is supportive of needed changes in federal policy and regulations to assist tribes in developing emergency management infrastructures. Tribes should not be denied the funding and technical assistance states and local governments have enjoyed for many decades. The NCAI passed resolutions in 2001 (BIS-02-036) and 2003 (PHX-03-001) to ensure that tribal governments are treated as states for planning, consultation, coordination considerations, and for eligibility for grant monies and funds to improve capacity and help prepare, prevent and respond to terrorist activities and for other purposes.

Funding, technical assistance, training opportunities, information and other resources are routinely available to state and local emergency management

programs. Tribal emergency management officials have been told to go through the states and local governments for assistance. Candidly speaking, the federal assistance theory of "trickle-down" has never worked for tribes and never will. There is a lack of complete communication, cooperation and interaction with state and local emergency management officials. In 2000, the FEMA Office of Inspector General determined that states are carrying over funding that should have been utilized for emergency preparedness programs for five years prior.

A FEMA 2002 congressional report titled, "Report on Cost-Share Capability of Indian Tribes in Emergency Management Programs," provided insight into the view of tribes-state/local government relations. On a question about "understanding of unique Tribal needs", sixty-three per cent of the tribes responding to the survey expressed dissatisfaction with state and local government understanding of tribal needs. Seventy-six percent of tribes surveyed were unhappy with state and local government "responsiveness to tribal needs". Regarding "communication with tribes", seventy-one percent of the tribes reported dissatisfaction with state and local government on this matter.

In closing let me share the daily risks in my homelands. The current size of the lands of the Mandan, Hidatsa and Arikara Nation is nowhere the size of our aboriginal territory and about 1/12 of the territory set aside for us in the Fort Laramie Treaty of 1851. We have over one million acres with about 500,000 acres held in trust. The resident population is approximately 6,000 Indians and non-Indians, but that figure can double during ceremonies and cultural events. We maintain five school districts, a tribal community college, a tribal heath center, and a successful gaming enterprise. There is one small airport on the reservation and several nearby. The building of the Garrison Dam in the 1940s further reduced our land size and almost destroyed our autonomy and culture. Families, clans and political districts have been torn apart by a project that tribal members opposed without exception. We still have not recovered fully from the devastating impacts and it is unlikely we will. The geographical land pattern resulting from the flooding of our ancestral lands continues to cause problems in basic transportation, public safety and communication matters.

Although our tribal government is comprised of six political districts, the Missouri River reservoir has split our reservation into five water-bound separate areas. Tribal members who at one time were 20 miles from the

tribal offices and health center have to traverse more than 100 miles one way for services. Conversely, there is no direct route for the primary tribal emergency responders, law enforcement and fire services to provide assistance when needed.

You may be aware there are several Minuteman launch facilities located in North Dakota and on our tribal lands. The Minuteman missile is a strategic element of our homeland security defense system. Our police officers are regularly called out to investigate possible trespass incidents near these U.S. Air Force controlled sites. We have patrolled these areas for years without monetary support from the Air Force. Therefore we are at risk from at least two catastrophic events which could be terrorist-driven. Floods would inundate our lands if the dam collapsed due to terrorist activities, and our people are in harms way if one of the missile silos becomes a terrorist target.

The members of this Committee are keenly aware of what native peoples have done in many areas of homeland security throughout the history of this country. In fighting against a common enemy the people of this country have no better ally. The warrior spirit still exists throughout Indian country. The people of the Mandan, Hidatsa and Arikara Nation have entrusted me to seek every available avenue to preserve, protect and defend our homelands. Treaties, executive orders and court cases support tribal sovereign rights to engage federal agencies in consultation and participation activities. Today I am asking for fair and equitable treatment of tribal governments by the federal government. I am asking for access to homeland security assistance as we face another common enemy.

It is evident that the members of the Committee have once again listened to the voices of Indian country and provided me and other tribal leaders the opportunity to express our concern on this critical issue of sovereignty protection and protection of our homelands. I know that the members of this committee will join us in educating Department of Homeland security officials and the American public in upholding the constitutional sovereignty of tribal governments and support the passage of S. 578 with the recommendations we have made. We will continue to work together, and without a doubt make this country and our communities a safer place for our families and future generations.

STATEMENT OF THOMAS B. HEFFELFINGER
UNITED STATES ATTORNEY FOR THE DISTRICT OF MINNESOTA

BEFORE THE

UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS

The Tribal Government Amendments to
the Homeland Security Act of 2002

July 30, 2003

Mr. Chairman, Mr. Vice-Chairman and members of the Committee, my name is Thomas B. Heffelfinger. I am the United States Attorney for the District of Minnesota. I am also the Chairman of the Attorney General Advisory Committee's Native American Issues Subcommittee. The membership of the Native American Issues Subcommittee (NAIS) consists of U.S. Attorneys from across the United States who have significant amounts of Indian country in their districts. The purpose of this body is to develop policies for consideration and approval by the Attorney General pertaining to the establishment and development of effective law enforcement in Indian country. In May of last year, with the Attorney General's agreement, the Native American Issues Subcommittee decided that its top priority in Indian country law enforcement would be addressing terrorism. The NAIS feels that it is important that the United States include Indian country when considering how to protect our nation's borders and critical infrastructure.

The Department of Homeland Security Provisions

Since September 11, 2001, homeland security has become an area of primary concern for all Americans, including the first Americans who have populated these lands since time

immemorial. In October 2002, the National Native American Law Enforcement Association (NNALEA) held a Tribal Lands Homeland Security Summit in Reno, Nevada. I had the privilege of being there to address the Summit and to hear Native American law enforcement officials from throughout the U.S. discuss their thoughts on homeland security in the post 9-11 world. To memorialize the findings and recommendations that resulted from that historic meeting, the NNALEA published a comprehensive Tribal Lands Homeland Security Report. According to this report there are a number of tribes that have land on or near our international borders and shorelines with either Canada or Mexico; these lands comprise a significant amount of our nation's border[1]. In addition, there are countless potential terrorist targets within Indian country that represent part of our nation's critical infrastructure. Such critical infrastructure in Indian country includes: dams, oil & gas fields, oil & gas pipelines, railroads, interstate highways, communication facilities, tourist attractions, mines, hydroelectric power generation and power transmission facilities.[2] Due to international borders and critical infrastructure present in Indian country, it is imperative to our national homeland security strategy to include tribes in the planning and provision of services relative to homeland security.

The Homeland Security Act of 2002 defines tribes as "local governments" along with

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[1]National Native American Law Enforcement Association, Tribal Lands Homeland Security Report, (2003) [hereinafter, NNALEA Report], at 6. See also, Attorney General John Ashcroft, Remarks at the U.S. Border Patrol - Native American Border Security Conference (Jan. 17, 2002). Transcript available at: www.usdoj.gov/ag/speeches/2002/011702agpreparedremarks.htm [hereinafter, Attorney General remarks, Jan. 17, 2002.]

[2]NNALEA Report, at 6-7 and 33-34.

cities and counties organized under state law. U.S. Supreme Court precedent treats tribes as separate sovereign governments. Administration policy affords tribes sovereign status, in accordance with this precedent[3]. This unique status has been described by the Supreme Court as "domestic dependent nation" status[4]. Tribal governments use their inherent governing authority to provide for public safety in Indian country. On a wide variety of public safety and criminal issues the federal government consistently works directly with the tribes on a government-to-government basis. On November 12, 2001, President George W. Bush stated, "My administration will continue to work with tribal governments on a sovereign-to-sovereign basis..."[5] Working directly with the tribes to assist them in obtaining necessary public safety resources and training and to conduct strategic planning for homeland security concerns is not only consistent with Supreme Court precedent and the direction of all recent Presidents, but also enhances the effectiveness of our homeland security preparations in these unique tribal communities. In January 2002, the Department of Justice coordinated the "U.S. Border Patrol-Native American Border Security Conference." Attorney General Ashcroft, in addressing the conference attendees, recognized that, "[m]ore than 25 Indian tribes govern lands that are either adjacent to borders or directly accessible by boat from the border. These tribal lands encompass over 260 miles of international

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[3]Presidential Memorandum, Government-to-Government Relations With Native American Tribal Governments 59 FR 22951 (5-4-1994).

[4]Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831); see also, at 18, (referencing U.S. Constitution Art. I, § 8, clause 3, as creating distinctions among "foreign Nations," the "several States," and "the Indian Tribes").

[5]Presidential Proclamation 7500, 66 FR 57641 (11-15-2001).

borders . . . This conference offers a unique opportunity to marry local, tribal expertise with federal expertise to enhance the security of our nation's borders."[6] My understanding is that there are efforts to have another conference regarding these issues within the next few months.

As the Department of Justice continues our efforts to reach out to tribes on these issues, I applaud the general goals of S-578 to maximize opportunities for the federal government to work with tribal governments in carrying out the activities needed to protect our nation's homeland. Likewise, the Department of Justice looks forward to working with the Committee to address technical issues raised by the bill.

Section 13 - The Oliphant-Fix

Section 13 of S-578 is a legislative overturn of the Supreme Court's decision in Oliphant v. Suquamish Tribe. Oliphant held that tribal courts do not have criminal jurisdiction over non-Indians. In the view of many, the Oliphant decision has created a gap in Indian country law enforcement and negatively impacts tribes' abilities to respond effectively to terrorist incidents and other crimes which may be committed by non-Indians in Indian country. However, overruling Oliphant in a broad manner could result in complicated legal and practical law enforcement issues such as due process concerns, double jeopardy, and appeal rights. Enacting Section 13, prior to working through these complicated matters, is premature and we do not believe that S-578 provides the best avenue for doing so.

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[6]Attorney General remarks, Jan. 17, 2002.

Since 1885, when Congress passed the Major Crimes Act[7], United States Attorneys have had primary responsibility for the prosecution of serious violent crime in Indian country. The Major Crimes Act, coupled with Indian Country Crimes Act[8] (which is also known as the General Crimes Act), gives the United States jurisdiction to prosecute most serious violent offenses which occur in Indian country. Under the Indian Civil Rights Act, tribal courts are limited to misdemeanor punishments.[9] This federal/felony and tribal/misdemeanor dichotomy is important because, generally, state governments have jurisdiction over only those offenses in Indian country in which the victim and the defendant are non-Indian.[10] Law enforcement in Indian country is primarily a federal and tribal function.

In 1978, the United States Supreme Court handed down it's decision in Oliphant v. Suquamish Tribe.[11] In Oliphant, the Supreme Court held tribal courts could no longer exercise criminal jurisdiction over non-Indians. This decision has had a profound effect on law enforcement in Indian country because it limits the authority of what local tribal law enforcement can do in the event a non-Indian is apprehended for a crime committed

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[7]Now codified at 18 U.S.C. § 1153.

[8]18 U.S.C. § 1152.

[9]25 U.S.C. § 1302(7).

[10]Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832); Draper v. United States, 164 U.S. 240 (1896); United States v. McBratney, 104 U.S. 621 (1882).

[11]435 US 191 (1978).

in Indian country[12]. While some tribal law enforcement agencies have obtained "cross-commissions" from state, local, or federal authorities to expand their authority to arrest non-Indian criminal suspects under state or federal law, such cooperative arrangements are not made in many jurisdictions[13] due to various factors including local political issues and concerns over liability. As a result, effective law enforcement over non-Indians who commit crimes in Indian country is not consistent from reservation to reservation.

Since September 11th, America as a whole has been more conscious of public safety in our great nation. As I stated earlier, there are international borders and critical infrastructure in Indian country. In an attempt to address mutual issues of security, the U.S. Border Patrol hosted a Native American Border Security Conference at which Attorney General John Ashcroft recognized "local law enforcement agencies play a crucial role in securing our nation's borders, and tribal law enforcement agencies are no exception."[14] Federal and tribal law enforcement agencies, working together, will continue to play a pivotal role in making our borders safe and secure. Tribal governments have enthusiastically agreed to help ensure the safety of America's borders to the full extent they are able with current resources and under the current jurisdictional scheme.

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[12]The need to address jurisdictional impediments facing tribal law enforcement has been recognized by both the International Association of Chiefs of Police (see, Improving Safety In Indian Country: Recommendations From the IACP 2001 Summit (2001), at 8-9) and by the National Native American Law Enforcement Association (see, NNALEA Report, at 8 & 19).

[13]NNALEA Report, at 7-8.

[14]Attorney General Ashcroft, remarks, Jan. 17, 2002.

Given the law enforcement constraints imposed by Oliphant v. Suquamish Tribe, the question becomes, "In light of Oliphant, what can Congress to do improve homeland security in Indian country?" Section 13 of S-578 is an attempt to deal with the Oliphant issue head-on.

In February 2003, the NAIS formed an Oliphant Working Group under the leadership of South Dakota U.S. Attorney James McMahon to review the Oliphant issue and consider options for improving public safety. Some time after March 7th, it was learned The Tribal Government Amendments to the Homeland Security Act of 2002 (S-578) had been introduced and Section 13 of this bill is an Oliphant-fix. In its deliberations, the Oliphant Working Group studied Section 13 extensively. The working group did not develop a position on whether or not they would eventually support an Oliphant-fix proposal; however, the working group did decide Section 13, as currently written, is too broad. [15] The working group identified a number of concerns, including due process issues, that Congress may want to address, which become especially important in the context of tribal jurisdictional expansion such as any Oliphant-fix proposal, including: separation of powers, the provision of indigent defense counsel, jury pools and appellate and habeas corpus relief.

