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A Collection of Summaries of 13 Task Force Reports to The American Indian Policy Review Commission, 1976

Canada

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The American Indian Policy Review Commission, 1976

by

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A NOTE ON THE FORMATION AND DIRECTIONS TO THE AMERICAN INDIAN POLICY REVIEW COMMISSION

The American Indian Policy Review Commission (A.I.P.R.C.) was given three broad areas of responsibility from which all Task Force work was to be done and to which all work was accountable. These three areas were:

1. "A review of the policies, practices and structure of the federal agencies charged with protecting Indian resources and providing services to Indians: PROVIDED, that such review shall include a management study of the Bureau of Indian Affairs utilizing experts from the public and private sector"; (Sec. 2; Para. 2)

2. "An exploration of the feasibility of alternative elective bodies which could fully represent Indians at the national level of government to provide Indians with maximum participation in policy formation and programme development." (Sec. 2; Para. 5)

3. "An examination of the statutes and procedures for granting federal recognition and extending services to Indian communities and individuals." (Sec. 2; Para. 3)

From this set of directions eleven Task Forces set about a comprehensive analysis of the United States Government-Indian relationship in all of its aspects. The three directions above should be kept in mind as the synopses of the various Task Force documents and documents of Special Study Teams are reviewed.

AMERICAN INDIAN POLICY REVIEW COMMISSION REPORTS

Task Force #1 - Trust Responsibilities and the Federal Indian Relationship; including Treaty Review

Task Force #2 - Tribal Government

Task Force #3 - Federal Administration and Structure of Indian Affairs

Task Force #4 - Federal, State, and Tribal Jurisdiction

Task Force #5 - Indian Education

Task Force #6 - Indian Health

Task Force #7 - Reservation and Resource Development and Protection

Task Force #8 - Urban and Rural Non-Reservation Indians

Task Force #9 - Indian Law Revision, Consolidation and Codification

Task Force #10 - Terminated and Non-Federally Recognized Indians

Task Force #11 - Alcohol and Drug Abuse

Other Reports

Bureau of Indian Affairs Management Study

Special Joint Task Force Report on Alaskan Native Issues

TASK FORCE I

TRUST RESPONSIBILITIES AND THE FEDERAL - INDIAN RELATIONSHIP; INCLUDING TREATY REVIEW

INTRODUCTION

Task Force I involved "... a study and analysis of the Constitution, treaties, statutes, juridical interpretations and Executive Orders, to determine the attributes of the unique relationships between the federal government and Indian tribes and the land and other resources they possess." (p. 13)

The history of legal concepts and policy applications in the U.S. shows a consistent abandonment or abuse of law in the executive, legislative and judicial systems. Good actions by one arm of government are often undone by another arm of government. This is especially true in recent times.

From the start of New World exploration it was agreed that "discovery" permitted just claim to native American lands. This was based on an agreement that the native peoples had appropriated too much land to themselves, exceeding territorial needs. When this idea was advanced and confirmed in the developing LAW OF NATIONS, under which the U.S. came into being, a corollary or necessary RIGHT OF NATIVES was recognized which placed strict limitations on claims of "discovery." This corollary stated that NATIVE PEOPLE BE ACCORDED THEIR RIGHT TO LIVE ON THE PLANET, POSSESSING A "SUFFICIENCY OF LAND" TO PROVIDE FOR ALL PRESENT AND FUTURE NEEDS. Under internationally observed legal principles, the future of the native nations was assured; there were limits beyond which neither the U.S. nor the natives could proceed. Essentially, a nation could not dispossess or alienate territories essential to its own security, survival, perpetuation and well-being.

In 1976, however, we find that the greatest need of native people is that of land. In its history, the U.S. government has never made available economic or other resources necessary to meet even the basic needs of Indian persons, families, communities or the national needs of Indian peoples. Rarely have tribes been enabled or allowed to secure the benefits or potential gains available from lands and resource bases still held by or retained in collective Indian ownership. Control of native resources, and thus the future, has always been in the hands of other people.

IDENTIFICATION OF PROBLEMS AND ISSUES:

The issue of SOVEREIGNTY, including a definitional analysis of the character and status of Indian nations, was central to many of the concerns and problems examined by Task Force I. Matters such as treaties, trust relations, trust responsibilities and the nature of federal Government-Indian relations are all influenced and formed by the attributes of sovereignty.

National sovereignty derives from a people being joined in social and political compact; it encompasses their obligations and duties to themselves and others. These obligations and duties give rise to rights by which their responsibilities are met. Territorial and self-government rights are principal among those, as are governing of relationships with other people and sovereign entities. The major problem with the Indian nations is the breakdown in national character (nationhood) caused by erroneous and repeated exercise of unjust powers.

Without modification in relations by treaties or other means, Indian nations were acknowledged as having similar character and the same rights as the U.S. in founding its republic. The standards of law and principles of governmental and territorial rights confirmed to the tribes prior to and at the time of the establishment of the U.S., when seen in the context of the deterioration in these standards and rights, delineate the issues and problems of today. The successful claims by Indian nations against the U.S. for wrongful actions provide evidence of both deliberate and unintentional errors. It can also be shown that many long-standing practices and actions of doubtful validity gave rise to erroneous doctrines of national law for oppressive governing of Indian people and property. These doctrines have been sustained by precedents and repetition of unjust actions and faulty judgements which must now be corrected.

TRIBAL SOVEREIGNTY AND TERRITORIAL RIGHTS

Inherently, tribes have self-government and determination rights. They should not be forced to protect by force or power those qualities of nationhood vested in them by right. These rights evolved from the existence of obligations and duties of their nations to themselves and their peoples.

Territorial rights were associated with the same obligations and duties. Governmental rights are framed by accepted definitions; territorial rights were naturally limited by physical dimensions or finite boundaries, and founded on immemorial prescription and use or possession. While just claims for acquiring tribal lands were validated by the DOCTRINE OF DISCOVERY, that doctrine also mandated that Indians be maintained with sufficiency of land to satisfy their duties and obligations to themselves, including their future development, security and well-being.

Among the sovereign governmental and territorial rights and obligations recognized pre and post Revolution were the following, which today constitute issues:

i) ADEQUACY OF LAND BASE: Tribes had the right to convey or not convey lands to other nations. Treaties were the recognized form of conveyances and boundaries. Land conveyances, absent decrees by conquest, were contingent upon mutual consent. Basic limitation against alienation was at that point where the tribe would not have sufficient land to accommodate present and future needs of its peoples. Individual allotting of reservations took its first form in treaties, the 1887 General Allotment Act and Surplus Indian Bands Acts, all of which are subject to questions of validity and legitimacy in exercise of Federal powers. Loss of lands to tribes and the landless state of some tribes are among the most serious problems existing among Indian people today.

ii) WATER RIGHTS: Legal confirmation of water rights of tribes was well established prior to the U.S. Constitution. Spanish and English authorities affirmatively recognized Indian water rights and declared their "inalienable" character. Failure to accommodate Indian claims or to deliver water represents the government's greatest single failure to meet its obligations or to follow paramount law.

iii) HUNTING AND FISHING RIGHTS: These issues have been needlessly complicated by inter-racial conflicts, inter-governmental contests in supremacy claims resulting in misapplied case law developments and public miseducation. Hunting and fishing problems become incidental to the resolution of other issues such as jursidictional questions and territorial relationships. Commercial fishing issues are separate and distinct problems closely related to the national rights of tribes. As with water and certain forestry issues, commercial fisheries are subject to long estabished principles of "imprescriptability" or "inalienability" as part of the wealth or economic right of tribes, appurtenant to territorial rights. When ceding a portion of this right or admitting others to the resource, priority right in timing and harvest quantity prevails with first possessors. The crucial problem is the threat to Indian rights being subordinated to other interests.

iv) TIDELANDS AND SHORELINE: There are many situations where tide and shoreline issues are getting increased attention along with related questions of lake ownership and waterway boundaries. There is a problem in that these issues have been poorly litigated with contradictory results from one state or jurisdiction to another. Court decisions have been indecisive in settling the issues with finality, partially due to the character of litigants and questions of absence of "indispensable parties." The U.S. has shown dereliction in pursuing these issues in behalf of tribal claimants to rights, or has been itself primary transgresser.

v) BOUNDARIES AND SURVEYS: Indian land title questions have been aggravated by Federal government failure to maintain adequate land and boundary survey staff to determine exterior reservation boundaries and allotment lines. There is an issue of erroneous surveys which have diminished reservation lands and added to the national public domain. This issue needs clear public policy action for just resolution. Finally, there is a backlog in survey activities which has an adverse impact on reservations -- contributing to trespass, wrongful property use, property theft, stifled land use and inability to plan -- depriving Indian land owners of the beneficial use of their resources and property.

vi) TERRITORIAL JURISDICTION: The problems of jurisdiction within reservations affect many other issues when jurisdictional disputes become acute and intense. The general disposition of jurisdiction matters today is very different from the concepts of jurisdiction which preceded them. Originally, few variances existed from the proposition that the tribe's territorial domain in the exterior boundaries of the reservation were such that the tribe possessed jursidiction over all properties, orders of people and manners of activity. Unless provided by treaty or other valid measure, tribes were vested with the right to determine who was admitted and whether or not aliens could possess or own lands or permanent properties in their domain boundaries. Those admitted to a sovereign territory were subject to all jurisdictional laws in the territory. Early laws and treaties give no evidence of any other rule nor do they sanction any wholesale exceptions.

The first federal laws under the Constitution did not pretend jurisdiction over tribal members in Indian territory or over the tribal nations themselves. As the U.S. added new territory to its general domain, law provided that Indian lands remain excluded from the new territory and states until tribes consented to being included in federal territories and states. All individual and tribal Indian rights were to remain unimpaired until they might be modified or extinguished by treaty. These laws still remain on the statute books.

The issue of INDIAN TITLE constitutes the second major area of concern. The particular character of the lands owned by Indians and the character of the title pose many questions and provide indefinite answers. Currently, the debate is whether Indian lands are considered "public lands," "private lands" or "federal lands." Any definitive analysis of the issue of the trust relationship must involve examination of the implications of title questions, or the contradictory decisions revolving around the title issue. These contradictions have caused great problems.

TAXATION AND TAX IMMUNITIES:

The maxim that "the power to tax is the power to destroy" is obvious when the Indian situation is examined. The general idea that Indians drain the public dole while not contributing is false; they may be the most overtaxed peoples in the country. Battles between State and tribal governments over taxation issues are a major problem needing Congressional attention.

RIGHTS TO SECURITY AND ECONOMIC INDEPENDENCE:

In forming relations with the tribes, their national character and attributes of sovereignty were formally recognized by the U.S.. Even the removal of the treaties of the Five Civilized Tribes acknowledged sovereign rights through resting absolute title to Indian territory with the tribal nations. Among these rights was the right of economic independence, a viable right with land bases originally secured to them. Treaty negotiations and general provisions signified these purposes and promises.

Their right to security, freedom from external obstruction of their national preservation, perfection and happiness remained intact, assured for the future by the treaties. Transgressions against these rights are relevant to the assumption of future obligations by national commitment, since no lessening of obligation to satisfy just needs of tribal populations by arbitrary actions diminishing Indian capacity to meet responsibilities exists.

INDIAN RIGHTS OF TRADE AND COMMERCE:

Tribes are inherently invested with certain rights of commerce and self-regulated trade as confirmed by the treaties. The contemplated rights in the Constitution and in the treaties have become a dead letter as matters of sovereign right, untaxed rights, or viable economic assets.

The issue of the TRUST RELATIONSHIP constitutes the third major area of concern. The Task Force study indicates that all three major branches of the Federal government have failed to give definitive form or statement to the specific character and force of the trust relationship. Considerable confusion still exists in discussions of the relationship's applications and adjudging its genuine source(s).

The courts have given contradictory opinions as to the origins of the trust relationship. One court ruled that the first congress established the relationship in the first Federal Indian Trade and Intercourse Act of 1790. A second court of the same level stated that Trust was founded in fiction, evolving from Chief Justice Marshall's 1830's decisions, and attracted substance when being traded between Congress and the courts as a governing legal doctrine. Both views are partially sustained by historical analysis.

INDIANS AS DEPENDENT DOMESTIC NATIONS

In Marshall's opinions, tribes were "domestic nations." This idea incorporates the notions and conditions of the trust relationship. This relationship was said to have been established between separate and distinct national entities, consisting of sovereign people possessed of territorial domains. Thus, one nation might subject itself to the protection of another, or become dependent on the other, without surrendering its own sovereignty: its internal sovereignty stays intact. Any diminution of external sovereignty in such an arrangement would be the just price for the grant of protection. The degree of diminution, however, over external sovereignty would be controlled by formalizing instruments of protectorate and trusteeship, i.e., treaty.

The legal authorities used by Marshall in the 1830's for this opinion had published their ideas in 1760, and these ideas were in general use prior to 1776. Moreover, the early Indian Trade and Intercourse Acts were held to have imposed trust by affecting the conditions of trust while subjecting tribes to dispose of lands and properties possessed by them. These acts prohibited any person or state from acquiring title to Indian lands except by public treaty undertaken and secured by the U.S.. The acts applied to all Indians by indirection and had sole force over non-Indians. These acts of their own force did not divest tribes of their attributes of "independent sovereignty," nor render tribes outside of the original U.S. as being "domestic dependent nations." The basic question is whether or not the organic and fundamental laws of the U.S. established a trust relationship. In the strict sense, the conditions of the Trade and Intercourse Acts prevailed under the terms of the Constitution, by the very assertion of incipient "ultimate domain" over the territories of Indian nations. The non-intercourse act was punitive and provided sanctions against the exercise of authority and the undertaking of certain transactions which were disallowed under the constitutional sovereignty and domain of the U.S.. An examination of the question of Indian title to land throws light on the "dominion issue" for showing that the essential elements of the trust relationship were effectually incorporated in the Constitution.

INDIANS AS INCOMPETENTS AND AS WARDS UNDER THE CONSTITUTION

Marshall stated that the Indian "relation to the United States resembles that of a ward to his guardian." This is the fiction which was referred to above. Government officials who disregarded Marshall's rulings in the 1830's used this principle for policy to cut through tribal sovereignty and to develop a "wardship status." Although this principle was not fully applied until post 1871, the principle had a solid impact in political decision. Several Indian Affairs Commissioners used it to declare tribal territories as colonies of the U.S., others gave it different oppressive meanings. The concept did, however, give rise to references to trusteeship, but at the same time increased control over Indian people and their lands.

The treaties restricted adverse exercise of legislative and administrative power against Indians, but they also acted to deliver more Indian property to the federal government for direct control and management. The clearest expression of the trust responsibility during the treaty era was in regard to Indian funds. These funds were held in trust by the U.S., subject to different forms of control and use. While Indian lands were subject to explicit and express trust status, this came at a later time and in the context of a ward concept of the most negative kind.

Long before the 1887 Allotment Act, the process of allotting tribal lands to Indian individuals or families was authorized in the treaties. Later, with termination, allotment became mixed with issues of incompetency, taxability and citizenship. Incompetency became a way to create individual trusts, to hold real property and to establish taxability of these lands after expiration of the trust periods.

One doctrine flowing from trusteeship was that of the "plenary power of Congress." The implication was that this power was not exercised in the first 100 years of relations. This doctrine was used to gain access to Indian mineral and farmlands. The doctrine is declared to arise from the trusteeship: "with the obligation arises the power to carry out the duties imposed by the responsibility." This position was used in the second century of the United States to override treaty provisions and to abrogate some altogether.

ESTABLISHMENT AND TERMINATION OF TRUST RELATIONSHIPS

Several forms of trusteeship were established in the colonial period. In some instances, non-Indians were the trustees, while in others Indian governments were the trustees. Enforceable standards and systems for enforcement were set forth in law. Some trustee and protectorate, as well as tributory state, relationships were also maintained by treaties. Assertion of the ultimate federal title to Indian lands influenced the development of the trusteeship and gave the rationale to the wardship concept. The federal government ultimately asserted over- riding authority and power in claim of its "trust responsibilities," even where absolute title had been conveyed to the tribes. This was used to abrogate treaties, to reconstitute tribal governments and to control Indian properties. The termination policy created new problems and questions regarding the trust relationship and treaty rights. The Alaska Native Claims Settlement Act has only added to the questions of trusteeship and status relationships. Where treaties or tribal rights survived termination legislation, there are questions on the nature of any trust status. Termination policy was little more than the malformed, self-serving philosophy of non-Indian interests.

A fourth issue involves the Indians under the Constitution. The Commerce Clause of the Constitution has often been regarded as the source of Congressional power over Indian peoples and property. History, however, does not disclose any early claim of direct Congressional authority over either Indians or their property. Commerce and trade are central to the sovereign rights of a country and are directly related to national wealth, security and preservation. The Indian Trade Acts were to control non-Indians, not Indians. The federal land acquisitions from the tribes sought to secure only trade agreements by treaty. Indian trade was neither regulated nor legislated by Congress. Major federal expenditures were used to monopolize potentially lucrative Indian trade, but the value of the monopoly was not realized as non-Indians refused to be bound by the Trade and Intercourse acts. The Constitutional reference to "Indians not taxed" for Congressional representation had distinct application to Indians in the original states and territories.

The fifth issue concerns Indians and state and federal relations. For most of U.S. history, Indian country was technically excepted out of, excepted from being within, state and western territories, until the tribes agreed otherwise by treaty. Federal judicial districts were also outside of Indian country. The Statehood Enabling Acts and constitutions forever disclaimed jurisdiction over the tribes and their lands. This had the effect of the states not giving any affirmative recognition of positive standing of tribal rights in their statutes or legislation. Even where tribes forced states to recognize them in the courts, the states still failed to acknowledge tribal existence. Federal funds which rely on state distribution channels and approval procedures have probably aggravated the situation. Restoration of the tri-partite system of positive relationships is now essential.

The final issue concerns U.S. treaties with the Indian nations. The principles in treaty making were anticipated to be an integral part of formalizing and governing relationships of the U.S. and tribes and were observed as a distinctive feature of the moral foundations and just ideals of the new U.S. nation. These bilateral relationships acknowledged the national character and rights of the tribes while pursuing relations based on a mutuality of interests. In stating that one nation does not surrender independence by joining another and coming under its protection, Marshall repeated the maxim "to the more powerful is given more honour and to the weaker, more assistance." The U.S. secured most lands from the tribes by legitimate purchase; the accommodation made by the tribes, however, to the needs of colonial settlement and expansion must be noted. Indian land cessions and trade contributed substantially to the development of U.S. wealth. Loans of Indian monies to several original states, businesses and corporations were in character with relations between nations. This assertion by tribes was probably more in tune with the "Law of Nations" than the actions of the other interests involved.

DISCUSSION OF FORMATIVE RECOMMENDATIONS

a) GENERAL POLICY PRINCIPLES AND OBJECTIVES

In the past, U.S. public policy towards the tribes and their peoples has recognized few controlling imperatives or principles and has seldom worked towards the constructive advancement of Indian communities in forms consistent with Indian will and natural rights to a secure future.

A number of priorities or issues have emerged in the form of principles or objectives as follows:

1. Independent Societal and Secure Political Existence

2. Complete Economic Independence and Development Assistance

3. Promise of Permanency in the Life of America

4. Qualitative Reform in Governmental Systems and Relations

5. Protection of Basic Indian National and Territorial Rights.

b) TREATY RELATIONS AND TRUST RESPONSIBILITIES

The treaties were used mainly to acquire Indian lands; however, they also framed or modified relations between the contracting nations. Some treaty series reflected contemporaneous national policy and broader national purpose and commitments. Often these found clearer expression in the negotiation process, including related Congressional or Executive instructions, than in the treaties themselves.

i) RIGHTS TO DECENT HEALTH, EDUCATION AND HOUSING - The assumption of the obligation of the U.S. to sustain or fulfil rights of Indians to decent health, education and housing can be found in the treaties or treaty-making process and the establishment of the trusteeship. While this is truer with health and education than with housing, it can be shown that treaty negotiations promised the means or supplies for individual and family housing in the course of transaction treaties after 1850. The promise itself rarely appears in the treaties per se, but it was constantly used as an inducement to lure Indians to the reservations.

Caring for health and providing education for self-fulfillment opportunities are among the paramount obligations a society owes itself and its nation. As far as possible, there is a duty to afford these benefits to the people as part of both national and membership rights. While there are frequent references to education provisions, and fewer to health services, in explicit terms many treaties mention these rights, and implicity these provisions flow from the relationships formed.

Treaties of protection and dependence didn't divest the tribes of their national character or diminish paramount obligations for health care and educational opportunities. To the extent that tribal capacities were diminished for meeting these obligations, immediately or subsequently, the basic responsibility in some measure shifts to or is shared by the U.S.. The more extensive the reduction of tribal lands and resource base, the more reduced the tribe's capacity, and the more reliant on the U.S.

ii) UNRATIFIED TREATIES - It can be supported that a number of U.S. treaties made but not ratified by the Senate should be accorded the full respect of ratified treaties. If this is not the case, there is a duty to act towards restoring the conditions as closely as possible to their original state or standing which was vested in the U.S.

c) REFORM IN GOVERNMENTAL SYSTEMS AND RELATIONS

The main issue in the formulation of new policy proposals is the question of whether the Indian people and the people of the U.S. can insist upon and secure the basic elements of good government in the field of Indian affairs and matters of public policy and interests.

i) CURRENT CLIMATE OF INDIAN ADMINISTRATION: A policy of Indian Self-Determination has existed for six years, but analysis indicates that it doesn't include a concept of self-determination; rather it is "potential self-administration, inherently limited." Evidence supports the complaints that the climate and conditioning of B.I.A., as well as tribal governments, encourages corruption and reinforces or rewards incompetence. There appear to be no processes of accountability in either area for providing remedies to either condition, much less provision of systemsfor early detection. Federal services and funding delivery systems are extremely inequitable. This deficiency is compounded by personality and systematic or mechanical factors, from internal favouritism to transient political considerations.

ii) UNDIVIDED RESPONSIBILITY IN A NEW INDIAN DEPARTMENT: The Task Force findings favour and support arguments for a rapid phase-out of the B.I.A., contingent on replacement by a phased-in Departments of Indian Affairs. The operation and control structure of the new Department should be an agency of both the tribes and U.S. government, and should reflect a restored condition of bi-lateral relationships in administration and continuing policy development. The following are preliminary ideas.