Separation of Powers. While some tribes have distinct and co-equal legislative, executive, and judicial branches, many tribes do not. Tribal governments take a variety of

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[15]The conclusions of the Oliphant Working Group have not yet been considered by the whole NAIS or the Attorney General's Advisory Committee, nor have they been considered by the Attorney General.

forms including those organized under the Indian Reorganization Act or the Oklahoma Indian Welfare Act[16], those organized on theocratic governmental concepts,[17] and tribal governments operating without the constraints of a tribal constitution. As a result of this diversity of governmental forms, some tribes in effect do not have independent judicial branches. Lack of an independent judiciary creates opportunities for abuse; at a minimum, the provision of due process, as guaranteed by the Indian Civil Rights Act[18], can vary from tribe to tribe. The question of judicial independence, or a mechanism for ensuring expeditious review in the federal courts, should be considered as part of any proposal to significantly expand tribal court jurisdiction[19].

Indigent Defense Counsel. Under the Indian Civil Rights Act, criminal defendants in tribal court have a right to an attorney - however, this is at their own expense[20]. This is similar to the situation for persons facing minor charges in federal court.[21] However, if a defendant is facing jail time in such a case in federal court, then he is entitled to free assistance of counsel. Under federal law, there is currently no such requirement in tribal

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[16]See, respectively, 25 U.S.C. §§ 461, et seq. and 25 U.S.C. § 503.

[17]Such as many of the Pueblo tribes located in New Mexico.

[18]25 U.S.C. § 1302(8).

[19] Additionally, the Committee might consider providing for review of tribal determinations regarding Indian Civil Rights Act (ICRA) claims in the federal courts of appeal, which would provide both protections for the rights of individuals and uniformity in the interpretation of ICRA claims.

[20]25 U.S.C. § 1302(6).

[21]See, Federal Rule of Criminal Procedure 58(b)(2)(C).

court. The need to tie entitlement to free counsel to any expansion of tribal court jurisdiction, as well as the impact on the tribes of such a requirement, should be considered.

Jury Pools. Criminal defendants in tribal court have a right to a jury trial. However, in some tribal jurisdictions, one must be a tribal member in order to be eligible for jury duty[22]. Other tribes require that jury pools be drawn from a fair cross-section of the community - including non-Indians[23].

Appellate and Habeas Corpus Relief. Under current law, federal judicial review of tribal court convictions is limited only to habeas corpus review.[24] Any consideration of expanding tribal jurisdiction should include consideration of expanded appellate relief, such as requiring expedited habeas review or allowing a direct appeal to federal court.

As the working group considered Section 13, specifically, and an Oliphant-fix, generally, it became clear that significantly expanded tribal jurisdiction raised serious issues regarding protections for individual's due process rights. Consideration must be

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[22]In fact, this appears to one of the points of concern raised by the Supreme Court in the Oliphant case. In that case, the Suquamish Tribe only allowed Suquamish tribal members to serve as jurors. Oliphant, 435 U.S., at 194 and footnote 4. In light of the Court's concern, any consideration of an Oliphant-fix should include the issue of jury pools.

[23]For example, Navajo Nation law requires that non-Indians be included in jury pools in order to satisfy the concept of providing a jury consisting of a fair cross-section of the community. George v. Navajo Tribe, 2 Navajo Reporter 1 (1979); 7 Navajo Nation Code § 654.

[24]Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978); 25 U.S.C. § 1303.

given to issues such as disparate tribal resources, the impact of mandated legal obligations, and the need for training and for additional experienced tribal law enforcement officers. Neither the working group nor the full NAIS have yet been able to identify an Oliphant-fix that strikes the appropriate balance between the need to expand the various tribes' role in the homeland security effort and the significant issues and adverse impact caused by such an expansion of jurisdiction.

Section 13 of S-578 addresses "the authority to enforce and adjudicate violations . . . by any person. . . ." As such, the section expands the jurisdiction of both tribal law enforcement and tribal courts. Furthermore, this expanded jurisdiction shall be "concurrent" with that of the United States. Homeland security concerns are primarily law enforcement concerns, not tribal court concerns. It is the ability of tribal authorities to investigate and arrest suspected terrorists that is at issue, not the ability of tribal courts to prosecute such individuals. (It is highly unlikely that the federal government would defer federal felony prosecution in such cases to tribal court misdemeanor prosecution.) In considering the significant expansion of tribal jurisdiction in Section 13, consideration should be given to whether there are other options that can allow tribal law enforcement to be full partners in providing for a secure homeland while avoiding some of the adverse impact of a significant expansion of tribal jurisdiction. These options include expanded use of "cross-commissions" and of tribal law enforcement's authority to detain

individuals suspected of violating state or federal law.[25] While Section 13 might address some of the limitations in these options, the section also raises other issues not fully addressed in the proposed legislation. Therefore, the expansion of tribal jurisdiction reflected in Section 13 should appropriately be considered a part of a comprehensive review of tribal jurisdiction, such as that suggested by the Department of Justice in July 2002.[26]

Conclusion

The Department of Justice is in a unique position to protect our nation's homeland security. Homeland Security is an issue of concern for all Americans, Indian and non-Indian. The general goals of the Tribal Government Amendments to the Homeland Security Act of 2002 (S-578) are commendable. Without offering comment on the specifics of the remainder of the Bill, we note that Section 13, as currently written, is too broad because it would expand tribal criminal jurisdiction over non-Indians without adequately providing for common rights defendants expect in federal or state courts.

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[25]See, Ortiz-Barraza v. United States, 512 F.2d 1176 (9th Cir. 1975).

[26]Statement of United States Attorney Thomas B. Heffelfinger before the United States Senate Committee on Indian Affairs, Hearing on Contemporary Tribal Governments: Challenges in Law Enforcement Related to the Rulings of the United States Supreme Court (July 11, 2002).

Statement of Roland E. Johnson
Governor, Pueblo of Laguna
Laguna, New Mexico
Before the United States Senate Committee on Indian Affairs
July 30, 2003

Mr. Chairman, Mr. Vice-Chairman, and members of the Committee, my name is Roland E. Johnson, Governor of the Pueblo of Laguna. I am here today to express our tribal government's support for Senate Bill 578, which amends the Homeland Security Act of 2002, to ensure that the Department of Homeland Security consults, involves, coordinates with, and includes tribal governments in carrying out the mission of the Department, that tribal governments participate fully in the protection of the homeland of the United States which includes tribal homelands, and that these purposes are carried out in a direct relationship with tribal governments and as distinguished from counties, cities and other localities, and not as a subdivision of any state.

I am also here to speak to you about the importance of the Pueblo of Laguna's participation in securing the people, resources and infrastructures in our reservation homeland and to discuss three things that the Pueblo believes is important and necessary to our participation in the defense of the larger homeland. First, to be capable partners in ensuring comprehensive national domestic security, the Pueblo of Laguna must be well prepared to handle emergency situations. Second, it must be recognized as a legitimate governmental authority responsible for reservation health, safety and welfare. And, third, it must have the resources to ensure that all people in the Laguna Pueblo homeland receive timely and expert protection and assistance.

Laguna Pueblo is an Isolated Community at the Crossroads of Vulnerability

Laguna Pueblo is not like New York City or Washington, D.C. It is not located along the borders with Canada or Mexico. Facilities at Laguna do not include an international airport or a

nuclear power plant. Nevertheless, Laguna Pueblo is at the crossroads of vulnerability because it is located along the major east-west Interstate 40 corridor, where a major accident could potentially cripple the rest of the Nation.

The Pueblo of Laguna is located in west-central New Mexico and has a sparsely populated area along a basin of mesas and plateaus. The 560,000 acres of reservation lands are situated in four counties: Cibola, Valencia, Bernalillo and Sandoval. The Pueblo's six villages are located approximately forty-five miles west of Albuquerque, New Mexico and 25 miles east of Grants, New Mexico. The tribe has a membership of nearly 8,000 enrolled members, making it one of the largest Pueblos in New Mexico. Two major interstate transportation routes cross the reservation boundaries: Interstate Highway 40 and the Burlington Northern and Santa Fe Railroad lines, which travel approximately forty miles through the reservation. In addition, both El Paso Natural Gas Company and Transwestern Pipeline Company have high-pressure interstate gas lines buried below ground traversing the reservation. All of these transportation routes and pipelines are near the homes of reservation residents and converge within a one-mile radius of each other at a point where Laguna Industries, Inc., a large manufacturing facility, is located. This tribal corporation employs many tribal members and others and generates over $30 million dollars worth of business annually. The primary customer for this facility is the U.S. Department of Defense. City and county emergency response providers are miles away from this area. Therefore, the entities who must be prepared to quickly respond to emergencies in this area are the Laguna police and fire departments, Laguna's medical and ambulance services team, Laguna's hazardous materials response team and many other tribal government employees.

I want also to point out that Laguna shares its vulnerabilities with its neighbors throughout the State of New Mexico, including many defense and energy-related federal facilities in the state such as the Waste Isolation Pilot Program (WIPP), Sandia National Laboratories, Kirtland Air Force Base, the White Sands Missile Range, and the Los Alamos National Laboratory. While other communities are closer to these facilities than Laguna, the destruction and incapacitation of any of these physical assets would present extensive harm to all the people of New Mexico and their surrounding infrastructure.

Preparedness

In May of this year, 13 cars of a 49-car freight train derailed at Laguna Pueblo and forced an evacuation of a sizable area on Laguna Pueblo land. The wreck of the westbound Burlington Northern and Santa Fe Railway Company train was at first reported to be carrying toluene (tol-yoo-en), a clear liquid used in making paint and paint thinners as well as other products. Although no one was seriously injured in the accident, some 500 people had to be evacuated from the center of New Laguna, a village where the train derailed and where approximately 80 family homes, schools and tribal government offices are situated. Thereafter, the train tracks were closed in both directions for 24 hours. East bound trains were backed up and a west bound Amtrak train had to be stopped in Albuquerque. The train's 216 passengers had to be provided with overnight shelter and alternate transportation. Both of Laguna's fire trucks responded with full crews. So did all four of its police department cruisers, with almost all of the department's law enforcement personnel. Laguna's two ambulances were deployed and medical care workers from the local hospital responded, as well as Laguna's hazardous materials response team. Emergency equipment and personnel from adjacent, non-Indian communities also responded.

Fortunately, a month before the derailment, the Laguna Pueblo had engaged in a hazardous materials spill exercise based on a mock train derailment. This exercise helped to provide a better organized response to the real derailment because the Pueblo understood its deficiencies, but the lessons learned in both situations are quite revealing. First, when nearly all of our responses providers and systems were deployed at New Laguna during the real derailment, our five other communities were left without protection for other emergencies for a lengthy period of time. We learned that we needed to establish clear command systems so that workers at the scene had decision-making leadership. We found that we had insufficient facilities for use as a central command post. The space that was available for this purpose lacked adequate phone lines and other means of communicating with those involved at the site and with the reservation community so that we could inform them about possible dangers and to provide instructions to secure their safety. Since our communication equipment was deficient, private cell phones had to be used to coordinate the response activities. My point here is that approximately 85 trains go through the Laguna Pueblo each day and the potential for disasters is ever present, because they do carry hazardous materials periodically. We need adequate resources to address those disasters when they do occur.

We hope that through the consultation, involvement, coordination and inclusion of Indian tribes, S.578 will facilitate providing information and financial assistance that should be made directly available to tribal governments in matters concerning the nature of terrorism; how to assess the vulnerabilities of key resources and critical infrastructure; how to be better prepared to respond to terrorist attacks, major disasters and other emergencies; how to coordinate and collaborate well with the federal state and local governments in our state; and to receive financial and other assistance

to ensure the tribes are engaging in adequate planning, have adequate training and equipment, and have an improved ability to coordinate and distribute warnings and other public information.

The Pueblo of Laguna Needs to be Acknowledged as the Primary Authority on the Reservation for Directing Homeland Defense, Response and Assistance

The second purpose of S. 578 is to recognize tribal governments as "participants" in securing the United States homeland to prevent, detect, address and respond to domestic terrorism. Terrorism consists of activities dangerous to human life that violate criminal laws, are intended to intimidate or coerce a civilian population or their governments, or are intended to affect the conduct of a government by mass destruction, assassination, or kidnapping.[1] Defending the national and tribal homeland also includes protecting the interdependent network of critical physical and information infrastructures that all governments, businesses, and communities have come to rely on including the telecommunications, energy, financial services, water and transportation sectors. Tribal government participation in protecting tribal homelands may therefore involve terrorism prevention, detection, response, and post-attack community stabilization activities. Tribal law enforcement could be involved to the extent of conducting investigations, inspections, patrols, surveillance, searches, and arrests. Tribal medical, emergency, and social services agencies may need to become involved in rescues, evacuations, medical treatment, fire suppression, crisis response, and emergency relief. Tribal councils or other tribal governing entities must make sure that the governmental authorities are established to guide all of this activity and that the activities are conducted in a manner that is cognizant of human rights and dignity. Tribal governments also are the entities with the authority to enter into intergovernmental agreements, best practices and other mechanisms to share and

[1]Public Law 107-56 (October 26, 2001) 115 Stat 376, Section 802(a)(1)(4). The U.S. Patriot Act.

coordinate with the state and local governments. In that way, tribes can work with states and local governments together, to complete the web of federal, tribal, state and local government defense, protection and response infrastructure necessary for all citizens, where ever they are, to receive the care and services that are needed. Tribal involvement in the protection of the homelands will entail being able to receive direct funding from the federal government.

Determinations assigning jurisdiction between federal, state and tribal forums can be very complex and confusing. A clarification is needed when the defense and protection of people, places, infrastructure, systems and other property are at stake. Section 13 of S. 578 provides this clarification in the homeland security context by establishing that the applicable law is federal or tribal when tribal homelands are involved. By applying concurrently federal and tribal law, section 13 clarifies, in the context of homeland security, the confusing aspects of federal common law by making use of existing applicable law, which is already for the most part, federal and tribal law. In considering the limited purposes of the section 13 jurisdictional statement, it must be remembered that the essence of S. 578 and the Homeland Security Act is to:

- prevent and respond to terrorism;
- secure people, property and resources;
- secure borders, territorial waters, ports, terminals, waterways, and all transportation systems;
- ensure comprehensive preparedness for terrorist attacks, major disasters and other emergencies; and

- ensure coordination among the federal, tribal, state, and local governments. These same purposes in the context of tribal homelands do not deprive people of basic constitutional protections as is alleged by anti-tribal sovereignty groups.

Resources

The resources available through the Department of Homeland Security Department programs such as FEMA programs and Office of Domestic Preparedness programs will help tremendously to further the Pueblo of Laguna's protection and preparedness efforts, but we also know that there is a limit to federal funds. States, counties and cities have a tax base which provides the revenue-raising capacities that can supplement the cost of providing police, fire, medical, emergency and other services. However, Indian tribes are now being prevented from doing the same thing. For example, the Pueblo of Laguna has had a possessory interest tax in place for many years that helped us address the cost of providing essential governmental services. I mentioned earlier that our Pueblo responded to a railroad derailment with our full ability and resources. However, the same railroad that we assisted is now asserting that recent Supreme Court decisions, such as *Strate v. A-1 Contractors*, 520 U.S. 438 (1997), and *Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001), would allow them to not pay our tax. The railroad company assets that *Strate* and *Atkinson* stand for the proposition that railroad rights-of-way are no longer taxable Indian trust lands and that the tribe has no important government interest that justifies a tax. We assert that this is unconscionable and wrong. It is ironic that Congress and federal agencies have long encouraged and advanced concepts of tribal governmental and economic self-determination but the judicial branch is crippling the exercise of this self-determination by judicial fiat. It is also ironic, that every other government in this country is allowed to engage in the basic governmental function of raising revenues through

taxation within their physical boundaries to provide the kind of services that we have been talking about, and yet, Indian tribes are being denied the same opportunity.

The Pueblo of Laguna would like this Committee to consider protecting the ability of Indian tribes to exercise full jurisdiction over all lands within their reservations as an additional means of assisting tribes in building their capacity to provide community services to protect the health, safety and welfare of reservation residents and visitors, and to ensure the protection of critical transportation and infrastructure systems and assets. The provision in S. 578 that treats tribal governments in a manner similar to states for the purposes of regulation and taxation to provide for the health, safety and welfare of reservation residents, visitors, businesses and other community assets, is a huge step in that direction. A provision that defines Indian country to include all fee lands and rights-of-way, no matter who owns them, within the exterior boundaries of Indian reservations would be another step in that direction. To address this matter, the Pueblo of Laguna suggests the following language be inserted into S. 578:

> The term "Indian country," as used herein, means (a) all land, including all fee lands, within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including all rights-of-way running through the reservation, notwithstanding their ownership, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

This provision would greatly enhance the ability of the Pueblo of Laguna and other Indian tribes to tax all businesses that come to or through our reservations, as those businesses do benefit from the services that are provided by our governments.

Conclusion

In closing, Mr. Chairman and members of the Committee, thank you for listening to the issues and concerns of the Pueblo of Laguna. I urge you, on behalf of the Pueblo of Laguna, to address the three key ingredients necessary for effective tribal homeland protection: preparedness assistance; acknowledgment of Indian tribes as the primary authorities for directing tribal homeland defense, response and assistance; and providing Indian tribes with the revenue-raising capacity to carry out health, safety and welfare functions. Our people are concerned and feel particularly vulnerable, because, in spite of the great measures that our government is taking to ensure that Americans are prepared to care for themselves in the midst of these most extraordinary times, those measures have not been automatically extended to meet the needs of tribal homelands and residents on a government-to-government basis.

ATTACHMENTS:

Statement of Policy and Process, Governor Bill Richardson, State of New Mexico 01/17/03 State of New Mexico Legislature, First Session 2003, House Memorial 6 and Senate Memorial 18, Recognizing Tribal Self Governance, 2003.

STATEMENT OF POLICY AND PROCESS

WHEREAS the All Indian Pueblo Council consists of the Pueblos of Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Picuris, Pojoaque, Sandia, San Felipe, San Ildefonso, San Juan, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia, and Zuni (collectively "the Pueblos");

WHEREAS the Governor of the State of New Mexico ("Governor") recognizes and respects the sovereignty of each Pueblo and their respective tribal governments;

WHEREAS the Pueblos recognize and respect the sovereignty of the State of New Mexico ("State");

WHEREAS the Governor and the Pueblos want to encourage and promote government-to-government relationships between the individual Pueblos and the State based on mutual respect and open communications;

WHEREAS the State and Pueblos recognize the importance of full and open communication and cooperation on issues of shared interest or concern, such as taxation, water rights, education, health care, economic development, law enforcement, and the provision of State services to tribal members, so as to avoid misunderstandings, disagreements and disputes and to facilitate coordinated and cooperative policy formulation and implementation;

WHEREAS the Governor desires to have an open-door policy for Pueblos to voice concerns and discuss issues and to have the Pueblos' views seriously considered with respect to the formulation and execution of State policy;

WHEREAS, while the Pueblos are sovereign governments, the members of each Pueblo are also citizens of the State;

WHEREAS coordination and cooperation between the Pueblos and the Governor are in the best interests of the State, the Pueblos, and all the citizens of the State, and will promote the equitable and efficient allocation of governmental authority, services, and resources among all citizens of New Mexico;

WHEREAS the Governor and Pueblos agree to establish procedures setting forth the framework to coordinate a cooperative and joint effort to address issues identified by the Governor and Pueblos, to seek mutually beneficial solutions and outcomes, and to avoid litigation;

NOW THEREFORE THE UNDERSIGNED HEREBY COMMIT TO THE FOLLOWING PRINCIPLES AND PROCEDURES AND AGREE TO COMPLY WITH THEM TO THE GREATEST EXTENT FEASIBLE:

1. The Governor and the Pueblos will establish and promote a relationship of cooperation, coordination, open communication, and good will, and will work in good faith to amicably and fairly resolve issues and differences.

2. The Governor and the Pueblos' interactions shall be based on a government-to-government relationship. The Governor and Pueblo governing bodies shall direct and cause all cabinet secretaries, departments, agencies, units, and subdivisions of their respective governments under their supervision and control to respect the principle of government-to-government relations in all interactions between State and Pueblo governments.

3. In order to establish a process for meaningful consultation on issues identified by the Governor or a Pueblo(s), issues of interest or concern identified by any of the governments that are parties to this Statement of Policy shall be addressed through the following framework:

A. The Governor or affected Pueblo(s) will notify the other party in writing that it has identified an issue or concern and desires consultation or negotiations on the same;

B. The Governor and the affected Pueblo(s) will designate an appropriate person(s) to represent them in the conduct of such consultation or negotiation;

C. The representatives so designated will meet as soon as reasonably practicable to discuss the issue and exchange any relevant information or documentation.

D. Each representative shall timely inform the leadership of their respective party of the status or outcome of the consultation or negotiations and the leadership shall timely give direction as needed to address or resolve the issue.

E. If either party believes that further discussions or negotiations will be unproductive, they will promptly notify the other party.

4. The Governor and affected Pueblo(s) shall use their best efforts to facilitate an amicable resolution of any dispute prior to the filing of any litigation against the other;

5. The Governor and affected Pueblo(s) shall consult with each other prior to submitting or causing to be introduced legislation affecting or impacting the other.

6. The Governor and affected Pueblo(s) shall consult with each other prior to taking any executive or administrative action affecting or impacting the other.

7. The Governor and affected Pueblo(s) shall use their best efforts to ensure that the State and each Pueblo, or any cabinet secretaries, departments, agencies, units, and subdivisions

of their respective governments under their supervision and control, do not set forth or cause to be set forth internal or external communications inconsistent with this Statement of Policy.

8. The Governor and each Pueblo shall do all things necessary and proper to inform, direct, and cause their respective departments to implement the provisions and intent of this Statement of Policy. All consultations pursuant to this Statement of Policy shall be open and candid amongst the parties to this Policy so that all parties may evaluate for themselves and offer their views concerning the potential impacts and effects of the relevant proposals and pending actions.

9. The Governor and the Pueblos will meet together on a regular basis in order to insure that the terms, purpose, and intent of this Statement of Policy are carried out.

10. The Governor and the Pueblos will communicate the content of this Statement of Policy to each agency, department, division, or other official representative under the supervision of the Governor and respective Pueblo, and direct and cause them to observe and comply with this Statement of Policy and Process.

Dated this 17th day of January 2003.

Bill Richardson, Governor STATE OF NEW MEXICO	Fred Vallo, Sr., Governor PUEBLO OF ACOMA
Simon Suina, Governor PUEBLO OF COCHITI	Alvino Lucero, Governor PUEBLO OF ISLETA
Dr. Raymond Loretto, Governor PUEBLO OF JEMEZ	Roland E. Johnson, Governor PUEBLO OF LAGUNA
Tom F. Talache, Jr., Governor PUEBLO OF NAMBE	Gerald Nailor, Governor PUEBLO OF PICURIS
Jacob Viarrial, Governor PUEBLO OF POJOAQUE	Stuwart Paisano PUEBLO OF SANDIA

Anthony Ortiz, Governor
PUEBLO OF SAN FELIPE

John Gonzales, Governor
PUEBLO OF SAN ILDEFONSO

Earl Salazar, Governor
PUEBLO OF SAN JUAN

Myron Armijo, Governor
PUEBLO OF SANTA ANA

Denny Gutierrez, Governor
PUEBLO OF SANTA CLARA

Everett Chavez, Governor
PUEBLO OF SANTO DOMINGO

Allen Ray Martinez, Governor
PUEBLO OF TAOS

Marvin Herrera, Governor
PUEBLO OF TESUQUE

Gilbert Lucero, Governor
PUEBLO OF ZIA

Arlen Quetawki, Sr., Governor
PUEBLO OF ZUNI

HOUSE MEMORIAL 6

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Ben Lujan

A MEMORIAL

HONORING THE NATIONS, TRIBES AND PUEBLOS OF NEW MEXICO BY RECOGNIZING THE RIGHT OF TRIBES TO BE SELF-GOVERNING AND URGING CONTINUED GOVERNMENT-TO-GOVERNMENT COOPERATION FOR THE HEALTH, SAFETY AND WELFARE OF THE TRIBAL AND NONTRIBAL CITIZENS OF NEW MEXICO.

WHEREAS, New Mexico's nations, tribes and pueblos are centuries-old communities that established and continue to employ well-organized tribal self-governing systems; and

WHEREAS, the existence and significance of Indian self-government and tribal sovereignty over tribal homelands was acknowledged in New Mexico from the outset of European contact as evidenced by the early Spanish land grants, the recognition of civil and political rights by the independent government of Mexico, the United States in the 1848 Treaty of Guadalupe

underscored material = new
[bracketed material] = delete

Hidalgo and by the state in its Enabling Act of 1910; and

WHEREAS, the state has continued to recognize and respect the sovereign tribal governments of New Mexico through many state laws that encourage the use of cooperative agreements that authorize and encourage the legislative, executive and judicial branches of the New Mexico government to coordinate and work cooperatively with the nations, tribes and pueblos of New Mexico; and

WHEREAS, the senate celebrates and honors the governments, leadership and contributions of the nations, tribes and pueblos of New Mexico through an annual recognition day known as "American Indian Day", occurring this year on February 4, 2003; and

WHEREAS, the governor is in the process of executing agreements reaffirming government-to-government relationships between the state and the nations, tribes and pueblos of New Mexico;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NEW MEXICO that it salute and honor the nations, tribes and pueblos of New Mexico by reaffirming its recognition of their status as sovereign governments and the legislature's commitment to interact with the nations, tribes and pueblos on a government-to-government basis so as to promote intergovernmental cooperation, coordination and communication on all matters; and

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[bracketed material] = delete

BE IT FURTHER RESOLVED that the New Mexico congressional delegation be encouraged to support and reaffirm the government-to-government relationship between states and tribes and the fundamental principle that Indian nations, tribes and pueblos retain their inherent rights over their tribal lands except as provided by congress in an act of law or by the ratification of a treaty; and

BE IT FURTHER RESOLVED that the house of representatives express its high regard for the pueblos, nations and tribes of New Mexico and all they have done to strengthen community through their willingness to work cooperatively with the state in many areas such as taxation, tourism, environmental protection, social services delivery, health, education, gaming and public safety; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to each of the nations, tribes and pueblos of New Mexico, the president of the United States, the New Mexico congressional delegation, the president and president pro tempore of the United States senate, the speaker of the United States house of representatives and the New Mexico legislative council.