(a) JOINT CONTROL: While under the direct administration of a Cabinet level secretary for at least 10 years, charged function and general administration would be subject to "joint control" by an "Indian Board of Control" made up of persons appointed by the President from a nomination list submitted by Indian peoples.

(b) REGIONAL COUNCILS: A number of regional councils could be created, representing every tribe with a voting member of their own selection, permanently staffed and supported similar to the management and planning councils for the 200-mile fishing limit. These would plan, programme, co-ordinate, monitor and evaluate. Budget developments and personnel control or staffing recommendations relating to tribal and inter-tribal activities and programmes and other representations would be made from the regional councils to the new Department.

(c) TRIBAL AUTONOMY: The autonomous rights of tribes to self-government would not be relinquished by the establishment of the Board of Control or Regional Councils. Rights to make direct representations to Congress and the President or Executive agencies would not be impaired nor diminished.

(d) CONSOLIDATION OF FEDERAL RESOURCES: Without exception, all Indian programming and federal funding assistance would be consolidated in and channelled through the Indian Department.

(e) LEGAL DIVISION: The Department would have its own legal division and staff of attorneys to act on behalf of the Department and Regional Councils. Besides legal staff detailed to Regional Councils, the Department would detail regional attorneys on permanent and temporary bases to the U.S. Attorney's Office and Justice Department. Independent provisions for aiding tribes in financing the costs of litigation development and prosecutions, including attorneys' fees, would be established.

(f) APPROPRIATIONS LEVELS: A five year appropriation of not less than two billion dollars a year for the first five years should be allowed, including the Indian Health Service. Three other separate funds of one Billion dollars each might be established and committed under a ten-year authorization as follows: 1) INDIAN HOUSING AND COMMUNITY FACILITIES CONSTRUCTION AND CREDIT AUTHORITY; 2) ECONOMIC ASSISTANCE, LAND PURCHASE AND COMMUNITY DEVELOPMENT FUND; and, 3) TRANSPORTATION SYSTEM, SURVEYS AND NATIONAL RESOURCES MANAGEMENT AND DEVELOPMENT FUND.

iii) TRIBAL GOVERNMENT REORGANIZATION AND REFORM OPTIONS: An administrative commission or other unit should be established in the Department to facilitate or ratify for federal purposes, any constitutional revisions or tribal government reorganizations which might be submitted to it under prescribed processes within a three-year period after the establishment of the new Department. Many tribes involved in governmental revisions find their work needlessly complicated and burdensome. Some have been forced into restructuring for more bureaucracy and unwanted change by federal government eligibility and programme requirements. The same administrative unit might also handle some issues of federal recognition of tribes on a continuing basis.

iv) RELATIONS WITH CONGRESS: With the emergence of the asserted "plenary power over Indians" evolved the judgement that Congress was vested with the greatest measure of the trust responsibility towards Indian peoples.

v) QUESTIONS RELATING TO THE COURTS: Between World Wars I and II, a firm belief became established that the federal and state court systems were inadequate for accommodating the unique situation of Indian peoples with any clear prospects for justice, either civil or criminal.

vi) RELATIONS WITH THE PRESIDENT: The President's role in Indian Affairs was the most dominating in the first century of U.S. history. The proposal to establish a Cabinet level Indian Department is partly based on the view that a Presidential presence in the conduct of Indian Affairs on a continuing basis is essential towards giving concrete substance to any national commitment for insuring Indian peoples a future in the U.S.. If elevated to this level, the Department should stay at the level for not less than ten years.

TRUST RELATIONS BEYOND THE RESERVATION:

Strong authority exists that the trusteeship extends to all Indians, including those in migration or mobility away from the reservation who remain members of their tribes.

TRUST RESPONSIBILITIES AND ECONOMIC RESOURCES:

The records of Interior and B.I.A. in tackling trust responsibilities and the legal obligations involved in management and control of tribal and individual Indian economic and natural resources is very poor. At the same time, some of the most encouraging activities in the Indian community today are found within the resources management and economic development fields.

There have been many artificial barriers established to obstruct the natural advancement and economic development of reservations. As tribes have been drawn into increasing negative economic dependence, other interests have derived the primary economic benefits from Indian resources. Direct economic assistance to tribes has been modest, while massive funding proposals have called for delivery by indirection.

Problems of permanent unemployment and under employment are among the most serious of tribal problems. Lack of employment opportunities is, in many respects, caused by federal control over Indian peoples and properties and by decisions which are at odds with the fundamental standards of the federal trust responsibilities. For most tribes, remedial actions require conscientious federal attention with relationships no less demanding than those accorded any "developing nation" of the world.

TASK FORCE II

REPORT ON TRIBAL GOVERNMENT

This Task Force immediately emphasized the political-legal status of Indian tribes and nations as sovereign entities. The majority of the report deals with the consideration of, and problems related to, recognition of sovereign status in the Tribal-Government relationship. The basic issue was seen as that of federal law and policy which cuts across the entire Indian-Federal relationship and is the key to problem resolution, conflicts and federal law and policy inconsistencies.

INDIAN TRIBAL GOVERNMENTS AND THE DEPARTMENT OF INTERIOR

The first section of the report deals with the tribal relationship to the Department of Interior and its sub-agency, the Bureau of Indian Affairs. These two agencies are the prime agencies of the Trust. A series of problems arise to the extent that federal law and policy define the Interior Secretary's relationship to tribal governments. These problems can be reduced to the proposition that Interior and B.I.A. are not doing their job for protecting trust status, while at the same time federal law and policy continue to support a supervisory role in conflict with tribal self-government. Tribal governments cannot be true governments as long as Interior can exercise a veto over their decision-making.

INDIAN TRIBES AS GOVERNMENTS -- PROBLEMS IN THE EXERCISE OF SELF-GOVERNING AUTHORITIES

This section analyses the nature and extent of tribal government responsibility, identifying statutory obstacles to efficient and logical exercise of self-governing powers by tribes. Recommendations in this section are designed to ensure that a federal policy recognizing the true tribal self-governing rights are not contradicted by statute.

RESPONSIBILITY TO PROVIDE SUPPORT FOR THE FUNCTIONS OF TRIBAL GOVERNMENT

The third section of the report found that the basic reason for lack of maximum effectiveness of tribal governments was the lack of adequate resources to support tribal government operations. The Task Force identified areas in need of federal support if tribal government capacity to meet community needs is to improve. Tribes themselves expressed specific needs for resources and technical assistance. Also reviewed in this section are existing mechanisms in federal law to channel these resources.

STATUS OF TRIBAL GOVERNMENTS AND FEDERAL DOMESTIC ASSISTANCE PROGRAMMES

Examined in this section are various domestic assistance programmes from different Federal agencies. The Task Force identified problems in delivery systems, eligibility and programme requirements all of which constitute obstacles to Tribal participation. Also identified are programmes which need state approval beyond the approval specified by Congress in programme statutes. Here the Task Force noted:

> ...Indian tribes ought to be uniformly treated under Federal Law and policy as independent political units within the federal system. From the earliest days of this country, before the founding of the United States as a government, Indian tribes were recognized as having rights of inherent sovereignty. Although the potential to exercise international sovereignty was clearly limited when the U.S. Government was established, internal sovereignty or the right of self-government has never been limited or abrogated under Federal law and policy. (p. 3)

Except for the termination period, the federal government has always recognized tribal self-government rights. Inconsistencies in conflict with this basic policy exist and have gone unaltered by Congress.

LAND CONSOLIDATION AND ACQUISITION

Questions of land consolidation and acquisition are of critical significance. Without a land base, chances of tribal survival are slim. This section of the report identified the problem as seen by tribal leaders, as well as the direction to which Congress must look for solutions. One of the most serious problems in this area is that of fractionated heirship interests in Indian trust allotments.

SPECIAL PROBLEMS OF SMALL TRIBES

More than 80% of U.S. tribes are small, with populations of fewer than 1,000 people. Problems unique to small tribes are dealt with in the last section of the report. A number of federal programmes are based on population formulas which bear no relation to tribal need and tend to work to the disadvantage of the largest number of tribes.

In its introduction, Task Force II dealt with a number of topics of importance which are briefed below.

ALASKA

The Task Force spent a field trip in Alaska reviewing the ANCSA. As a result of the unique situation there, the Task Force filed a special report on the ANCSA. (A review of this report has already been made for Indian and Northern Affairs Canada (INAC).

HISTORICAL DOCUMENTATION FOR THE STATUS OF INDIAN TRIBAL GOVERNMENTS

From its first judgement in Worcester v Georgia (1832), the Supreme Court stated that tribes were independent and distinct political communities with powers of self-government steming from their original sovereignty. This position has been re-affirmed as late as 1976 in the Bryan v Itasca County, Minnesota case which denied state ability to tax.

The late Felix Cohen in his HANDBOOK OF FEDERAL INDIAN LAW stated the basic principle as it relates to tribal government:

> The whole course of judicial decision on the nature of Indian tribal powers is marked by adherence to three fundamental principles: (1) An Indian tribe possesses, in the first instance, all powers of any sovereign state. (2) Conquest renders the tribe subject to the legislative power of the United States and, in substance, terminates the external powers of sovereignty of the tribe, e.g., its power to enter into treaties with foreign nations, but does not by itself affect the internal sovereignty of the tribe, e.g., its powers of local self-government. (3) These powers are subject to qualification and by express legislation of Congress, but, save as thus expressly qualified, full powers of internal sovereignty are vested in the Indian tribes and in their duly constituted organs of government. (p. 5).

NEED FOR REAFFIRMATION OF CONGRESSIONAL COMMITMENT TO THE RIGHT OF TRIBAL SELF-GOVERNMENT

The Task Force felt that a Congressional restatement and clarification of the basic principle noted above was needed. Such a restatement would supersede inconsistencies in other areas of federal law. Since a major part of federal policy is the guarantee to tribes of independence from state jurisdiction and authority, it would follow that participation in federal domestic assistance programmes would not depend on state approval of tribal plans or applications.

THE EFFECT OF PRIOR TERMINATION POLICY ON INDIAN TRIBAL VIEWS

The termination policy of the late 1950's permanently effected the outlook of tribes. This outlook has appeared in recent efforts to initiate contracting of federal service delivery to tribes. Tribes fear that contracting may lead to termination of the trust. The tribes believe that if they successfully contract programmes presently provided by federal agencies, these agencies and the Congress will veiw this as proof that there is no longer a need for the trust nor tribal dependence on federal services. Tribes also fear that once they use contracts to administer federal programmes under the Indian Self-Determination Act, Congress will stop appropriating funds to pay the contracts, thus providing a "backdoor" termination.

These concerns on the part of tribes are well grounded in two respects: 1) Congress does not see itself as bound by prior legislation in the way that the courts are bound by stare decisis or precedent. Congress is free to determine law, and succeeding Congresses can repudiate former Congressional policies. 2) As a matter of federal Indian law, Congress can terminate the trust relationship as was done in the ANCSA. Non-Indian pressure groups and state officials have been urging termination.

ANALYSIS OF THE PLENARY NATURE OF CONGRESSIONAL AUTHORITY OVER INDIAN TRIBES

The Supreme Court has stated that Congress has plenary authority in the area of Federal-Indian relationships. This power comes from late 19th century congressional actions when Congress terminated a number of treaties with tribes. The Task Force felt that, short of a Constitutional amendment, there was no way of limiting Congressional power to terminate the trust.