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SENATE MEMORIAL 18

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Richard M. Romero

A MEMORIAL

HONORING THE NATIONS, TRIBES AND PUEBLOS OF NEW MEXICO BY RECOGNIZING THE RIGHT OF TRIBES TO BE SELF-GOVERNING AND URGING CONTINUED GOVERNMENT-TO-GOVERNMENT COOPERATION FOR THE HEALTH, SAFETY AND WELFARE OF THE TRIBAL AND NONTRIBAL CITIZENS OF NEW MEXICO.

WHEREAS, New Mexico's nations, tribes and pueblos are centuries-old communities that established and continue to employ well-organized tribal self-governing systems; and

WHEREAS, the existence and significance of Indian self-government and tribal sovereignty over tribal homelands was acknowledged in New Mexico from the outset of European contact as evidenced by the early Spanish land grants, the recognition of civil and political rights by the independent government of Mexico, the United States in the 1848 Treaty of Guadalupe

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Hidalgo and by the state in its Enabling Act of 1910; and

WHEREAS, the state has continued to recognize and respect the sovereign tribal governments of New Mexico through many state laws that encourage the use of cooperative agreements that authorize and encourage the legislative, executive and judicial branches of the New Mexico government to coordinate and work cooperatively with the nations, tribes and pueblos of New Mexico; and

WHEREAS, the legislature celebrates and honors the governments, leadership and contributions of the nations, tribes and pueblos of New Mexico through an annual recognition day known as "American Indian Day", occurring this year on February 4, 2003; and

WHEREAS, the governor is in the process of executing agreements reaffirming government-to-government relationships between the state and the nations, tribes and pueblos of New Mexico;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NEW MEXICO that it salute and honor the nations, tribes and pueblos of New Mexico by reaffirming its recognition of their status as sovereign governments and the legislature's commitment to interact with the nations, tribes and pueblos on a government-to-government basis so as to promote intergovernmental cooperation, coordination and communication on all matters; and

underscored material = new
[bracketed material] = delete

BE IT FURTHER RESOLVED that the New Mexico congressional delegation be encouraged to support and reaffirm the government-to-government relationship between states and tribes and the fundamental principle that Indian nations, tribes and pueblos retain their inherent sovereign rights over their tribal lands except as provided by congress in an act of law or by the ratification of a treaty; and

BE IT FURTHER RESOLVED that the senate express its high regard for the pueblos, nations and tribes of New Mexico and all they have done to strengthen community through their willingness to work cooperatively with the state in many areas such as taxation, tourism, environmental protection, social services delivery, health, education, gaming and public safety; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to each of the nations, tribes and pueblos of New Mexico, the president of the United States, the New Mexico congressional delegation, the president and president pro tempore of the United States senate, the speaker of the United States house of representatives and the New Mexico legislative council.

underscored material = new
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Testimony of

Chairwoman Vivian Juan-Saunders

Tohono O'odham Nation

P.O. Box 837

Sells, Arizona

Before the

U.S. Senate Committee On Indian Affairs

Tribal Government Amendments to the

Homeland Security Act of 2002 - Senate Bill 578

July 30, 2003

Background

Chairman Campbell, Vice Chairman Inouye, members of the committee. I am Vivian Juan-Saunders, Chairwoman of the Tohono O'odham Nation. On behalf of the 28,000 members of the Nation, I thank you for the opportunity to speak on this issue of critical importance to our people.

Prior to European contact, the aboriginal lands of the O'odham extended east to the San Pedro River, West to the Colorado River, South to the Gulf of California, and North to the Gila River. In 1848 the United States and Mexico negotiated the terms of the Treaty of Guadalupe Hidalgo, which among other things, established the southern boundary of the United States. The treaty placed the aboriginal lands of the O'odham in Mexico. In 1854 through the Gadsden Purchase, the United States and Mexico further defined the southern boundary by placing the boundary at its present location and cut into the heart of our aboriginal lands and consequently displaced our people on both sides of the international boundary. Today we face enormous challenges, which impact the lives of our people. Furthermore, in 1848 and 1854 the O'odham were never consulted in a manner respectful of our sovereign status as an Indian Nation.

Today, our tribal lands are located in southern Arizona and with a 2.8 million acre land base; we have the second largest reservation in the United States. Our lands also include 75 miles of the U.S.-Mexico international border, which has become the avenue of choice for undocumented immigrants and drug trafficking activities traveling into the United States. This also creates

grave concerns about protection against possible terrorists coming through a very vulnerable location on our Nation. Although the Nation has the neither the manpower nor the resources, we continue to be the first line of defense in protecting U.S. interests and its border in this highly volatile region.

The genesis of this volatility stems from the U.S. government's implementation of border policy in the last decade that drastically changed conditions on the Nation. Without ever consulting with the Tohono O'odham Nation, policy was implemented that focused on closing down the U.S. southern border by dramatically increasing manpower and resources at ports of entry and located at popular entry points such as San Diego (CA), Yuma (AZ), and El Paso (TX). Instead of stopping this problem however, the policy created a funnel effect and immigrants, drug traffickers, and anyone else attempting to illegally cross into the U.S. were pushed away from these areas and into the lands of the Tohono O'odham Nation.

Impacts of U.S. Border Policy on Tohono O'odham Nation

The impacts of this policy have overwhelmed the Nation. While immigrant and drug traffic have decreased at other parts of the border, levels have sky rocketed on the Nation. Today, 1,500 immigrants illegally cross into the U.S. via our lands daily. Tribal members live in fear for the safety of their families and their properties. Often times, homes are broken into by those desperate for food, water and shelter.

The Tohono O'odham Nation Police Department (TOPD) has stretched its resources to the limit and now spends on average $2.5-$3 million annually in response to border related incidents. Consider:

- On an average day, every officer in the TOPD spends 60% of his or her time working on border related issues.
- In 1999, our officers assisted the border patrol with 100 undocumented immigrant apprehensions per month.
- In 2002, our tribal officers recorded 6000 undocumented immigrants detained pending U.S. Border patrol pick up.
- In 2002 and 2003, 1500 undocumented immigrants crossed our tribal lands each day.
- Illegal narcotics seizures have more than doubled in the last 3 years to over 65,000 lbs. in 2002.
- It is no longer just Mexican nationals crossing our reservation land. Over the last year, undocumented immigrants from Guatemala, Honduras, and Central America have been apprehended on our Nation.
- In 2002, 4300 vehicles were used for illegal drug and immigrant smuggling. A total of 517 stolen vehicles were recovered on tribal land.
- From January 2003 to today, 2675 abandoned vehicles were found on the reservation with 308 stolen vehicles used for criminal activities en route to Mexico. These vehicles were stolen in Tucson, Phoenix, and Chandler etc and used for illegal activity.
- Since January 2003, 48 undocumented immigrant heat and exposure deaths investigated by tribal police were reported. A total number of 7 staff members are in the criminal investigations unit.

- The tribal police pay for autopsy costs at $1,400.00 per body out of tribal police funds.
- In 2003, Tribal police investigated 10 vehicle crashes involving undocumented immigrants.
- In FY 2002-2003, the U.S. Border Patrol-Casa Grande Sector apprehended 55,514 undocumented immigrants on our lands.

Many other areas on the Nation, such as its limited hospital and ambulance services have been similarly impacted. Overall, it is estimated that the Nation expends $7 million annually on services directly relating to border issues.

- In 2003, the Indian Health Service (IHS)-Sells Service Unit spent $500,000.00 on health care to undocumented immigrants resulting from dehydration. These funds are not reimbursed to IHS and result in the inability of certain tribal members to receive health care services due them.

In response to the September 11, 2001 terrorist bombing and related events in the United States, the 107th Congress passed the Homeland Security Act of 2002 (P.L. 107-296). This authorized the reorganization of existing federal agencies under the Homeland Security umbrella. This led to expanded border protection policies through the National Homeland Security Reorganization Plan. Once again, although these changes have had dramatic impacts on our people and land, we were never consulted and we have not had the ability to receive direct funding for our homeland security expenditures. This lack of consultation has strained relations and put the Nation in the difficult position of reacting to policy decisions as opposed to proactively working together in a

unified fashion with respect to the sovereign status of our Nation.

Section 2. Findings and Purposes (a) (1).

The Tohono O'odham Nation strongly supports the language the "Congress finds that-"there is a government-to-government relationship between the United States and each Indian tribal government." We also agree with (b) Purposes - The purposes of this Act are to ensure that -(1) the Department of Homeland Security consults with, involves, coordinates with, and includes Indian tribal governments in carrying out the mission of the Department under the Homeland Security Act of 2002 (Public Law 107-296; and (2) Indian tribal governments participate fully in the protection of the homeland of the United States.

In 2002, the United States Department of Homeland Security was established by Congress and preceded to implement immediate reorganization of its federal programs. As a result of the establishment of Homeland Security and the reorganization of federal agencies, several issues surfaced, which are of concern to the Tohono O'odham Nation.

Lack of Tribal Consultation

The Nation was never consulted when the international boundary was drawn in 1848 and in 1854, bisecting Tohono O'odham lands and separating our people from relations, cultural sites and ceremonies, and access to much needed health care, housing, and transportation. The Nation was never consulted when Operation Gatekeeper was designed and implemented in the 1990's, making the Tohono O'odham Nation's border a gateway for undocumented immigrants and drug trafficking activities traveling into the United States.

The Tohono O'odham Nation was never consulted when the Department of Homeland Security changed the structure and functions of federal agencies such as U.S. Customs and Border Patrol who have conducted its activities on our reservation lands for over 20 years. Consequently on July 11, 2003 the Tohono O'odham legislative council passed Resolution No. 03-318 entitled Supporting Tohono O'odham Nation Position on Strengthening Relations Between the Tohono O'odham Nation and Bureau of Customs and Border Protection (attached).

The Tohono O'odham Nation takes the position that this has strained relations and puts our Nation in the awkward position of reacting to policy decisions as opposed to proactively working together in a unified fashion with respect for the sovereign status of our Nation and to protect national security.

We were never consulted when Homeland Security officials transferred a unique group of 21 Native American customs agents; known as the Shadow Wolves, operating within the boundaries of our Nation from their previous mission of drug interdiction to Customs and Border Protection (CBP). This transfer impacted their morale and mission. Not until this issue became a public one, did CBP agree to allow the Shadow Wolves to determine their mission and to continue with their previous mission of drug interdiction instead of immigration. The Tohono O'odham Nation requests written assurances that the mission of the Shadow Wolves will not be changed, and that their ability to operate as an independent tracking unit will not be compromised by the new administrative structure.

Issues related to the conduct of federal agents on our lands, especially related to fear of

unauthorized roads being created, which may be near or on sacred sites, and harassment of our people as they conduct their day-to-day activities, continue to be raised by our people.

In the interest of national security, we believe the reorganization of federal entities that conduct activities on our Nation provides an opportunity to strengthen relationships. For example, federal border patrol agents have assisted us by making their helicopters available to assess fire damage on our lands, provided emergency assistance to our members until local emergency personnel arrived, and have made themselves available for district presentations to our members. All that we ask is respect for our sovereignty, our people, and land.

Possible Solutions

The terrible conditions that currently exist on the Nation were largely caused by the unilateral implementation of border protection policies by the U.S. government. This is no longer a cry for assistance - we are well beyond that point. We must have a seat at the table and further funding assistance from the federal government on this federal issue and we must have it now.

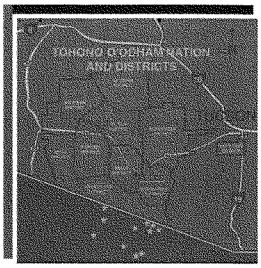
1. Senate Bill 578, will recognize the important role that tribes play in the defense of the homeland and will finally include us as participants in the activities of the Secretary of Homeland Security, including information analysis and infrastructure protection, science and technology, the Directorate of Border and Transportation Security, and emergency preparedness and response. Due to our geographic location and isolation, the Tohono O'odham Nation is at the front lines. We need resources sent directly to our Nations instead of to states and through counties. We are located in three different counties and do not have the staff and resources to

participate in three different emergency preparedness planning sessions nor do we have the staff or resources to lobby three different counties for Homeland Security Resources.

2. Passing this legislation, together with better communication and sharing of ideas, coupled with direct federal funding for manpower and resource support, are effective first steps to deterring these activities on the Nation's lands. By working together, and continuing to identify and implement solutions we can better protect U.S. interests and enhance Government-to-Government relations.

ISSUE BRIEF: THE ROLE OF THE TOHONO O'ODHAM NATION IN PROTECTING THE HOMELAND

BACKGROUND
The Tohono O'odham Nation is a recognized sovereign government located in southern Arizona with over 28,000 members. The Nation has a land base of 2.8 million acres, 75 miles of which is contiguous to the U.S/Mexico border. As a result, the Tohono O'odham Nation forms part of the first line of defense for U.S. homeland security.



ISSUE
Over the past few years, there has been a dramatic increase in undocumented immigrants traveling through the Tohono O'odham Nation. This is directly attributable to the U.S. government's border protection policy, first implemented in 1993. The broad policy directive, known as Operation Gatekeeper, was designed to close down the southern border in California, Arizona and Texas.

In Arizona, Operation Gatekeeper focused on ports of entry, such as Douglas, Yuma and Nogales, in the effort to stop undocumented people. While this concentrated effort worked to reduce the flow at these entry points, it left a huge hole in the U.S. border - the lands of the Tohono O'odham Nation.

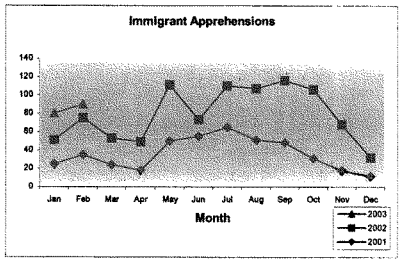
This has created a funnel effect and immigrants, drug traffickers and others who were pushed away are using the lands of the Tohono O'odham Nation as a gateway into the U.S.

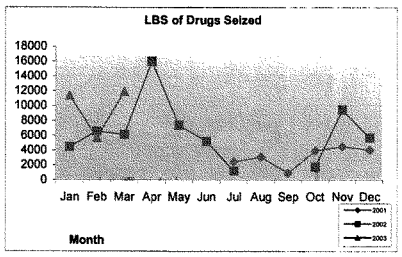
In 2002, the U.S. government expanded its border protection policies through the National Homeland Security Reorganization Plan. Once again, although these changes have had dramatic impacts on the people and land of the Nation, we were never consulted and we have not had the ability to receive direct funding for our homeland security expenditures.

IMPACTS OF ILLEGAL ACTIVITY ON THE NATION
The Nation's police department (TOPD) has stretched its resources to the limit and now spends $2.5 to $3 million annually in responses to border related incidents. Consider:

- In 1999, our officers assisted the border patrol with 100 undocumented immigrants per month; in 2002 that number increased 8 fold to over 800 per month.
- Illegal narcotics seizures have more than doubled in the last 3 years to over 65,000 lbs. in 2002.

The Nation's limited hospital and ambulance services have also been inundated with requests to provide aid. As a result, health services for O'odham members have been seriously compromised.





Most importantly, Tribal members literally live in fear for the safety of their families and their property. Few can imagine what it is like to have a constant stream of lost and suffering border crossers passing by your home on a daily basis. Often times, homes are broken into by those desperate for food, water and shelter. If this were happening in Tucson, a state of emergency would be declared.

REMEDY
The terrible conditions that currently exist on the Nation were largely caused by the unilateral implementation of border protection policies by the U.S. government. Senate Bill 578, will recognize the important role that tribes play in the defense of the homeland and will be an important first step in deterring these activities on the Nation's lands.

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL

(Supporting Tohono O'odham Nation Position on Strengthening Relations Between the Tohono O'odham Nation and Bureau of Customs and Border Protection)

RESOLUTION NO. 03-318

1 WHEREAS, the Tohono O'odham Nation through historical oversight and exclusion from
2 decision-making between the United States and Mexico's treaties and agreements
3 resulted in 75 miles of the international boundary being adjacent to the Tohono
4 O'odham Nation; and
5 WHEREAS, due to an influx of undocumented immigrants crossing through the boundaries of
6 the Tohono O'odham Nation, the former United States Border Patrol has operated
7 within the lands of the Nation for over 28 years; and
8 WHEREAS, over time, due to the physical presence of the U.S. Border Patrol on the Nation's
9 lands, district officials and citizens of the Tohono O'odham Nation have voiced
10 concerns regarding the disruption of their daily lives due to lack of respect for
11 people, land, and the environment of the Nation; and
12 WHEREAS, in 2002 due to terrorism attacks on citizens of the United States, President George
13 Bush, with the support of the United States Congress, established the United States
14 Office of Homeland Security, effectively reorganizing the Border Patrol as the Bureau
15 of Customs and Border Protection within the U.S. Office of Homeland Security; and
16 WHEREAS, there exists records of United States Presidential Executive Orders regarding respect
17 for government-to-government relations and consultation on all matters, which have
18 a direct impact on Indian tribal nations;
19 WHEREAS, the Tohono O'odham Nation and the Bureau of Customs and Border Protection share
20 a common goal of protecting the United States and its borders within the Nation's
21 lands.
22 NOW, THEREFORE, BE IT RESOLVED by the Legislative Council that it hereby supports the Tohono
23 O'odham Nation's Position Paper, which outlines the Nation's stance on the Bureau
24 of Customs and Border Protection conduct of activities within the boundaries of the
25 Nation.
26 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 11TH, Day
27 of JULY, 2003 at a meeting at which a quorum was present with a vote of 1,535.85 FOR; 840.25
28 AGAINST; 253.6 NOT VOTING; and [0.1] ABSENT, pursuant to the powers vested in the Council by
29 Section I (f) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono
30 O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary -
31 Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48
32 Stat. 984).

RESOLUTION NO. 03-318
(Supporting Tohono O'odham Nation Position on Strengthening Relations Between the Tohono O'odham Nation and Bureau of Customs and Border Protection)
Page 2 of 2

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Dennis Ramon, Chairman

14th day of July, 20 03

ATTEST:

Julianna Saraficio, Acting Legislative Secretary

11th day of July, 20 03.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 14th day of July, 20 03 at 9:38 o'clock, P.M., pursuant to the provisions of Section 3 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Dennis Ramon, Chairman

[X] APPROVED on the 14th day of July, 20 03

[ ] DISAPPROVED at 6:16 o'clock, P.M.

VIVIAN JUAN-SAUNDERS, CHAIRWOMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 15th day of July, 20 03, at 8:33 o'clock, A.M.

Julianna Saraficio, Acting Legislative Secretary

POSITION PAPER: **STRENGTHENING RELATIONS BETWEEN THE TOHONO O'ODHAM NATION AND BUREAU OF CUSTOMS AND BORDER PROTECTION (CBP)**

The Tohono O'odham Nation and CBP share the common goal of protecting the United States and its borders within the Nation's lands. Federal border policy has pushed those attempting to gain illegal entry into the U.S. away from populated areas and onto the lands of the Tohono O'odham Nation. This has caused tremendous strain on the Nation's people, its lands and its resources.

Effectively stemming the tide of these activities can better be accomplished through ongoing communication, consultation and continuous updates of policies and procedures. The Nation acknowledges that the CBP has recently implemented necessary changes through increased manpower, deployment strategies and community outreach. However, since the Nation was not consulted on the National Homeland Security reorganization plan, there are several changes needed to ultimately provide greater protection to the Nation and the United States. These areas include:

- **Government-to-Government Consultation** – The Nation was never consulted on the Homeland Security plan and we are currently enduring the repercussions of that decision. This lack of consultation has strained relations and puts the Nation in the awkward position of reacting to policy decisions as opposed to proactively working together in a unified fashion with respect for the sovereign status of our Nation

- **Agent Deployment** – Current CBP policy is to deploy new agents every 30 days that causes significant difficulties on the Nation. While additional manpower is needed, cultural sensitivity training efforts are simply not sufficient when agents are serving temporary 30-day assignments. These agents are not aware of historical sites; on occasion they continue to create their own roads and do not fully understand the Nation's unique geographic and cultural make up. Agents continue to speed through O'odham villages without regard for our children and elders. The Tohono O'odham Nation demands respect for our people, land, sacred sites and sovereignty.

- **Placement of Agents** – Stationing agents directly on the border is an important deterrent and it protects the Nation's people and its lands. It also helps to save lives. It is important that a CBP presence is maintained along the border and at other points on the Nation and steps be taken to downplay the militarization on the Nation by relocating the towers along state route 86 to locations along the international boundary.

- **Reporting Methods** – The Nation currently is broken down into three separate CBP areas of responsibility including Tucson, Ajo and Casa Grande. This system is antiquated, time consuming and needs to be streamlined. In addition, members currently must call an 800 recording system that creates a communication barrier for many members. Human contact is a simple yet effective solution for increasing reporting on the Nation. A central contact person and an office is a better solution for communication purposes.

Continuing to identify and implement solutions will better protect U.S. interests and enhance relations between the CBP and Tohono O'odham Nation. Better communication and sharing of ideas, coupled with increases in manpower and resource support, are imperative first steps to effectively deterring these activities on the Nation's lands.

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Supporting Tohono O'odham Nation Position on Strengthening Relations Between the Tohono O'odham Nation and Bureau of Customs and Border Protection)

RESOLUTION NO. 03-318

1 **WHEREAS,** the Tohono O'odham Nation through historical oversight and exclusion from
2 decision-making between the United States and Mexico's treaties and agreements
3 resulted in 75 miles of the international boundary being adjacent to the Tohono
4 O'odham Nation; and
5 **WHEREAS,** due to an influx of undocumented immigrants crossing through the boundaries of
6 the Tohono O'odham Nation, the former United States Border Patrol has operated
7 within the lands of the Nation for over 20 years; and
8 **WHEREAS,** over time, due to the physical presence of the U.S. Border Patrol on the Nation's
9 lands, district officials and citizens of the Tohono O'odham Nation have voiced
10 concerns regarding the disruption of their daily lives due to lack of respect for
11 people, land, and the environment of the Nation; and
12 **WHEREAS,** in 2002 due to terrorism attacks on citizens of the United States, President George
13 Bush, with the support of the United States Congress, established the United States
14 Office of Homeland Security, effectively reorganizing the Border Patrol as the Bureau
15 of Customs and Border Protection within the U.S. Office of Homeland Security; and
16 **WHEREAS,** there exists records of United States Presidential Executive Orders regarding respect
17 for government-to-government relations and consultation on all matters, which have
18 a direct impact on Indian tribal nations;
19 **WHEREAS,** the Tohono O'odham Nation and the Bureau of Customs and Border Protection share
20 a common goal of protecting the United States and its borders within the Nation's
21 lands.
22 **NOW, THEREFORE, BE IT RESOLVED** by the Legislative Council that it hereby supports the Tohono
23 O'odham Nation's Position Paper, which outlines the Nation's stance on the Bureau
24 of Customs and Border Protection conduct of activities within the boundaries of the
25 Nation.
26 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 11TH, Day
27 of JULY, 2003 at a meeting at which a quorum was present with a vote of 1,535.83 FOR; 840.25
28 AGAINST; 253.6 NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by
29 Section 1 (f) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono
30 O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary -
31 Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48
32 Stat. 984).

RESOLUTION NO. 03-318
(Supporting Tohono O'odham Nation Position on Strengthening Relations Between the Tohono O'odham Nation and Bureau of Customs and Border Protection)
Page 2 of 2

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Dennis Ramon, Chairman

14th day of July, 20 03

ATTEST:

Julianna Saraficio, Acting Legislative Secretary

11th day of July, 20 03.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 14th day of July, 20 03 at 9:33 o'clock, A.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Dennis Ramon, Chairman

[X] APPROVED on the 14th day of July, 20 03

[ ] DISAPPROVED at 6:15 o'clock, P.M.

VIVIAN JUAN-SAUNDERS, CHAIRWOMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 15th day of

July, 20 03, at 8:33 o'clock, A.M.

Julianna Saraficio, Acting Legislative Secretary

POSITION PAPER: **STRENGTHENING RELATIONS BETWEEN THE TOHONO O'ODHAM NATION AND BUREAU OF CUSTOMS AND BORDER PROTECTION (CBP)**

The Tohono O'odham Nation and CBP share the common goal of protecting the United States and its borders within the Nation's lands. Federal border policy has pushed those attempting to gain illegal entry into the U.S. away from populated areas and onto the lands of the Tohono O'odham Nation. This has caused tremendous strain on the Nation's people, its lands and its resources.

Effectively stemming the tide of these activities can better be accomplished through ongoing communication, consultation and continuous updates of policies and procedures. The Nation acknowledges that the CBP has recently implemented necessary changes through increased manpower, deployment strategies and community outreach. However, since the Nation was not consulted on the National Homeland Security reorganization plan, there are several changes needed to ultimately provide greater protection to the Nation and the United States. These areas include:

- **Government-to-Government Consultation** – The Nation was never consulted on the Homeland Security plan and we are currently enduring the repercussions of that decision. This lack of consultation has strained relations and puts the Nation in the awkward position of reacting to policy decisions as opposed to proactively working together in a unified fashion with respect for the sovereign status of our Nation

- **Agent Deployment** – Current CBP policy is to deploy new agents every 30 days that causes significant difficulties on the Nation. While additional manpower is needed, cultural sensitivity training efforts are simply not sufficient when agents are serving temporary 30-day assignments. These agents are not aware of historical sites; on occasion they continue to create their own roads and do not fully understand the Nation's unique geographic and cultural make up. Agents continue to speed through O'odham villages without regard for our children and elders. The Tohono O'odham Nation demands respect for our people, land, sacred sites and sovereignty.

- **Placement of Agents** – Stationing agents directly on the border is an important deterrent and it protects the Nation's people and its lands. It also helps to save lives. It is important that a CBP presence is maintained along the border and at other points on the Nation and steps be taken to downplay the militarization on the Nation by relocating the towers along state route 86 to locations along the international boundary.

- **Reporting Methods** – The Nation currently is broken down into three separate CBP areas of responsibility including Tucson, Ajo and Casa Grande. This system is antiquated, time consuming and needs to be streamlined. In addition, members currently must call an 800 recording system that creates a communication barrier for many members. Human contact is a simple yet effective solution for increasing reporting on the Nation. A central contact person and an office is a better solution for communication purposes.