NEED FOR REAFFIRMATION OF TRIBAL RIGHTS OF SELF-GOVERNMENT

The Task Force concluded that there is a critical need for Congressional restatement and clarification of federal Indian policy in the area of the political and legal status of tribal governments. This was not to say that Indian interests should always outweigh state interests, but rather that the Congress should keep faith with the tribes by acknowledging that it is inconsistent to reorganize tribal government as independent, legitimate and autonomous while at the same time limiting tribal government authority.

ONGOING INTERNAL DEBATE IN INDIAN COUNTRY CONCERNING THE PROPER STRATEGY TO BE PURSUED IN THE FUTURE

Given fears of termination, Indian people have become involved in a continuous internal discussion about the proper strategy to pursue in the future. One set of beliefs suggests that the more that Indians develop their governments along the lines of the larger society, the less possible it will be to retain their cultural integrity and traditional values. The extension of this line of reasoning is that the tribal government should limit its concerns to protecting traditional values and customs, leaving all other matters, such as services and jurisdictions, to the trustee. Traditional tribal identity is thus linked to survival. As proof of this, these people point to court cases involving tribes which have adopted governments closer to those of the larger society, in which the tribes have been held more strictly to U.S. Constitutional standards.

On the other side of the debate is the fact that federal Indian policy directed at self-determination encourages development of strong and viable tribal governments along with increased participation in delivery of federal programmes. People on this side of the discussion feel that they must take advantage of this opportunity to strongly assert tribal sovereignty and the rights attached thereto. The logic is that the more that the tribe is aware and asserts its rights, the more it will be able to ensure that the trustee fulfills it's role of protecting the tribe, hence increasing the possibility of tribal survival.

At the same time these people must look to examples of the Cherokee and the so-called five civilized tribes. In an effort to avoid termination they developed sophisticated governments which were patterned after those of the larger society. These tribes were none the less terminated by the Curtis Act and the Act of 26 April 1906, their institutions were surpressed and they were removed. In 1935 the Committee on Indian Affairs concluded:

> ...They maintained complete governments; particularly in the East, five tribes areas;;they had their own schools; their own legislative assemblies; their own courts. And they did the job well. Under all the conditions they made a receord which would have been creditable to any municipality or State in the country. (p. 9)

Those who were in favour of termination used the example of the Cherokee as proof that tribes were managing their own affairs well and thus were no longer in need of the trust relationship! As this Task Force completed its work, it became aware of a memo within the Office of Management and Budget, which has become known as the Borgstrom Memo.

Borgstrom, an employee of the O.M.B., recommended a policy of termination of the trust and suggested two possible approaches. The first would be a gradual cessation of service responsibilities through bringing tribal conditions up to the standard of the rest of the country. The second approach would involve a planned federal withdrawal from the relationship.

This memo only seems to indicate that the fears of the tribes are justified and real.

TASK FORCE III

REPORT ON FEDERAL ADMINISTRATION AND STRUCTURE OF INDIAN AFFAIRS

UNDERLYING PROBLEMS

TASK FORCE III, in responding to the three directives of the A.I.P.R.C., carried out research and inquiry along five different lines. These were: 1) administration of the trust; 2) delivery of services; 3) management of the Bureau of Indian Affairs (B.I.A.); 4) feasibility of alternative elective bodies; and, 5) procedures for granting recognition.

Throughout their work, two problems were found to be underlying and recurrent. These were "THE HORIZONTAL PROBLEM" and the "REPRESENTATIONAL PROBLEM". The horizontal problem refers to the fact that the Indian trust responsibility cuts horizontally across all federal departments. Placement of Indian programmes within the federal structure involves issues in horizontal nature in the Federal - Indian relationship.

The first such issue has to do with strategies of concentration verses diffusion of responsibility to serve Indians. Clearly, it is not possible for one agency to serve Indians to the exclusion of all other agencies, especially since Indians are eligible for all federal programmes on the basis of citizenship. At the same time, the unique federal interest in Indians necessitates that certain key functions be housed in an agency solely interested in Indians. Historically, the two approaches have been combined. THE TASK FORCE RECOMMENDED MAINTAINING THIS COMBINATION, BUT CALLED FOR ESTABLISHMENT OF A MECHANISM TO PERMIT ADJUSTMENT IN THE DELIVERY SYSTEM TO MEET THE CIRCUMSTANCES OF ANY SPECIFIC TIME.

The second issue involves placement of the major federal government Indian agency. B.I.A. is part of the Department of Interior, a land-based federal department. The idea of this placement seems to have been that the trust involved Indian land and resources. Several arguments have developed against this placement: a) Interior is the enemy of Indian interests as a result of its public responsibilities and affinity to economic, social, cultural and political interests which conflict with Indian interests. b) The placement is poor in that B.I.A. has a human/social development responsibility, an area in which Interior pretends no expertise.

This argument is inherent as a result of federal interest in Indians which is both comprehensive and horizontal. In terms of the placement issue, the Task Force concluded that: "...UTILITY OF ANY PARTICULAR PLACEMENT OF INDIAN RESPONSIBILITY IN THE FEDERAL GOVERNMENT DEPENDS ON A HOST OF FACTORS AND MAY BE DIFFERENT DEPENDING ON THE CIRCUMSTANCES, AND SUBJECT TO CHANGES AS CONDITIONS AND IMPERATIVES CHANGE. (p. 4)

Representation, the second recurring problem, centres upon the federal government's agencies' relationships with the Indians on the one hand, and with the federal government on the other. One set of expectations sees B.I.A. as the Indians' advocate -- i.e., the Indians' agency. At the same time, B.I.A. is the focus of the government's trust relationship, and in this role it represents the U.S. government in its relationship to Indian tribes and nations. From this prospective, B.I.A. is an institution of the U.S., not of the Indians, and represents the U.S. side of the relationship. Thus, the advocacy role can be expected on those issues where agency and Indian interests coincide.

In conclusion on the representational problem, INDIANS WILL ALWAYS BE AT ODDS WITH ANY FEDERAL AGENCY REGARDLESS OF MANDATE. THE TASK IS TO FIND AN ADMINISTRATING STRUCTURE WHICH MAKES CONFLICTS MANAGEABLE MEETING THE HIGHEST STANDARDS OF FAIRNESS AND EFFICIENCY.

FIVE LINES OF RESEARCH AND INQUIRY

i) Administration of the trust

Executive agencies and departments of the federal government were found to be ignorant of the trust responsibility towards Indian lands and resources. To the extent that the trust relationship was recognized, especially in terms of tribal self-government, agencies and departments saw B.I.A. as the sole instrument subject to the standards of this relationship.

This had the effect of isolating B.I.A., taxing its budget to aid Indians in fighting other government agencies, states and private interests. Overall, B.I.A. is forced to compromise Indian interests as a means of survival in the federal system or as a trade-off for other interests.

The law clearly states that the trust relationship extends to the U.S. as a whole, meaning that acts of all federal agencies can be so held accountable. This may need to be stated emphatically by a Congressional Act.

The present Indian Affairs structure is unfair to Indians, the Department of Interior and Department of Justice. The U.S. system demands resolution of conflicts between Indians, federal, state and local governments, private individuals and corporate interests in an open forum with due process for all. Currently, such conflicts are solved in a closed bureaucratic process immune to judicial review. This makes the process political and usually prejudiced against Indian interests.

ii) Federal Domestic Assistance and Delivery of Services

Congress has created specific programmes for Indians to fulfill both treaty provisions and its commitment to improving economic conditions on reservations. Most of these are housed in B.I.A. and Indian Health Services (I.H.S.), but many are in other departments and agencies. While the majority of programmes are in federal agencies, there is still ignorance of Indian eligibility and federal policy regarding use of tribal government as the primary delivery mechanism at the reservation level on the part of these agencies. The result is that tribes either don't participate, or do so under conditions which are unacceptable to them.

Congress must adopt as policy a determination that each federal domestic assistance agency is charged with serving tribes with due respect to tribal self-government. The agency for Indian affairs should co-ordinate all federal agencies in working out procedures for such a system, in conjunction with tribes, which meets tribal needs without elaborate exceptions to the prevailing delivery system.

Research revealed that of 1,000 domestic assistance programmes, Indians participate in only 76. The Task Force suggested that a SPECIAL ACTION OFFICE on Indians in the WHITE HOUSE could work with tribes and departments to develop a planning mechanism and delivery system to assume and assure goal setting and dollar targeting by tribes and departments. This would be under congressional mandate and would be done in the process of establishing an independent agency for Indian Affairs. Within the 1,000 programmes, funds should be devoted in proportion to need, not population.

The studies also indicated that tribes do not get adequate information on programme availability. They also have problems getting assistance due to lack of adequately trained people at the tribal level. A number of other problems also came to light. First, Congressional statutes are made with little consideration of tribal government application, neither includng nor excluding tribal governments. Second, federal agencies lack knowledge, awareness, understanding and accurate information as to the legal and political status of Indian tribes, nations and peoples. This includes the trustee relationship and leads to an infringement of Indian rights. Three, federal agencies do not provide a direct means for tribes to make their funding needs known prior to appropriations. Four, federal agencies have little or no organization to assure adequate or equitable service delivery to Indians as citizens or government entities. Usually, all they have organizationally is an Indian Desk. Five, where is

inequity in delivery of existing technical assistance and services such that tribes with capable technical staff and monies receive more than those lacking these elements. Six, federal regional offices are geared to serve well prepared state and local governments. This does not serve Indian tribes and nations well politically; tribes cannot compete for funds well through such agencies. Seven, federal agencies do not co-ordinate efforts to develop guidelines and regulations. This results in a maze of standards, procedures and accounting systems burdening tribal governments' administration abilities. It makes tribal development of co-ordinated and comprehensive programmes at the local level difficult. Eight, demands by government agencies programmes for governing boards, authorities and committees at the local level rather than use of direct relations weakens tribal government and council control, thus minimizing such control.

Indian Affairs must be placed on an equal organizational level with all other government departments. This implies equal status for B.I.A. officials in inter-governmental relations at all organizational levels.

iii) Management of B.I.A.

The Task Force effort in this area centred upon historical development, present-day operations and the views and experiences of Indians with B.I.A. policies, practices and structure. The present structure, location and practices of B.I.A. were found to harm tribes with a consequent need to separate Indian Affairs from the Department of Interior. While B.I.A. is charged with managing the U.S. trust responsibility to tribes in all matters arising from Indian Affairs, it has in fact become an agency that manages the affairs of Indians: how they live, use their land, how they will be governed.

Internally, B.I.A. is complex; its operations manual is ten years old. B.I.A. lacks an adequate reporting system to Congress or to the tribes regarding how funds are spent and whether such expenditures are in accord with tribal need or congressional intent.

Indian peoples see B.I.A. as both friend and foe. Friend in that it is symbolic of the continuing U.S.-Indian relationship; foe in that it has not consistently prevented the erosion of Indian rights and property, and at times has even been responsible for same.