Continuing to identify and implement solutions will better protect U.S. interests and enhance relations between the CBP and Tohono O'odham Nation. Better communication and sharing of ideas, coupled with increases in manpower and resource support, are imperative first steps to effectively deterring these activities on the Nation's lands.

PREPARED TESTIMONY ON
S.578 THE TRIBAL GOVERNMENT HOMELAND SECURITY ACT OF 2002.

INTRODUCTION:

THANK YOU for the opportunity to testify today. I am here on behalf of the Blackfeet Tribe. I know my time today is brief.

I intend to address three topics that are relevant to Homeland Security. First, for those of you who may not know much about the Blackfeet Nation or the Blackfeet Reservation I will give you a brief history on the treaties between the Blackfeet Tribe and the Federal Government. The next part of this testimony I will focus on the law enforcement entities that have are located or have a presence on the Blackfeet Reservation and finally, if time allows, I will give you a brief background on how the current or modern era of case law has severely and detrimentally affected the Blackfeet people and finally I will request your support of the proposed Amendments to the Homeland Security Act.

I. Blackfeet Tribe or Tribes a semi-sovereign entity.

A. History

In 1855 first Treaty between Federal Government and Blackfeet Tribe

1865&1868 two treaties drafted and signed by Blackfeet Tribe but not ratified by Congress

1896 Grinnell Treaty (Glacier National Park for 1.5 million to be paid at $150,000 per year for the next ten years)

B. Current Reservation

Total Miles on Reservation - 1.5 million acres

1) Trust land -
a) Blackfeet Tribe 311,324.98
b) Tribal Members 650,557.94

2) Fee land -970,173.98

3) Government Reserve - 8,291.58, i.e. irrigation projects, school reserve.

4) Miles of Border - 56 to 63 miles

II. Law Enforcement - three entities are Tribal law enforcement, Bureau of Indian Affairs, and Federal Bureau of Investigation.

A. Bureau of Indian Affairs -

1) Presence of patrol officers since February 2003.
2) Presence of criminal investigators since January 2002.

- Tribe retroceded 638 K. in Feb. 2003.
- Many problems exist between the BIA and Blackfeet government, but we are doing our best to solve our problems.

B. Federal Bureau of Investigation

1) Presence on Blackfeet Reservation for approximately 6 years.
2) Investigate major crimes
3) Prosecute Indians in Federal Court
4) Many crimes are not investigated.
5) Only in situations involving a very serious bodily-injury, death or drug offense are matters investigated.
6) Little communication between tribal law enforcement and this Bureau.
7) Anticipate contacting the Director of the FBI to discuss its role on the Reservation

C. Tribal Law Enforcement

1) 638 K. in 1996. This contract was voluntarily retroceded in Feb. 2003.
When Tribe operated this contact had employed almost double the number of

officers then the BIA as the Tribes salaries are not the same as the Federal government.
Even with the increase in law enforcement tribe was unable to cover outer lying areas.

2) Creation of Tribal Law Enforcement Department using COPs Grant funding.

a) With the COPs Grant have ability to cover outer lying areas and with the changes to the Homeland Security Act will have ability to station officers at remote locations.

b) The Blackfeet Tribe currently employs 14 officers under COPs Grant.

c) Anticipate hiring approximately 15 more officers.

d) Anticipates a MOA with Glacier County to cross-deputize offices.

e) Anticipate a MOA with Montana State Highway Patrol.

f) Anticipate a MOA with Bureau of Indian Affairs.

VII. Impact of last 26 years of Supreme Court Decisions.

For almost One Hundred and Forty years the United States Supreme Court, recognized the Tribes as Nations who the Federal Government has a special trust relationship with and as such State law was incompatible with federal laws and the United States Constitution.

This was the rule until 1978, Justice Rehnquist, writing for the majority penned **Oliphant v. Squamish Indian Tribe**. - In this case the court reasoned that because "Congress had never delegated authority to the

tribes to enforce criminal laws against non-Indians, there was no legal basis for this assertion of this authority by an Indian tribe."

Practically speaking this has created a mess. People living on the Reservation do not know who to turn to for help. Tribe should be the one that controls, not BIA, not FBI. This has not been tried.

The Tribe needs to be given back what the United States Supreme Court has taken. Non-Indians choose to live on the Blackfeet Reservation. They must be subject to its criminal laws in order for the Blackfeet Nation to keep the peace.

VIII. Tribal Courts.

Increased funding for the Tribal Courts is necessary.
Statistics

2001 - 6,725 Criminal Cases
2000 - 7,580 Criminal Cases

The Blackfeet Tribe has one prosecutor and two public defenders.

IX. CONCLUSION

This, I know is a quick summary.

As I stated in the beginning I am here on the behalf of the Blackfeet people requesting that you support the proposed amendments to the Homeland Security Act.

These Amendments are practical and they make sense. Who better to police the Blackfeet Reservation but the Blackfeet people.

For these reasons I respectfully request your support of the Amendments to the Homeland Security Act.

Thank you.

Statement of Tim Sanders

Emergency Operations Coordinator, Office of Emergency Management

Gila River Indian Community

On Senate Bill 578:

The Tribal Government Amendments to the Homeland Security Act

July 30, 2003 – 2:00p.m.

Senate Hart Building, Room 216

Good afternoon. On behalf of the Gila River Indian Community in Arizona, I would like to thank Chairman Campbell, Vice-Chairman Inouye and members of the Committee for allowing me to testify before you today. My name is Tim Sanders, and I manage the Community's Office of Emergency Management. I am pleased to be here today to discuss S. 578, the Tribal Government Amendments to the Homeland Security Act. This is an important first step to clarify the role of Tribal governments and universities in that Act. I would also like to share with you the Community's experience with homeland security and provide recommendations in areas that we believe the federal government can greatly improve and strengthen tribal emergency preparedness and response capabilities.

The Gila River Indian Community is compromised of approximately 18,000 Tribal members, of which nearly 14,000 reside on 600 square miles of land immediately south of the Phoenix metropolitan area – the largest Indian reservation in the Phoenix area. The Community was established by an Act of Congress in 1859, and formally organized by a tribal constitution in 1939. In recent years, we have been successful with a range of industrial, recreational, entertainment and retail activities. As a result, we have developed strong governmental and

administrative capabilities, including an Office of Emergency Management which was developed as a result of a series of natural disasters in 1997.

Importantly, the leadership of the Community has provided significant resources for assistance to Community members during times of emergencies. As a result, today, the Gila River Indian Community operates one of the most respected and successful emergency preparedness and response programs in Indian Country. Our Office of Emergency Management (OEM) has developed an emergency assistance administrative plan and an emergency operations plan. Within the Emergency Operations Center, OEM coordinates all aspects of emergency response and recovery on the reservation. The OEM Preparedness Division coordinates emergency plans, training and exercises for the Community. The OEM Mitigation Division identifies ways to reduce our vulnerabilities and risks for all hazards. In addition, the Community operates public safety agencies that are components of the Arizona state homeland security plan, including a hospital, a fire department, an emergency medical service, and a police department. Our current emergency preparedness and response capabilities demonstrate that tribes can and do play a critical role in homeland security.

S. 578: The Tribal Government Amendments to the Homeland Security Act

As an initial matter, our community supports S. 578. The bill makes important changes to the Homeland Security Act of 2002 to recognize the sovereignty of tribal governments and proposes to establish a government-to-government partnership. This bill would ensure that tribes are partners with the federal government in homeland security and have direct access to technical assistance, planning and preparedness resources, and information and intelligence, as provided by the Act. As Tribal Governments try to keep pace with the states in homeland security preparation, these resources are critical to help each tribe address security concerns in this new

era. We appreciate the Committee's efforts to clarify the role of tribes in the Homeland Security Act, and are pleased to be here today in support of S. 578.

The Broader Homeland Security Picture

However, in the broader context of the treatment and role of tribes in the arena of homeland security, this bill corrects only one of a number of significant omissions with respect to Indian tribes and homeland security.

Issues concerning the role of Indian tribes in emergency preparedness and response, and the preservation of our direct relationship with the federal government, are not new to us. These issues have arisen in the context of FEMA preparedness and recovery grants, and have come up again in the context of state homeland security grant funding.

The Gila River Indian Community has worked with FEMA in recent years to address the omission of a direct federal-tribal relationship in the Robert T. Stafford Disaster Relief and Emergency Assistance Act.[1] As you know, the Stafford Act provides FEMA with its powers and authorities with respect to major disasters and emergencies, and all of FEMA's powers and authorities have been transferred to the Department of Homeland Security. However, the Homeland Security Act did not amend the Stafford Act to include tribal governments as sovereign entities, but rather continued tribal identification as "local governments". Indeed, the definitions of States, local governments, and tribes in the Homeland Security Act were based on those in the Stafford Act. As a result, even with S. 578's corrections to the Homeland Security Act, tribal governments cannot directly request disaster declarations, and cannot enter into direct relationships with FEMA with respect to a majority of its programs. This situation means that

[1] P.L. 93-288 (1974), as amended.

even if a tribal community is devastated by a natural, technological, or intentional event, federal assistance would not reach the tribe if damages to the state as a whole do not rise to the level required for a Presidential declaration.

At Gila River, we have worked with FEMA to improve the federal-tribal grant process so that it more properly reflects the relationship between the federal government and Indian tribes. We have found FEMA receptive to our concerns that the Stafford Act lacks an Indian policy that recognizes this government-to-government relationship. As a result of our work, FEMA has established tribal liaisons in each of its regions. We have also worked with the National Congress of American Indians (NCAI) to develop an instrument to measure tribal emergency management programs. Modeled after the Local Capability Assessment for Readiness, the instrument was adapted through extensive work with the Gila River Indian Community that involved the Inter-Tribal Council of Arizona and FEMA. The resulting product is now available as software to help tribes measure, evaluate, and set goals and objectives for their own emergency management programs.

Finally, we are proud to have been an integral part of the development of a specific tribal emergency management training course. This course, the *Emergency Management Framework for Tribal Governments*, has been enormously successful and is offered to other tribes throughout the country twice a year at FEMA's Emergency Management Institute (EMI), in Emmitsburg, Maryland. We appreciate the work that EMI specialists have done to become educated about tribal issues and their work to make this course valuable for other tribes.

While we have made significant progress working directly with FEMA to address deficiencies in the current law, neither the Homeland Security Act nor S. 578 would correct the definitional problem with the Stafford Act itself. We are concerned that while S. 578 corrects

the Homeland Security Act, Congress is in danger of leaving a similar, more far-reaching mistake uncorrected in the Stafford Act.

Homeland Security Grant Funding and S. 1245

S. 578 also does not change the current position of Tribal governments with respect to state homeland security grant funding. In the discussion about S. 578, there has not been enough discussion about the fact that the Homeland Security Act does not address state and local homeland security preparedness funding, despite the fact that Congress has appropriated more than $5 billion in funds for such programs since the Act's passage.

The majority of these funds are distributed by the Department of Homeland Security's Office for Domestic Preparedness, or "ODP." This office distributes "first responder" money based primarily on a formula set forth in the USA PATRIOT Act of 2001, as clarified by language in subsequent appropriations bills.

Federal hospital and health system preparedness funds, including bioterrorism funds, are distributed by the Department of Health and Human Services according to formulas set forth in the Public Health Security and Bioterrorism Preparedness and Response Act of 2002[2], and in subsequent HHS guidelines.

Both the USA PATRIOT Act and the Bioterrorism Act contemplate distribution of money primarily to the states. The lion's share of money distributed by ODP goes to states, with the remainder distributed to high-threat, high-risk urban areas. Money distributed by HHS is distributed to the states, territories, and the three largest urban areas in the country. None of these programs direct grant funding to Tribes on a government-to-government basis. As a result,

[2] P.L. 107-188 (2002).

tribes must depend entirely on the states to provide homeland security funds. Obviously, this situation is undesirable for our Community and fails to acknowledge the government-to-government relationship between the federal government and tribes. S. 578 does not address Tribal homeland security preparedness funding.

There is an opportunity to correct this omission through a different Senate bill, S. 1245, which if enacted would consolidate many federal grant programs related to homeland security. Among other things, this bill would establish a new state homeland security grant program with new distribution formulas, replacing the formula set forth in the USA PATRIOT Act. However, S. 1245 contains no provisions addressing Tribal funding for homeland security preparedness. Therefore, even as we sit here discussing S. 578, Congress is in danger of making the same mistake it made with the Homeland Security Act and the Stafford Act by failing to take into consideration the homeland security funding needs of the Tribes. We urge the Committee to also focus on S. 1245 and other legislation concerning homeland security grant funding, so the mistake Congress made in the Homeland Security Act is not repeated. Any Homeland Security funding bill should recognize the sovereignty of Indian tribes and ensure that tribal governments have the resources they need to address homeland security preparedness needs.

Recommendations

Mr. Chairman, we do not come here today with our hands out, with no emergency preparedness and response capability. Instead, the Community has built a robust emergency management capability that has been recognized as a model by FEMA. We have also assisted FEMA in developing resources for tribal emergency management nationwide. On a more local level, the Community is conducting threat and needs assessments and is working with the State of Arizona to become a reporting jurisdiction separate from the counties in which it resides.

From the law enforcement perspective all of the Community police officers are tribal, state and federally certified which allows them to enforce respective tribal, state, and federal law within our jurisdiction. We are also working with the Bureau of Indian Affairs, the federal agencies in charge of wild land firefighting, and the State of Arizona to resolve issues relating to multi-jurisdictional wildfires. From this experience, we bring several recommendations for strengthening homeland security and emergency preparedness and response capabilities in Indian country.