B.I.A. was found to have thrown weight in tribal elections, to have mismanaged Indian funds and tribal and individual leases and to have acted in concert with private commercial interests in the use of Indian resources for the benefit of non-Indians. Ten different reasons for this were cited. First, B.I.A. has no systematic, long-range programme-planning capability. Technical and service priorities are not arranged in terms of future needs of, and planned, development of Indian communities. Second, some B.I.A. staff are not committed to the development of Indian lands and resources for tribal benefit. These people lack expertise. The Bureau does not require updating of its staff's skills. They also lack basic understanding of tribes and tribal needs. Third, demands on agency superintendents to protect tribal resources and interests fail as a result of lack of authority and lack of emergency procedures. Thus, delegation of authority to proper organizational levels is inadequate. Authority is often not taken as a result of lack of clarity and understanding. Fourth, when a tribe or individual needs a problem resolved involving individual Indian monies, health services, education or land ownership, they must depend on a complex appeals system at various B.I.A. levels. The system thus blocks problem solving. Fifth, B.I.A. resource management and economic development assistance activities are deficient and fail to provide adequate Indian use of Indian land and resource potential, especially in mineral and surface land leasing programmes. Sixth, the Indian desire to have control over Indian schools is prevented due to B.I.A. reluctance to encourage Indian parents and tribal influence in this area. Seventh, the "Indian Preference" requirements are misinterpreted and inconsistently applied by B.I.A.. Eighth, the Band Analysis Budget System provides an 18-month span of estimating needs without the realistic goal of long-term needs of tribes. The margin for decision is small, accounting for less than one-half of B.I.A.'s budget. Ninth, while the while centralized data system is being updated, other offices are establishing mini-computers which are not related to the central computer. This increases costs and undermines and deprives the central terminal of Bureau-wide data. Tenth, central data provides information, but it does not provide comparative information to determine if funds were distributed according to tribal needs as justified to Congress. There are not adequate checks and balances to determine if equitable use of Indian tribal funds is being achieved.

iv) Feasibility of alternative Indian elective bodies and
& v) recognition and eligibility for federal services

Indian tribes seek to exercise the right of self-government and all the sovereign powers of any state or nation. According to the U.S. Supreme Court, the U.S. is trustee after the fasion of a

greater power, protecting but not dissolving interest in a lesser power. In actuality, however, the U.S. is occupying Indian territory and using this territory in the fashion of a colonial power. Rule of a government department over Indian lands and peoples is like England's rule over the colonies.

Four possible methods of establishing direct tribal participation in the federal government were discussed by the Task Force, and a fifth method added at a later date. 1) The election of Indian voting or non-voting delegates to Congress from four Indian states or territories -- i.e., northwest, southwest, midwest and southeast. 2) A tribally created "Union of Indian Nations" exercising varying degrees of governmental authority depending on the extent that Indian nations and tribes would lend their power thereto. 3) Election of an Indian "Board of Representatives" or "Commissioners" empowered to define U.S. policy towards Indian nations, direct programme development and activities and to co-ordinate with all federal government departments as these relate to Indians. 4) Recognition of tribes after a manner similar to the trust relationship between the U.S. and Micronesia. 5) Election of a non-voting delegate to Congress from those tribes who wish to participate. This person would sit as a member of committees considering Indian legislation and legislation affecting Indians indirectly.

Since tribes are autonomous, individual and separate and see themselves dealing independently with government, such forced organization as suggested above is incompatible with self-government. A number of arguments express this:

a) Creation of such institutions must be an Indian decision. States, counties and municipalities deal as separate entities in the federal structure; tribes should be permitted to do likewise.

b) Tribes are diverse social, political and cultural units which have only just started to develop extra-territorial institutions.

c) Neither the tribes nor the federal government have a clearly defined position regarding the status of tribes politically.

d) Tribal efforts with National Indian Organization support, in efforts to initiate legislation, are impaired by an administrative structure and legislative system which has neither adequate knowledge, capability or experience to decide native needs or interests nor the right to do so without Indian consent.

e) Tribes are nations with a continued culture, government and political existence. An Indian nation may exercise governmental control over those who are its natural members as well as those who express allegiance and are accepted by that nation.

f) An Indian is a person whose primal allegiance is to an Indian nation, who is accepted by Indian authorities in a distinct Indian nation or, where the nation no longer exists, an ancestral relationship can be significantly identified.

g) Congress has no unified method to oversee the exeecutive to and determine whether its legislative enactments, as intended, were carried out.

h) The extension of citizenship to Indians did not enhance Indian rights; in some instances it eroded them.

i) Indians do not have direct representation in the federal government; their numbers in any one place are too few to influence policy making and programme development.

j) Tribes need substantial funds and technical assistance to subsidize Indian government due to their small revenue base. Development of a national alliance would necessitate such funding assistance.

k) Indians lack an effective method of redress when the U.S. violates rights or usurps tribal powers. This is especially true when they consider such relations within the jurisdiction of the legislative branch.

l) There are more than ten congressional committees with jurisdiction over Indian Affairs matters. Many of these are not well informed as to the basis of the U.S. Government - Indian relationship.

OVERALL CONCLUSIONS

Structurally, the principal reasons for the continued deficiencies exist are organizational. The Task Force in conclusion stated:

1. "THE CONGRESS OF THE UNITED STATES, WHILE DETERMINING HOW THE AMERICAN INDIAN SHOULD BE DEALT WITH, HAS DEVIATED FROM TIME TO TIME IN ENACTING LEGISLATION WHICH HAS REDUCED LANDS, DISTURBED TRIBAL GOVERNMENTS, AND THREATENED TERMINATION."

2. "THE BUREAU OF INDIAN AFFAIRS IS RESTRICTED BY THE DEPARIMENT OF INTERIOR AND IS GUILTY OF INEFFECTIVE PRACTICES, WEAK IN INDIAN ADVOCACY, AND UNDER SUCH CONTROL AS TO BE UNABLE TO ADEQUATELY PLAN, SUPERVISE AND PERFORM THE FUNCTIONS FOR WHICH IT WAS DESIGNED."

3. "THE DEPARIMENT OF INTERIOR HAS FAILED IN ITS CONDUCT OF THE TRUST RESPONSIBILITY. THIS DUTY REQUIRES THE HIGHEST DEGREE OF SKILL, CARE AND DILIGENCE. POLITICAL PRESSURES, CONFLICTS OF INTEREST, AND ADMINISTRATIVE NEGLECT OF DUTY CONTRIBUTE TO THIS FAILURE."

4. "THE JUSTICE DEPARIMENT SUFFERS THE SAME NEGLECT OF DUTY: ADMINISTRATIVE DELAYS, CONFLICT OF INTEREST, AND HANDLES INDIAN CASES AT TOO LOW A LEVEL OF ORGANIZATION TO BE EFFECTIVE." (p. 16)

TASK FORCE IV

FEDERAL, STATE AND TRIBAL JURISDICTION

The concepts of sovereignty and jurisdiction are inherently intertwined, and some understanding of both is a necessary prerequisite to this report.

Sovereignty is a legal concept of western European international law. It defined the political-legal existence of a nation-state. Jurisdiction in its simplest terms is the legitimate power of a sovereign over people and property.

...(T)he relationship established between the Indian tribes and the European powers - one characterized by treaties - was based on the concept of sovereignty. Sovereignty has become the starting point for any discussions or decisions with respect to Indian tribes and nations and the jurisdiction they possess over people and property. (p. 1)

ISSUE I: PUBLIC LAW 280:

Public Law 280 was the Termination statute which provided for mandatory and permissive transfer of the federal jurisdiction and responsibility in Indian Affairs to state governments. The law contains three mechanisms for assumption of federal jurisdiction by the several states. These are: a) mandatory assumption in the five states of California, Minnesota, Nebraska, Oregon and Wisconsin; b) assumption as a state option by affirmative action including removal from the state constitution of the disclaimers barring jurisdiction; and, c) assumption as a state option by affirmative state legislation, there being no constitutional disclaimer regarding jurisdiction is the remaining states.

ISSUE I: FINDINGS:

The philosophy of termination was always opposed by the tribes and is now republished by the U.S. Congress. Public Law 280 has been a major block to tribal self-determination. Although amended in 1968, the amendments have not cured the situation since, tribes still do not have a determinative voice. The state assumption of jurisdiction through Public 280 has not resulted in integration, has not provided non- discriminatory services to Indian people, and has not cured oppressive B.I.A. involvement in tribal viability.

ISSUE II: THE FEDERAL ROLE IN JURISDICTION: FINDINGS:

Many federal regulatory statutes are unclear on applicability in Indian country resulting in abrogation of Indian treaty rights. The courts attempted to mitigate this effect by strict construction of

legislative language. Judicial construction is inconsistent, however, and the need for extensive litigation is costly and puts Indians in a position of possible criminal prosecution. In the passage of statutes which regulate federal agencies unclearly, Congress has created a potential threat to Indian governments in the use of land and resources, which is in conflict with the federal policy of encouraging tribal integrity and self-sufficiency. In the passage of unclear statutes delegating regulatory authority to states, Congress has subjected Indian governments to state jurisdiction, which directly conflicts with tribal sovereignty. Congressional passage of domestic assistance statutes giving the states the authority to participate in the delivery systems has subjected Indian entities to state jurisdiction which jeopardizes tribal sovereignty, resulting in Indian eligibility for said programmes being conditioned on both state and federal regulations which burden tribes and frustrate the special federal trust responsibility to tribes. Federal statutes which are vague in their effects on Indian sovereignty and jurisdiction result in expensive and extensive litigation as the only alternative resolution of jurisdictional problems.

ISSUE III: SPECIAL PROBLEM AREAS: FINDINGS:

Indian tribes and individuals have been and are subject to continuous challenges by local non-Indians and states regarding their exercise of treaty and aboriginal hunting, trapping, fishing and gathering rights. States have failed and/or refused to implement the decisions of federal courts regarding the scope and nature of these rights, thus denying the tribes and peoples of the rights. These rights are an integral part of Indian culture, trade and commerce and are necessary for continued survival and economic viability. The refusal of states to recognize and protect these rights has led to lawlessness, with the effect of state actions being based on racial distinction -- i.e., failure to provide equal protection of the laws in the exercise of Indian treaty rights. The failure to understand and to appreciate the historical and legal basis of these rights, combined with increased competition for shrinking resources, has led to non-Indian proposals for abrogation of these rights. This is not consistent with the moral and legal foundations upon which the rights rest and contributes to an atmosphere of disregard for federal court decisions.

ISSUE IV: CHILD CUSTODY: FINDINGS:

Removal of Indian children from their natural homes and tribal meetings is a national crisis. It has serious impacts on long-term tribal survival and damaging social and psychological impacts on many of the children. Most non-Indian public and private agencies have no sensitivity to Indian culture and society. Litigation which has attempted to cure the problem can only be partially effective. The systems of data collection concerning removal and placement are inadequate and hide the dimensions of the problem. The federal

government, pursuant to the trust responsibility, has failed to protect the tribes most valuable resource -- its children. U.S. policy should do all in its power to ensure that Indian children remain in Indian homes.

ISSUE V: JURISDICTION OVER NON-INDIANS: FINDINGS:

Congress has not terminated tribal jurisdiction over non-Indians. Exercise of jurisdiction by the federal and state governments, in most cases, is concurrent with that of the tribes. Issues involving jurisdiction over non-Indians have caused hostility and emotionalism in Indian and non-Indian communities alike. This jurisdictional issue is not properly addressed by jurisdictional legislation. The long-term solution to this problem lies in returning to a situation wherein the reservation - with sufficient land for growth and development -- is owned and occupied almost exclusively by the individual Indian tribe. Many tribes have programmes to consolidate their land bases; these, however, are meagerly funded. Many non-Indians have, however, expressed a willingness to sell out and leave the reservations.