1. First, we reiterate the need to make the same amendment to the Stafford Act as S. 578 would make to the Homeland Security Act. We have discussed the good working relationship we have developed with FEMA, but ultimately the agency's Indian policy is constrained by the underlying law. It simply makes sense to correct the Stafford Act now, when Congress is focused on correcting the Homeland Security Act.

2. Second, we believe that tribes should be given the option of being treated as a separate "reporting jurisdiction" in a state's homeland security plan, rather than having to submit its threat assessments and funding needs to those counties or municipalities within which the tribe's land is located. For example, the state of Arizona recognizes its fifteen counties as the sole reporting jurisdictions for purposes of its homeland security plan. Although the Gila River Indian Community is in the process of completing a risk assessment in accordance with the state's requirements, since the reservation stretches across two counties, the Community must artificially divide its threat and needs assessments between these two counties. In order to ensure that this does not happen, Congress should direct the DHS and HHS to require states to permit Indian tribes to be treated as separate reporting jurisdictions should they so choose. Creating this option for tribes would assure that tribes receive proper recognition as a sovereign nation for

purposes of the PATRIOT Act and the Bioterrorism Act. S. 578 is a possible vehicle to make this change, but Congress could also issue this directive in S. 1245 or in the appropriations bills for DHS and HHS.

3. Third, Congress must recognize that Tribes have unique homeland security and emergency preparedness response needs, and because of their historic lack of resources come to the table with less emergency preparedness infrastructure than a county or municipality of similar size. It is unfair to burden states with the additional requirement of building capability in Indian country when states without tribal communities bear no such burden. Therefore, states with tribal communities should receive a specific, additional amount of homeland security preparedness money set aside for Indian homeland security activities. Tribal governments should also have direct access to FEMA emergency management and planning assistance grants and other technical assistance.

4. Fourth, despite our relative disadvantage with respect to emergency management infrastructure, tribes must be given the opportunity to participate as full partners in local, regional, and statewide mutual aid relationships, and under the National Response Plan and National Incident Management System. As the experience of our Community has shown, with sufficient resources, technical assistance, and skill, tribes can create emergency management organizations that are capable of participating as full partners in local, regional, and statewide mutual aid and emergency management systems. Indeed, our Community has taken over the responsibilities of the Indian Health Service with respect to emergency medical care on the reservation, and is exploring ways to assume the responsibilities of the Bureau of Indian Affairs with respect to fire suppression activities in tribal wild land areas. Through similar arrangements, tribes can and should assume primary responsibility for these functions once they

develop sufficient capability, and become full partners in local, regional, and statewide emergency response. Accordingly, tribes should not be overlooked in the crafting of mutual aid programs, the National Response Plan, and the National Incident Management System.

5. Finally, we concur with our colleagues in the emergency management community that an "all-hazards" approach to emergency preparedness and response is the most cost efficient and effective way to improve the capabilities of all governments, including tribal governments. Improved capability to respond to wildfires and floods translates into improved capability to respond to acts of terrorism. Mutual aid relationships with our local, state, and federal partners will be utilized in times of disaster, whether caused by a natural or technological hazard or an intentional act. Tribal participation in the National Response Plan and the National Incident Management System will benefit the Communities when disaster strikes, and will benefit our neighbors when tribal resources can be called upon in times of need. Tribal medical surveillance capabilities will benefit all Americans when an outbreak of an infectious disease, whether it be naturally occurring such as tuberculosis or a bioterrorist event, is detected early and contained.

Conclusion

In conclusion, I would like to thank the Committee for the opportunity to testify before you today, and to describe to you some of the emergency preparedness and response activities going on right now in our Community and Indian country. We are encouraged by the recent attention this Committee and the Congress have given to tribal homeland security issues. We would like to offer any assistance the Community can provide to assist this Committee or others in addressing homeland security needs. Homeland security is an area where tribes can make significant contributions; however, it is vital to develop a funding and reporting structure that allows tribes to participate equally with other governmental entities for resources and needs. We

want to work in concert with the respective federal agencies to maximize the return on federal financial investment in making our lands, and all of America, safer. The bill you are considering today, S. 578, is an important first step in this collaborative effort and we support its passage. We look forward to working with you on this bill and on broader tribal homeland security goals. Thank you.

Richard P. Narcia
GOVERNOR

Mary V. Thomas
LIEUTENANT GOVERNOR

Gila River Indian Community
EXECUTIVE OFFICE OF THE GOVERNOR & LIEUTENANT GOVERNOR

July 17, 2003

Mr. Frank Navarette, Director
Arizona Division of Emergency Management
5636 E. McDowell Rd.
Phoenix, AZ 85008

Dear Mr. Navarette:

As the State of Arizona continues its efforts to assess statewide risks, threats, vulnerabilities, and needs, as required by the federal Office of Domestic Preparedness (ODP), I would like to bring to your attention an issue that will impact the Gila River Indian Community ("the Community") in this process.

As you aware, the Community is in the process of developing a risk assessment for the State of Arizona, but our job is complicated by the fact that the reservation stretches across two counties, Pinal and Maricopa. In this process the Community therefore must artificially divide its threat and needs assessments between these two jurisdictions, since it cannot report its assessments directly to the State. This division of our data and information does not provide the State with an accurate picture of the Community's role in homeland security and dilutes the Community's presence at the state level. In addition, because our assessment data loses its identity, our vulnerabilities and needs are not adequately communicated to the state and we do not receive equitable consideration for funding to meet these needs. Therefore, in an effort to provide a clear picture our needs, the Community should be treated as a separate "reporting jurisdiction" in the State of Arizona's homeland security plan, rather than having to consolidate its threat assessments and funding needs into those of the counties or municipalities within which it is located .

By way of background, the Community operates one of the most respected emergency preparedness and response programs in Indian Country through our Office of Emergency Management ("OEM") and plays a key role in homeland security on the reservation. OEM is charged with preparing and responding to all disasters, natural and manmade, and its role includes emergency planning and recovery, reducing vulnerabilities and risk for all hazards, and training of responders. Recognizing the ongoing efforts of the myriad number of agencies at the local, state and federal level that have mobilized to deter and prevent potential threats, so to has the Community invested time and resources in this process.

315 WEST CASA BLANCA ROAD • POST OFFICE BOX 97 • SACATON, ARIZONA 85247

Importantly, as the Community borders the Phoenix metropolitan area and is the neighbor to several large cities we have a vital role to ensure that our efforts are seamless and consistent with other regional planning efforts. To do so requires that sufficient data and resources are available. We believe that permitting the Community to be treated as a separate "reporting jurisdiction" will greatly facilitate this process.

Further, on a broader scope, Indian communities across the state comprise a significant geographical area that face many of the same risks, threats and needs as other communities, however, do so with less infrastructure and capacity to prepare and respond. With Indian communities located near major metropolitan areas, as well close to the U.S.-Mexico border, an accurate assessment would actually help Arizona demonstrate the need for additional funding from the U.S. Department of Homeland Security to the state.

I am hopeful that you will give consideration to the unique needs of the Community on this matter and my staff and I look forward to working you to build a better partnership. I have designated our Office of Emergency Management to be the point of contact for the Community on these matters and Mr. Tim Sanders will be available to assist you.

Sincerely,

Richard P. Narcia
Governor

WRITTEN STATEMENT

OF

JACOB VIARRIAL

GOVERNOR OF THE PUEBLO OF POJOAQUE,

STATE OF NEW MEXICO

IN SUPPORT OF SENATE BILL 578--

"TRIBAL GOVERNMENT AMENDMENTS

TO THE HOMELAND SECURITY ACT OF 2002"

***

OFFERED TO THE SENATE INDIAN AFFAIRS COMMITTEE

JULY 30, 2003

WASHINGTON, D.C.

Jul 26 2003 11:17PM POJOAQUE JUDICIAL 5054550102 p.2

Honorable Committee Members:

Senate Bill 578, "Tribal Government Amendments to the Homeland Security Act of 2002" is integral to homeland security efforts. In New Mexico, the Federal Government, the Los Alamos National Laboratory and the Pueblos should work together to ensure national safety.

The Pueblo of Pojoaque joins with other Pueblos in New Mexico in supporting S. 578 and in requesting an amendment to S. 578. The amendment will ensure that all the land within the Pueblos remains Indian country.

The Pueblo specifically requests that 18 U.S.C.. Section 1151 should be amended as follows:

> The term "Indian country," as used herein, means (a) all land, including all fee lands, within the exterior boundaries of any Indian reservation or Pueblo land grant under the jurisdiction of the United States, notwithstanding the issuance of any patenet, and including all rights-of-way therein, notwithstanding the ownership thereof, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The Pueblos of New Mexico have supported the national government since the Civil War. In 1864, Abraham Lincoln presented the Pueblos with silver-tipped canes symbolizing the Pueblos' sovereignty and his gratitude for supporting the Union during the Civil War. The U.S. issued land patents for all lands within the exterior boundaries of most Pueblos in 1864. The Pueblos have held title to their native lands under the Spanish, Mexican and American governments.

Today, terrorists have struck our country. A logical target for terrorists is the Los Alamos National Laboratory (LANL) located in northern New Mexico. LANL is operated for the National Nuclear Security Administration of the U.S. Department of Energy. Known as the birthplace of the atomic bomb, LANL is integral to national security.

Fortunately, the roads to and from Los Alamos cross through Santa Fe County and four northern New Mexico Pueblos. Over the roads travel the nuclear waste from LANL to the Waste Isolation Pilot Project (WIPP) in southern New Mexico.

Unfortunately, the roads surrounding the WIPP route are designated as federal, state, county, and tribal roads. Due to recent Supreme Court decisions in Strate v. A-1 Contractors, 520 U.S. 438 (1977) and Alaska v. Native Village of Venetie, 522 U.S. 520 (1998), the traditional homelands and roadways through the Pueblos have come under jurisdictional attack. This judicially-created maze of jurisdiction hinders the national effort to protect LANL. This maze of jurisdiction endangers the Pueblos.

The federal government and the Pueblos have exercised concurrent criminal jurisdiction within the Pueblos' exterior boundaries since 1913 when the U.S. Supreme Court declared that the Pueblos were "dependent Indian communities" and deserving of federal protection. United States v. Sandoval, 231 U.S. 28, 46. Together, the federal and tribal governments have protected all persons within the Pueblos' boundaries. The Pueblo of Pojoaque Tribal Police Department, the Pueblo of Tesuque Police Department, and the Bureau of Indian Affairs are the dominant law enforcement agencies in northern Santa Fe county. The Pueblo of Pojoaque Tribal Police has a $1.5 million budget. One million dollars are federal funds administered through a 638 contract, $500,000 are tribal funds. Due to the extensive law enforcement provided by the Pueblo and federal police, the County of Santa Fe has one deputy sheriff assigned for the county of Santa Fe north of the City of Santa Fe. The County provides the Tribal and federal police with commissions to enforce State laws. Yet, federal and tribal jurisdiction is under attack.

In 1924, Congress passed the Pueblo Lands Act. The Pueblo Lands Act extinguished title to approximately 13.7 percent of the lands within the Pueblo of Pojoaque. (Less land was extinguished for the majority of the New Mexico Pueblos.) These lands were patented to non-Indians who had settled on the lands before federal protection was extended to the Pueblos. The Pueblo Lands Act did not alter the Indian country status of all lands within the exterior boundaries of the Pueblo. However, a later Congressional act was to eventually place the Pueblos traditional Indian country status in jeopardy.

In 1971, Congress passed the Alaska Native Claims Settlement Act (ANCSA). ANCSA explicitly altered the relationship between the federal government and Alaskan tribes. The federal government extinguished federal set-aside of ANCSA lands and sought to limit federal superintendence over the ANCSA lands. ANCSA gave Alaska Natives title to 44 million acres and $962 million to settle aboriginal land claims by creating thirteen for-profit corporations. In Venetie, the United States Supreme Court held that the ANCSA tribes could no longer be considered "dependent Indian communities" under 18 U.S.C. §1151(b).

The Pueblo Lands Act has now been analogized to ANCSA. The State maintains that neither federal nor tribal laws apply to certain roads passing through the Pueblo. The Venetie decision has now been used to challenge federal and tribal jurisdiction within Pueblo lands. Since Venetie, the jurisdictional framework for the Pueblos has become confused. The resulting confusion could endanger the application of federal and tribal laws within the Pueblos' Indian country.

The Pueblo requests Congress to affirm their historical intent that all lands within the exterior boundaries of the Pueblos remain as Indian country. The proposed bill, S. 578, Section 13, should include an explicit statement that the Pueblos of New Mexico shall be considered Indian country.

Thank you for your consideration.

STATEMENT

OF

TERRY VIRDEN

DIRECTOR, BUREAU OF INDIAN AFFAIRS

DEPARTMENT OF THE INTERIOR

AT THE HEARING

BEFORE THE COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ON

S. 578, "TRIBAL GOVERNMENT AMENDMENTS

TO THE

HOMELAND SECURITY ACT OF 2002"

July 30, 2003

Good afternoon, Mr. Chairman and Members of the Committee. Thank you for the opportunity to present the views of the Department of the Interior on S. 578, a bill to amend the Homeland Security Act of 2002 to include Indian tribes among the entities consulted with respect to activities carried out by the Secretary of Homeland Security. The Department supports the concept of maximizing opportunities for the federal government to work with tribal governments in carrying out the activities needed to protect our nation's homeland. We do however, understand that the Department of Justice has concerns with the bill and we look forward to working with the Committee to ensure those concerns are addressed.