ISSUE VI: TAXATION: FINDINGS:

The governmental status and powers of the tribes have constantly been affirmed by the Congress, the Executive and the courts. The economic stability, development and growth of reservation Indians is seriously affected by taxation or potential taxation by state and federal governments. The ability of the tribal governments themselves to exercise taxation to the exclusion of state taxation is an important revenue source for tribal government support and service delivery ability. The income levels of Indian peoples and development of reservation resources is below that of neighbouring non-Indian communities. In this respect, the ability to offer tax advantages to non-member enterprises is an important aspect in encouraging development and enterprise. The present taxation laws are confusing and uncertain, presenting unresolved areas which discourage aggressive development. Tribes and individuals are increasingly becoming involved in litigation in certain taxation areas, this will continue with continued assertion of questionable state and federal tax authorities. State and local governments view Indian tax exemption as an drain on their revenues where these governments provide services to Indians. Exact figures do not seem to exist regarding state and local government expenditures for services on Indians, or for the amounts of monies paid by such Indians in taxes, or for funds received by state and local governments as a result of federal funding based on Indian lands and resources within their relative taxing or service areas.

ISSUE VII: LAND USE CONTROLS: FINDINGS:

The area of land-use controls on reservations is complex, unclear and may work to the detriment of all concerned in efforts to develop and protect Indian lands and resources. Past Congressional policies and enactments have and are having adverse effects on the use of lands on reservations. Continued conflicts with federal agencies require substantial expenditures to clarify or resist adverse actions or rulings of such agencies. The application of state and local land-use controls, directly or otherwise, has adverse effects on Indian ability to formulate and implement comprehensive and beneficial development and protection of resources. There is a need to provide tribal government with the resources and assistance necessary to develop comprehensive plans for development and control. Non-Indian government members holding fee patents on reservation lands have been misled by Congressional policies of the representations of federal agencies when they purchased land within reservation boundaries.

ISSUE VIII: EXERCISE OF JURISDICTION BY INDIAN JUSTICE SYSTEMS: FINDINGS:

Tribal justice systems, including courts and police, are evolving institutions. The design and structure of most existing tribal justice systems were implicitly or explicitly imposed by the federal government. There is, however, a need for flexibility in the redesign and restructuring of these systems. Through the Indian Civil Rightas Act, the federal courts have become greatly involved in the functioning of Indian governments. The closer tribal governments come to the functioning of non-tribal governments, the closer they are held to constitutional standards rather than their traditional standards. Because of the colonial status of many tribal governments, the financial burden must be born by the federal government. Tribal justice systems, given needed funding, are able to provide effective service delivery to all persons subject to their jurisdiction.

OVERALL FINDINGS:

ONE: There is throughout all levels of American society substantial ignorance and much misinformation concerning the legal-political status of Indian tribes and the history of the unique relationship between the United States and Indian tribes.

TWO: This ignorance and misinformation, particularly when found among all levels of government - Federal, State and local - has significant negative impact on Indian tribes. (p. 151)

TASK FORCE V

INDIAN EDUCATION

The Task Force on Indian Education is broken into several sections dealing with historical policies and finances, the roles of federal agencies, state policies and finances, field analysis, special studies, and proposed legislation. The summary of the Task Force notes that education of Indian people has been a primary tool in instituting overall Congressional and B.I.A. policies -- specifically isolation and assimilation. Historically, materials and funds have been inadequate and curriculum has been devoid of Indian culture and values.

The historical situation has been one of unique tension for Indian children wherein physical needs were met at the expense of family separation and cultural alienation. Constant swings in Congressional and B.I.A. policies have tended to fragment and scatter Indian educational institutions.

Although Indians view the federal role in education as a right and obligation, the federal government often encouraged state assumption of the Indian education responsibility. In reality, Indians had an entitlement from both the federal and state governments in the education area. The high level of state participation has meant that states have been highly influential in Indian education. Lack of federal monitoring and evaluation of state programmes increased ambivalence regarding state responsibilities and roles in the education of Indian children.

The B.I.A. and U.S. Office of Education (U.S.O.E.) both have primary responsibility for the education of Indians, yet both have different ways for defining the word Indian vis-a-vis their education programmes. Neither agency has policies or guidelines concerning the quality of their Indian education programmes. This may be due, in part to fragmented and isolated decision-making within each of the agencies. Further, while national and parent advisory committees do exist, they are not used for the setting of programme direction and national priorities.

Eligibility and funding criteria are limited in type and scope, thus limiting access of Indian groups to funds. There is not an equitable access plan to meet the needs and desires of diverse Indian groups.

Lack of educational policy is increased by administrative level decision-making which excludes members of the Indian community. The U.S.O.E. does now have policy regulations, but these are not matched to Indian needs and concerns as a result of the lack of Indian and non- Indian professionals within the various programme areas who are experienced in Indian Affairs. For its part, B.I.A. has only just

published its rules and regulations for Indian comment for the first time ever. Neither agency is comfortable dealing with innovative Indian education projects.

States do not have a clear picture of how federal supplementary funding fits into their picture of financing Indian education. In this respect, states are unhappy with having to conform to federal regulations while at the same time they desire access to the funds that federal programmes bring. Moreover, they are unhappy that Title IV of the Indian Education Act gives states no role in Indian education.

School districts within states which serve Indians are in financially inadequate positions. Federal supplementary funds are not enough to run the divisions properly. The question of basic funding is thus paramount.

Field hearings revealed a lack of adequately trained people in communities to ensure broader Indian participation in all stages of programmes and services. Parents need training in order to operate properly under Title IV. Funding in this area is effected by restraints on use and national priorities, thus undermining the fund's impact.

The problem of defining the term Indian results in the exclusion of many Indians from programmes. Of special note in this regard are urban and rural non-reservation people. Even where these people are counted, their numbers as included in census data make them uncompetitive for funds.

The above example points up agency lack of planning and implementation responsiveness. Funding programmes are based upon needs which the programmes and not the Indian people themselves perceive. The effect is to draw services away from the community and to sustain institutions which are not in harmony with community needs.

Overall, Indian needs are promoted as a service industry rather than as a reinforcement or promulgation of Indian control. Indian professionals are hardly represented on the staffs of this industry. As a result, access to experience, training and knowledge of Indian professionals is minimal.

INTERIM RECOMMENDATIONS

To overcome the fact that the present systems ignore parts of the Indian population a policy should be developed to ensure adequate services with equal accessibility to all Indian people (This applies to federal education services). Along with this policy, the present delivery system should be revamped, targeting monies into Indian communities in a manner which enhances local programmes.

In an effort to ensure promotion of local control, programmes must encourage or require grantees to set aside funds for in-service training and staff development programmes.

No further expansion of off-reserve boarding schools should take place, and deficiencies in U.S.O.E. and B.I.A. programmes should be cleared up by interim measures. Existing B.I.A. day schools should have their control turned over to Indian communities.

Fully funded scholarship programmes should be established, with ceilings realistically reflecting the costs of private or advanced degree charges at private colleges. This should include the various professions.

Management deficiencies in Title IV programmes must be cleared up so that funds are allocated in a more expeditious and equitable manner with closer monitoring. Additionally, for all of the parts of Title IV, funding must be set at levels which acknowledge the increased number of Indian students served each year and the increased costs of serving them. Sections B and C of the Act should be amended to extend authorization. This latter would permit increased numbers of communities to gain increases in planning and programme operation skills.

The intent of the Johnson-O'Malley legislation should be expanded to ensure adequate and comprehensive support packages. This would assure adequate shelter, clothing and medical services to students.

The Task Force saw the key to meaningful Indian education as the need for adequate and relevant non-compensatory programmes in education. Such an education would build on the Indian child's cultural and language skills. Without this, the child's educational choice becomes one between no education and meaningless education.

The data system regarding Indian education was found to be completely inadequate. It was recommended that this be overhauled. Standardization of data collection systems is needed.

LONG-TERM RECOMMENDATIONS

Currently Indian education depends on a large number of bills passed at different times and leaving many gaps in the programme grid. The Task Force recommended a comprehensive education bill ensuring quantity and quality of services to Indian people. In relation to this policy, guidelines were called for which would reaffirm the commitment of the Congress to meeting the educational needs of the Indian people. Finally, Congress was called upon to support and finance a declared policy of Indian community control of all aspects of Indian education. The right and obligation of the Indian people to an education should be fulfilled by Congress and the federal government.

TASK FORCE VI

INDIAN HEALTH

INTRODUCTION

In 1955 the Indian Health Service (I.H.S.) took over responsibility for Indian health. In that time the health of Indian people has improved, but still remains significantly below that of the general U.S. population. Major problems still exist in the areas of tuberculosis, gastroenteritis, otitis media, pneumonia, influenza, gonorrhea, trachoma, chickenpox, mumps, dysentery, strep throat and rheumatic fever. The influence of these illnesses is reflected in the shorter life expectancy of Indians when compared to non-Indians (65.1 years to 70.8 years).

Five different areas of deficiency in health care to Indians were discovered by the Task Force.

i) Inadequate policy to solve the problems of Indian Health

I.H.S has a comprehensive list of services which are available through federal, state and local authorities. There does not exist, however, a clear overall direction or policy implementation for these programmes. This results in a crisis and emergency-directed service delivery. Response in other service areas is slow and inadequate, resulting in increased prevalance of specific health deficiencies which are almost unknown in the general U.S. population.

ii) Inadequate appropriations

The method of funding I.H.S. is not satisfactory. Fixed-limit funding results in denial of services and forced suspension or cut-back in services when funds run out. This reinforces crisis-oriented service as well as neglect of specific areas such as preventative programmes.

iii) Lack of adequate mechanism for delivery of services

The delivery mechanisms proved to be weak. As a result, resources tend to be under or improperly used. Evaluation of management indicated several areas are not well administered. This occurred in authority and responsibility areas between central and area offices and the service units. It included mechanisms for continuing planning, monitoring and evaluation, establishment of measurable objectives and development of the best mix of strategies for effective and efficient delivery.

iv) Lack of responsiveness by state and local agencies to Indian people

I.H.S. is seen as a residual or supplementary service to Indian people, yet in reality it is the primary service delivery. The majority of state and local agencies are not responsive to Indian needs because they see this as the responsibility of I.H.S.

v) Lack of accountability at all levels of Indian Health Service

I.H.S. lacks an adequate system of accountability at the different levels of the service. Goals and objectives cannot be measured since they are not set in quantifiable and measurable terms. This results in inability to hold anyone to account for progress. Without a system of accountability, effectiveness and efficiency will be difficult to measure.

MAJOR RECOMMENDATIONS

Only the major recommendations are discussed in this brief of the Task Force's report. It must be noted that the Task Force has provided recommendations on the following items: environmental services, nutrition, mental health, traditional medicine, Indian health service management, contract medical care, training and technical assistance, community health representative programme, Indian involvement and Indian self-determination in health care, discrimination, urban Indians and special problems of Oklahoma Indians.

The Task Force stated that the entire approach to Indian health problems is inadequate, resulting in an inadequacy in the service's total effect. It went on to give the following major recommendations:

1. Cabinet-level Indian agency

That all Indian programmes be consolidated in a Cabinet-level agency. This agency would be the focal point of these services. Indian Health would be one of the functions of this agency. This was suggested because present inter-agency agreements between agencies like I.H.S., H.U.D., S.I.A., etc., had proved that it was not working well. Programme consolidation, it was felt, would be more effective.

2. Basic Health Care Guarantee Package

The Task Force recommended that a basic health care package be developed and available to all Indians. This package would not have an arbitrary funding limit. In this way, every Indian would be assured of needed services.

3. Preventive and Environmental Health Programme

Environmental conditions of Indian people were found to be far below acceptable levels. This manifested itself in high occurrence of water supply and waste disposal related disease. The Task Force called for a high priority on preventive and environmental problems, stating that "...unless a massive preventive and environmental health programme can be undertaken, curative measures will improve the level of Indian Health only slightly." (p. 14)

4. Urban Indians

The majority of urban Indians are deprived from their entitlement to I.H.S. supported contract services. This is a violation of trust responsibility. Services should be made available to all Indians, regardless of where they live.

5. TV satellite channels for Alaska and remote parts of the United States

Lack of good communications was found to be a block to service delivery in Alaska and remote parts of the U.S.. A HEW/NASA experiment in Alaska showed that lives could be saved and travel costs reduced by satellite use. The Task Force recommended that this experiment become an on-going programme.

6. Management of Indian Health Service

It was recommended that authority lines be clarified between central, area and service offices. The data system was found to be inadequate and the Task Force called for its upgrading. Administrative requirements for records and reports needed review to: a) eliminate useless reports, b) eliminate backlogs of medical summaries and indexing, c) ensure that those providing data to the system will receive data results in return. Finally, a unified system for programme planning, monitoring and evaluation needed to be developed.

7. Indian involvement and self-determination in health

It was recommended that an I.H.S. policy be established for Indian Health Boards which would relate to organization, membership, operation and relationship to I.H.S.. The Indian Health Boards should be strengthened to increase their effectiveness in policy making and priority establishment at all levels. I.H.S. should develop a time-phased programme with training and technical assistance to fully implement self-determination and shifting of authority and responsibility according to tribal desire.

8. Community health practitioners and health aides as primary providers of medical care

An Alaska experiment indicated that Community Health Aides provided a high level of health care, often without direct medical supervision. This programme should be developed and expanded to a point where licensure would not necessitate a physician preceptor and the Community Health Practitioner could work autonomously, obtaining consultation when needed. The core of the delivery in this area should be fully trained para-medics.

9. Contract Care

The eligibility criteria for contract case should be made simple and uniform. I.H.S. should negotiate rates of payment so as to avoid paying more than states do for the same services. Continuity of care should be assured through improved co-ordination with contractors. At the service unit level, evaluation of contract services should be continuous. Adequate funds should be made available needed I.H.S. contract staff. The contractors' records on patients should become part of I.H.S.'s records.

10. Tribal-based nutrition programme

Malnutrition is a major problem and present food assistance programmes are not responsive to Indian needs. Both quantity and quality of food from these programmes are low. The Task Force recommended consolidation of these programmes and their operation by tribally-controlled Nutrition Assistance Centres. These would assure that adequate food as well as education in nutrition, meal planning and diet control would take place.

11. Indian Health Service as the primary provider of health care to Indians

I.H.S. should be recognized as the primary provider in terms of Indian people. At the moment Congress sees I.H.S. as a supplementary provider. The Task Force recommended that Congress view I.H.S. as the primary provider and fund I.H.S. adequately.

12. Mental Health

While there has been a mental health programme for ten years, there has been little significant improvement in this area. Even significant progress in such areas as identifying mental health needs has not been achieved. The programme should be strengthened, with the first step being identification of the nature of mental health problems facing Indians, and the development of an orderly plan to meet those needs.

13. Health, Education, Housing, Economic Development and Poverty

Health problems are often related to overcrowded and inadequate living conditions, lack of resources to maintain sanitary environments, lack of education needed in acquiring needed economic resources. In effect, there is a cycle of poverty and deprivation. This can only be overcome by a co-ordinated strategy designed to raise the standard of living. It was recommended that preference be given to Indian enterprises for all health related construction projects. This preference should also be carried over into maintenance and operation of health facilities.

14. An American Indian School of Medicine

The American Indian School of Medicine has been publicized and has important attributes not present in other medical schools. The Task Force recommended support for the school as recommended by the Department of Health, Education and Welfare in their feasibility study.

TASK FORCE VII

REPORT ON RESERVATION AND RESOURCE DEVELOPMENT AND PROTECTION

INTRODUCTION

Two hundred years' effort has failed to make appreciable advances in economic progress for Indian peoples. In its efforts to explain why this has been the case, the Task Force took as its responsibility the bringing to life of the terms of the Northwest Ordinance of 1787, which stated:

> The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and in their property rights and liberty, they shall never be invaded or disturbed unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made for preventing wrongs done to them, and for preserving peace and friendship with them.

Throughout U.S. history the promises in the Northwest training have been violated. The resources of Indian reservations have regularly been exploited, which has led to a drastic reduction of Indian land and resource base. This fact necessitates stringent resource protection. The combination of exploitation of reservation resources and the resulting inadequate land and resource base make reservation development, especially economic development, both very critical and difficult.

Overall, the Task Force felt that Indian people must seek a way to develop within the U.S. system and at the same time, and in many ways, apart from that system. In looking at this approach the Task Force proposed a plan known as the KAH-NEE-TA PLAN. The first part of this plan provides a constitutional amendment which embodies the feelings and sentiments expressed in the Northwest Ordinance. The second part of the plan re-channels, through the establishment of an American Indian Development Authority, monies presently expended on Indians through Health, Education and Welfare, Housing and Urban Development, Indian Health Service, Bureau of Indian Affairs and D.O.L., as well as other agencies. These funds are made up of capital outlays and would be placed into one agency designed for the sole purpose of providing viable and permanent economic bases for Indian reservations.

RESERVATION AND RESOURCE PROTECTION

The magnitude of land losses by Indian people since the arrival of non-Indian people in the U.S. is very great. In 1492 Indians owned and used almost two billion acres; by 1887 this had been cut back to

150,000,000 acres; by 1934 it had been reduced to 60,000,000 acres -- approximately what Indian peoples own and use today. The Indian land base is only one-third of what it used to be, while the actual Indian population is the largest that it has ever been.

Reviews of historical information indicate that existing law and policy have failed to adequately protect Indian lands. The ultimate goal, as the Task Force saw it, was the establishment of a constitutional amendment. This is necessitated by the fact that Congress can repeal its own acts and that even treaties can be overridden by the Congress. Beyond this, interim legislation could be sought in two basic areas.

First, to establish an American Indian Trust Protection Commission charged with the responsibility of protecting Indian resources and reviewing proposed federal actions which might affect those resources. This Commission would have the responsibility and financial capacity to provide either direct legal and technical assistance or grants so that tribes could obtain such assistance.

Second, in order to prevent on-going encroachment by states and local governments which take Indian resources and hinder reservation development, legislation would be sought to specifically prohibit any state or local regulatory or tax activities within Indian country without consent of the governing body of the tribe. Such legislation would not, however, affect the duty of the state or local government to provide equal access to state services and programmes to all of its citizens, including Indians. Efforts at resource protection are designed to hold the line against further encroachment and to provide a legal base and setting in which reservation development can take place.

RESERVATION AND RESOURCE DEVELOPMENT

The Indian lands which have been taken in the course of history have been those with the highest economic development potential. Thus, the Indian population has been increasing while the resources base has shrunk. Moreover, reservations have been located at a significant distance from major economic centres, which has placed them at a disadvantage in terms of industrial development.

Since 1950 the federal government has spent massive sums of money through various agencies and programmes to improve the material conditions of Indians. It is generally agreed that economic development of the reservations is the best means to overcome the poverty of Indian people. Poor results of federal government efforts are in part attributable to the fact that the rate of economic development has kept pace with neither the rising needs of the Indian population's increase, nor with the rising costs of the average level of living in the U.S.

The slow rate of economic development on Indian reservations is due, in part, to the level and use of federal funds for economic development. In 1976, $1,733,000,000. was spent for the benefit of Indians. The majority of these funds, however, were spent on the symptoms of poverty and under-development, and too little was spent on the causes of poverty. The effect of expenditure is mitigating problems rather than developing solutions. To date the federal programme suffers from the problem of too little available funding for reservation development on the scale needed to solve problems related to under-development. Since under-development is such an encompassing and pervasive situation, the project-by-project, piecemeal type of categorical grant approach is not a workable solution.

A new programme is needed for support of reservation development. This programme would call for a significant increase in available funds and administration in a manner which would place these funds in the right place at the right time on the causes of under-development. As an example, instead of spending funds to provide houses for those who cannot afford them, or training people for jobs which do not exist, funds should be spent for reservation resource and industrial development along with the necessary sustaining infrastructure.

> With an increased understanding of how real development has taken place in thepast, these funds should be applied comprehensively for implementation of plans rather than for projects. Such plans would enable tribes to program development to be consistent with their ability to absorb the massive infusions of Federal capital. Such comprehensive plans would also enable tribes to realize the full external benefits of each project, in that each project would make every other project more feasible. (pp. 131-132)

Recent mineral discoveries and increased energy resource prices have tended to make many reservations viable in terms of economic development. The goal of this approach is to create a means for efficient development of viable reservation economies resulting in maximum opportunity for choices of style and standards of living and moving towards tribal and individual self-sufficiency.

In order to deliver this approach as developed, Congress should create the American Indian Development Authority as an independent federal agency. A.I.D.A. would provide technical assistance funding and capital to prepare and implement comprehensive development plans. Initially, A.I.D.A. would co-ordinate and eventually consolidate all development-related federal funds from all categorical grant programmes. Additionally it would administer an increasing amount of financing for reservation capital formation realized from increasing annual appropriations as set forth in the Act which creates its authority.

Each tribe would apply to A.I.D.A. for planning grants to establish a Tribal Development Authority. This Authority would prepare a multi-year comprehensive development plan in terms of tribal long-range development goals. A.I.D.A. would then review the tribe's plan in light of specific needs and development problems as well as the overall feasibility of the plan. Once A.I.D.A. accepted a plan, it would make a commitment for the plan's duration providing grants for development capital and making loans for operating expenses. In this manner, economics would work for rather than against the tribe. In essence, this is the model which the U.S. has used successfully in application to under-developed countries.

The Task Force prepared drafts of the bills which they have recommended within the body of their report.

TASK FORCE VIII

REPORT ON URBAN AND RURAL NON-RESERVATION INDIANS

In their review of the federal government's historical and legal relationship with urban and rural non-reservation Indians, the Task Force found seven significant areas of problem.

First, it was found that Indians come to the city as a result of acute problems on the reservation. Once in the city, however, it was found that Indians were unable to establish themselves. Federal policies and programmes thus were either directly or indirectly responsible for the migration. Where responsibility has been direct, as a result of various programmes, these programmes have failed to provide needed assistance. In an effort to increase assistance available, the government has passed bills such as the Vocational Training Act of 1956. Such acts have been a response to an emergency situation and not a recognition of either need or rights. As a result, services have remained inadequate.