Indian country consists of 56 million acres of lands. Approximately 25 tribes are located on or near the international borders with Mexico and Canada, with additional tribes located on or near international waterways. Of particular note are the Tohono O'Odham Nation in southern Arizona and the St. Regis Mohawk Nation in upstate New York. Both reservations include lands that cross the international borders and, therefore, have tribal members on either side of the border. Border tribes are faced with attempted illegal border crossings and trafficking of illicit contraband. Tribal law enforcement work in tandem with federal, state, and local law enforcement agencies on helping combat these illegal activities.

Since September 11, 2001, our tribal law enforcement officers have been on alert and have worked with other law enforcement officers to protect our Canadian and Mexican borders as well as the waterways that are a part of Indian country. A principal responsibility of Homeland Security is domestic preparedness to prevent, respond to, and recover from an attack. Homeland Security for tribes includes law enforcement, security and emergency management personnel, key components tribal governments must provide in protecting its members, residents and visitors. There is a need to

have direct funding streams from the Department of Homeland Security for such activity.

Tribal law enforcement can be vital to protecting our borders and waterways. In certain areas of the country, tribal emergency management may be the only agency able to respond to a terrorist threat or attack. Tribal public health can provide valuable expertise in confronting an outbreak of a deadly disease, and tribal members may be the only citizens within miles to detect a terrorist incursion.

S. 578 is an appropriate step in recognizing the importance of American Indians in protecting our homeland. Establishing the appropriate role for the tribes with the fifty states will facilitate protection of critical infrastructure and key assets in Indian Country and bring to bear the leadership, expertise, and dedication of Indian people. We are concerned however, that Alaska Native villages and organizations are not included in the definition of Indian tribe. Alaska Native villages and organizations have been included in the definition of Indian tribe under other laws including the Indian Self Determination and Education Assistance Act of 1975 (25 U.S.C. 450 *et seq.*).

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

TESTIMONY BY THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION IN SUPPORT OF S. 578 THE TRIBAL GOVERNMENT AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

PRESENTED BY
ALVIN WINDY BOY, SR., CHAIRMAN
CHIPPEWA CREE TRIBE

BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

JULY 30, 2003

Good Morning, my name is Alvin Windy Boy, Sr., I serve as the Chairman of the Chippewa Cree Tribe on the Rocky Boy's Reservation. I am active in advocacy for Indian issues especially when the issue impacts our government-to-government relationship with the United States of American and our right to tribal self-determination and self-governance on our reservations. I wish to thank the Honorable Ben Nighthorse Campbell, Chairman of the Senate Committee on Indian Affairs and the Honorable Daniel Inouye, Vice-Chairman of the Committee and Committee members for allowing me to speak in support of this important bill to Indian Country, the Rocky Mountain Region tribes and to the United States of America.

Today, I am here to support the passage of S. 578, which allows tribal governments to actively participate in our national strategy to combat terrorism and protect our tribal members and tribal homelands. If Indian Tribes are not part of the national strategy, it would leave a huge void in our national security plan. We are very patriotic people. Indian veterans have answered the call in every war this Nation has fought. They have paid the ultimate price for freedom and now our governments must be involved in retaining that freedom. The freedom to accomplish the national objectives of the homeland security plans such as border security, the protection of critical infrastructure on Indian lands, integrated law enforcement, and emergency response and medical capacity planning and implementation.

In support of S. 578, I would like to share with the Committee members some experiences my tribe has had with Border Security, Tribal Court Jurisdiction over our homelands and the need to access homeland security funding to enhance our ability as first responders and for the protection of our infrastructure.

BORDER SECURITY

Last summer, my Tribe had a horrifying experience with an across the border abduction of tribal children into Canada. Our inability to do anything was the most frustrating experience of it all. Upon learning that our tribal children were abducted and taken across the border to Canada, approximately fifty (50) miles

from the reservation in extreme north central Montana, we contacted all the federal and state law enforcement agencies for assistance. No one could help us. It was outside the jurisdiction of every federal and state entity. The Federal Bureau of Investigation did not have jurisdiction because of the international border crossing. The State of Montana could not help us because it was out of their purview. Finally, we contacted the State Department in Washington, D.C. and they referred us to the Child Abduction Bureau. They gave us sound advice but could not do anything to help us get our tribal children back into the United States and onto our reservation where they lived. Every governmental agency we spoke with said that because we are an Indian tribe they could not help us and did not understand tribal jurisdiction. Basically, we were on our own.

As a Self-Governance tribe, we are used to taking charge and performing federal functions to the best ability that we can while maximizing the resources we have access to. With the limited resources available to us, we charged the abductor in tribal court for abduction or kidnapping which is a Class III offense in our Tribal Law and Order Code punishable for up to 6 months incarceration and a $500 fine and immediately issued an arrest warrant. We knew that service of process for the arrest warrant across the border was going to be a big problem because both state and federal authorities could not help us. This is as far as we could go. Everything came to a standstill.

Finally, after weeks of trying to get assistance and access governmental resources to help us locate and return our kids, we contacted a Barrister in the Canadian Justice System. The Tribe had to spend approximately $15,000-20,000 dollars to hire a Canadian attorney to represent us in the Canadian Judicial System and relocate our tribal children back into the United States. After several months of agonizing hearings and countless phone calls we were successful in getting our tribal children back into the United States and home on our reservation. This is an experience I will never forget and have vowed to not have to go through unfortunate experience again. The helplessness and lack of coordinated resources is a shame in this day and age. We cannot allow this type of void in jurisdiction to carry over into the fight against terrorism.

As you can see, our ability to access direct governmental resources and to do so on a government-to-government basis in order to provide better border security for our tribal homelands is imperative. Today, timing is critical. We must have the ability to immediately assess and evaluate any situation we are confronted with, especially when the protection of our homelands and members are at issue. All Indian tribes and especially the tribes bordering international boundaries need to be part of the comprehensive maintenance of the homeland security of the United States. We already have the tribal laws, tribal court system, law enforcement personnel (albeit limited), and governmental infrastructure. What we need is the ability to work together and coordinate with our federal counterparts and have access to the various resources available to all agencies

involved with law enforcement and border security.

It is my hope that S. 578 will assist us in strengthening our ability to deal with those who intrude on our lands for the purposes of committing terrorist actions. Without S. 578, there is a void and we are limited in our ability to protect our homelands, our resources and our people from these relatively new threats to our health, safety and welfare.

TRIBAL COURT JURISDICTION

We have operated all aspects of our tribal court system for many years now. Under our Self-Governance compact with the United States, we carry out all judicial and law enforcement functions on our reservation. It works for us. We know our people and having the ability and resources to carry out these fundamental governmental functions is critical to our existence. We support Section 13 of the Act, which supports our ability to exercise jurisdiction over any terrorist entering our lands. Closing the current jurisdictional gaps is imperative to protecting our homelands. We currently exercise as much jurisdiction as the law allows us over our lands today but there are jurisdictional gaps that cannot be allowed to continue unless we want Indian reservations to become the points of entry and activity for terrorist cells. Section 13 will allow us to close the jurisdictional gap and be more responsive everyone, tribal and non-tribal, within our jurisdiction in terms of law enforcement and judicial capabilities. We realize

it is limited to the purposes of the Act and should not be viewed as an across the board expansion of tribal jurisdiction.

Currently, if we have a criminal violation by a non-Indian within our reservation, we turn the case over to the federal authorities. Our local F.B.I. agents are good and we have a great working relationship with them. But they do not have the time and resources to cover what they already have on their plates, how are they going to help us deal with these new threats? If our law enforcement and judicial systems had more of a direct role we could streamline a lot of our problems and cover more ground together. We have unfortunately a number of violent crimes on our reservation lately. The federal authorities have been extremely helpful with these kinds of cases but again they are overburdened. They cover several reservations in our area, as well as other federal cases off the reservation as well. We can help off set their enormous load and work together in a more direct capacity than we currently do. We work together now but we can only perform law enforcement and judicial duties in a limited capacity. Section 13 will allow us to work together in a true government-to-government relationship and jointly utilize our resources to get the job done expeditiously and more thoroughly.

Unfortunately, several extremist – and frankly racist - groups have taken up the cause of tribal jurisdiction and put their "spin" on what Section 13 will do to non-Indians residing on or frequenting Indian reservations. They allege that Section

13 will overturn U.S. Supreme Court decisions and result in total chaos in Indian Country. All I can say is that we need to work together to accomplish the same goals of protecting our people and our resources. Unless you have committed some sort of terrorist, criminal act as defined in the Homeland Security Act of 2002, within our jurisdictional boundaries, you have nothing to fear. Every American should be supporting this effort to work together to make the reservation environment as safe as the off-reservation environment. The effort to combat terrorism cannot be a game plan full of loopholes and voids that begin at the reservation boundaries. The pooling of federal resources and personnel with our own efforts to improve the health, safety and welfare of reservation residents both Indian and non-Indian is an admiral and respectable goal for us all. We strongly support the inclusion of Section 13 in our efforts to provide for the active participation of Tribal governments, law enforcement and tribal judiciary in our national strategy to combat terrorism and protect all citizens and our valuable homelands.

ACCESS TO HOMELAND SECURITY PROGRAMS

In Montana, Tribal access to homeland security opportunities and resources has been limited. Much of the planning and the resources are allocated to the State of Montana. Tribes need to be included in the development of Homeland Security preparedness plans. Tribal input would bring to the table specific issues that may have national impact such as:

1. Bovine spongiform encephalopathy (BSE) or commonly called "mad cow disease" – the spread of BSE – obviously including any bio-terrorism in this regard by terrorists - could literally decimate the Montana Indian cattle industry. What is the being done to insure the integrity of Montana Indian cattle operations? Because many Montana Indian cattle operations are in isolated areas near the US-Canadian border, there is real concern for safeguarding the cattle from any infection of BSE through terrorist actions. Montana Tribes are challenged with economic development and the cattle industry is a primary source of income. The challenges of a multi year drought and decreasing beef prices have left the Montana Indian cattle operations struggling for survival. A bioterrorist infection of BSE would completely destroy the Montana Indian cattle industry and have a significant negative impact upon the total economy of Montana and that of the US.

2. Transporting and sale of methamphetamines by foreign nationals – Montana Tribes and other Tribes that border Canada and Mexico have recognized challenges in the transport and sale of illegal drugs on and near their reservations. This problem is multi-fold but to effectively address law enforcement, Montana Tribes need resources to recruit and train our law enforcement personnel. As more than a health issue, Montana Tribes need the resources to identify and develop innovative programs towards drug prevention.

3. Tribes are "at-risk" communities; American Indian/Alaska Native mortality rates for many diseases are 200-300 times that of All-US races rates. This is concerning as Tribes

are susceptible to bioterrorism with diseases like smallpox. With the added challenge of a healthcare infrastructure system made vulnerable through years of inadequate funding, Tribes are in a precarious position and are concerned for our communities.

EMERGENCY RESPONSE AND MEDICAL PLANNING AND IMPLEMENTATION

Emergency response and medical planning and implementation are absolutely critical components in the development of tactical and strategic homeland security plans. Not having the ability to be full partners in the development and implementation of these critical plans is particularly offensive to Indian Country. The citizens of Montana both Indian and non-Indian have a particular concern with emergency response and medical planning in the event of a catastrophic terrorist event. It is well known to the citizens of Montana that we have a great arsenal of Inter-Continental Ballistic Missiles strategically placed around our expansive State. Indian people share the same risks and concerns as the general population in case of a terrorist attack at these sites. We also share the same support for our military people and armed forces who protect our great country. We understand the need to strategically place ICBM's in our State and near our reservations. Having said that, we as most citizens of the United States wholeheartedly support the protection of our great country and of the freedom we enjoy, knowing that we have at great risk the potential to be exposed to massive radiation in the event of a tragic terrorist attack on our State. We do ask that we be part of any effort to develop and improve our emergency response capability

and access to medical planning and implementation sources.

The new Homeland Security Department created last year has a multi-faceted and complex mission – promoting homeland security, preventing domestic terrorist attacks, reducing the vulnerability of Americans and our infrastructure, and mitigating the effects of terrorist acts should they take place – I am here today to support S. 578 and the effort to be aided by every resource at our collective disposal, including those of Indian tribes and our law enforcement agencies, our medical facilities and our tribal personnel. Together we can truly ensure our continued survival and the protection of the great freedoms we enjoy in this country and uphold the respect our great nations have jointly strived and fought for.

In closing, Chairman Campbell, Vice-Chairman Inouye and Committee members, the Chippewa Cree Tribe wholeheartedly supports the passage of S. 578 to amend the Homeland Security Act of 2002, to provide direct tribal participation in Homeland Security activities. The direct participation of Indian Tribes is critical and vital to the implementation of policies and programs of the Department of Homeland Security. The United States must deal with Indian Country on a true government-to-government basis and ensure the inclusion of tribal governments in the national homeland security strategy. The passage of S. 578 will enable tribes to enhance emergency response capabilities to address the new reality of terrorism, and allow tribes to develop and maintain programs related to the campaign against terrorism. Thank you.

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