Second, policies related to services for off-reservation Indians are basically policies of denial. The government has tried to reduce its commitment and cancel this commitment by establishing policies through which Indians would "melt" into the cities. In terms of overall analysis, this represents a transfer of the crisis from one location to the next. The Task Force found that migration has not brought "even moderate economic well-being to the majority..." of Indians who have moved off of the reservation.

Third, the argument in favour of special programmes of assistance to these peoples has two directions: A) The direction of unique Indian rights, which will require court decisions and legislation to finally reach clear settlement; B) The argument of special need, which is one of immediacy and is undeniable.

Fourth, the only government commitment to these peoples at the moment is on the basis of citizenship -- i.e., the same services which are available to all U.S. citizens. The Task Force took the position that this attitude must be rejected. Their research indicated that Indians do not use the non-Indian programmes. This was in part a result of the fact that non-reservation Indians tend to retain their tribal identity. At the same time, it was discovered that in many cases these same people were unified and willing to demand services of the government.

Fifth, the definition of the trust responsibility in terms of non-reservation peoples has certain Congressional considerations which must be examined. The genesis of the concept of trust responsibility and its scope as related to off-reservation peoples has been interpreted to the exclusion of these peoples. This interpretation

does not flow from the legal requirements but rather from practical considerations which may be translated "it's always been done that way."

Sixth, in spite of the difficulties which remain in legal and legislative methods (i.e., defining the trust responsibility in terms of this group of people), all agree that it is a government responsibility to protect Indian land and natural resources. What is not clear is whether the trust responsibility also means, independent of specific treaty provisions, agreements or statutes, that services must be delivered, and whether such protection extends to tribal members who live off the reservation and on non-tribal lands.

Seventh, the needs of non-reservation Indians have not been ignored in legislation but have been circumvented by administrative neglect or refusal to provide services. The Snyder Act calls for direction, supervision and expenditure by Congressional appropriation for the care, benefit and assistance of "...the Indian throughout the United States...." Mr. Soller, in 1971 the Assistant Solicitor of the Division Indian Affairs, Department of Interior, interpreted the Act to mean all Indians whether of federally recognized tribes or not, regardless of their place of residence. Naturally, this interpretation needs statutory limitations and Congressional Committee consultation, but the fact is that the interpretation's consideration never even got that far. Such broad discussion of this interpretation was squelched by Assistant Secretary Harrison Loesch. Interestingly, the Supreme Court case of Morton vs Ruiz stated that B.I.A. services "...clearly has not been limited to reservation Indians...." (p. 9) The court called for services to those living near reservations and unassimilated. The fact is that even this ruling is not being fulfilled.

The Task Force held extensive meetings with Indian people in the discharge of its duties. In examining the procedures and statutes which grant federal recognition and extend services to Indian communities and individuals, it was found that the main concern was non-recognition of 500,000 urban and non-reservation Indians by both the B.I.A. and I.H.C. Non-reservation Indians still saw themselves in their tribal identify regardless of their place of residence. In 1970 the federal government started a number of pilot projects to fund urban Indian centres. The funding for these projects was extremely disproportionate in relation to what the reservations receive for their needs.

When the Task Force collected and compiled data as to the present and future needs of non-reservation peoples, they concluded that the funds and services to which individual Indians were entitled from the various federal agencies could be better managed by a single elected urban Indian Council. At present these funds go to a host of

competing urban organizations, causing political needs to replace objective needs. The result of this competition was the development of splits between Indians, leading to alienation and destructive acts of revolution. Indians wanted new legislative mandates for urban programmes, new management systems to set local priorities, and a new delivery system to assume and carry out these priorities. Indians also noted that the word Indian is what determines eligibility; they felt that this word needed to be defined and possibly identification cards issued.

At present non-reservation people have no voice. It was felt that there was a need for total restructuring of the federal Indian Affairs administration in order to include non-reservation people. The Phoenix Indian Centre argued for a federal Cabinet-level agency to develop policy and programmes in harmony with the trust relationship. They felt that this agency could have a council of advisors from urban Indian centres and that it could be combined with a similar office which would work directly with the tribal governments. Indians felt that Indian federal agencies were preferable to state agencies, since the latter tend to be anti-Indian. Additionally, states also have fewer resources and run programmes in competition for land, water, taxation and other services with Indians. Finally, it was felt that the states lack jurisdiction.

In conclusion, it was felt that the problem was not one of changing existing laws, procedures, regulations, policies and practices, but rather that the problems were related to enforcement of the rights

which non-reservation people already have as well as a clear statement as to what these are.

TASK FORCE IX

LAW CONSOLIDATION, REVISION AND CODIFICATION

The U.S. Government-Indian relationship has at its centre a very strong legal basis. This legal basis flows from the U.S. Constitution, the various treaties with the tribes, numerous court decisions and canons, and Congressional statutes. It is a well known fact that some court decisions and a greater number of Congressional statutes, although sustained in their legality, violate the nature and basis of the Government-Indian relationship. These violations are a result of accident, lack of understanding of the nature of the relationship, of historical circumstances and, at times, intentional disregard of the relationship.

As a result of their work, Task Force IX had prepared a twelve-paragraph statement entitled "Proposed Congressional Findings and Declaration of Policy." This statement effectively summarizes Task Force IX's work and findings, as well as the intent of their work. The contents of the statement are discussed below

DISCUSSION OF THE IMPLICATIONS OF THE PROPOSED CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

Congressional authority in the area of Indian Affairs has its sources in the treaty-making powers, the powers to regulate commerce and the ability to make appropriations under the Constitution. These powers are plenary and totally exclude state authority in Indian country except as explicitly authorized by Congress.

Early Congressional action in the area of Indian affairs established the policy of relating to tribes as foreign nations, with tribal lands protected by treaties. Various court decisions have sustained this position of the tribes.

Historically, Congress has exercised its plenary powers even to the extent of violating the spirit of this policy by purposefully failing to recognize and/or even destroying tribes. Task Force IX asked Congress to recognize that the Constitution alone does not authorize interference with the internal affairs of tribes. While no restraint exists on Congresssional powers, the Task Force noted that there is a moral obligation to refrain from legislation which violates U.S. commitments to Indian people.

The Task Force thus seeks to put U.S.-Indian relations back into their original frame of reference re-establishing Indian self- governing rights, exclusiveness of jurisdiction, domestic nation sovereignty, and the tribes' sovereign immunity.

From the mid-1800's up to and including the 1950's and 60's, many attempts have been made to terminate tribes, tribal rights and government obligations to the tribes. This has happened to such a degree and in such a consistent manner, that Indian people live in constant fear of termination. Task Force IX called upon Congress to affirm tribal permanence as part of the U.S. governmental system, and to develop an institutional framework to give meaning to that affirmation. Many recent bills have implicitly expressed this view, but there is a need for an explicit statement regarding permanence, to put aside remaining fears regarding termination. The method of Indian representation in Congress must be developed by the Indian people themselves.

Congress is requested to recognize that the sources of tribal authority emanate from tribal status as sovereign dependent nations; that tribal power comes neither from the Constitution nor from Congressional acts. These powers are retained by the tribes in all aspects except as explicity limited by treaties or federal statutes. Such recognition of the source of tribal power would effectively control the powers exercised over tribes by the vast government bureaucracy.

The trust responsibility of the federal government towards the Indian people and tribes has fallen victim to considerable confusion over the years. In lay terms, the trust implies the historical relation of the government to the Indian people as one of protection and preservation of Indian people, property, governments and nations. The major problem in this area was seen as one of implementation rather than principle.

The economic situation of the Indian people has long been a concern of the U.S. government. Task Force IX asked Congress to recognize that the Removal and General Allotment Acts are primarily responsible for the economic condition of Indian people, as a result of land base break-up caused by these acts. These acts also crushed tribal government as well as Indian culture. Finally, these acts have caused continuous jurisdictional problems for tribal government. Congressional approval of this position merely recognizes the results of these misguided pieces of legislation.

Task Force IX saw the Indian Reorganization Act (I.R.A.) as an attempt to get government-Indian relations back in the proper relation and asked Congress to reaffirm its commitments under this act. The objectives of the act (the end of allotment; restoration of a viable land base; loan credits for development of businesses and resources; tribal self-governing rights recognition) and the Indian employment preference in agencies responsible for protection of Indian resources and service delivery, should be met.

The Task Force called specifically for repudiation of the termination legislation and restoration of federal recognition to terminated tribes. Again, a number of bills have implicity repudiated this policy, but as no direct repudiation of the Act itself has taken place, Indians still fear termination. In repudiation, terminated tribes should be recognized by criteria to be established by Congress.

As part of such a repudiation, on the positive side, Congress should reaffirm its commitments of the Indian Financial Act and Self-determination and Education Acts. A restatement of the goals of these acts would facilitate law codification.

Task Force IX requested that Congress recognize the tribes which, for lack of treaty relationship or other contact with federal authorities administering federal Indian law, have been heretofore unrecognized. Recent court decisions have affirmed these tribes' rights. Money has been, in many respects, the primary cause of non-recognition. Recognition of previously non-recognized tribes implies and necessitates expenditures above and beyond expenditures to currently recognized tribes. Congress must thus commit itself to this new expenditure.

Finally, the Task Force called upon Congress to recognize the large off-reservation Indian population, some of whom come from recognized tribes. All share common historical, cultural and social backgrounds which cause the urban systems to fail them and which thus create common needs. Current laws were found to be broad enough to legislate inclusion of these people in present and existing services. Exclusion to date has been a decision dictated by a lack of financial resources. Again, new monies are needed to help these people while not diminishing current services at the reservation level. Discussion of whether or not a person is still Indian, using some criteria such as time that they have lived off of the reservation or where the persons tribe has been terminated, is pointless.

CONCLUSION

The overall effect of the work of Task Force IX is to remove the major pieces of past legislation which have violated the original spirit of the U.S.-Indian relationship such as the General Allotment Act, Removal Act, Termination Acts, etc. The intent is to clearly establish and retain the original relationship, from the basis of trusteeship and domestic nation sovereignty, and build on more recent legislation which has been supportative of native people. In terms of problem solving, the outstanding problems of terminated tribes, non-recognized tribes and urban Indian populations are treated by inclusion into the total Indian population, without resort to subjective factors as a method by which to include or exclude sub-groups of native people from services.

Two major problems remain or flow from the statement of this Task Force. The first is that, in many instances, the Congress is asked only for an agreement in principle. Historically such agreements are easily had, but rarely followed up upon. Secondly, many of the recommendations bespeak greatly increased expenditures on the nation's behalf for native people. The economics of the current situation may not permit such increases in funding.

B. PROPOSED CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities, to American Indian people, finds that—

1. The authority of the Congress of the United States to regulate affairs with Indian tribes is plenary. This power is founded in the United States Constitution and flows first from the treaty making powers (Article 2, Sec. 2, cl. 2); second from the American clause (Article 1, Sec. 8, cl. 3) authorizing Congress to regulate commerce with foreign nations and with the Indian tribes; and third from the power to make or withhold appropriations. The plenary authority of Congress operates to the total exclusion of state authority because in ratifying the Constitution the original thirteen colonies gave up all authority in the premises and the power was withheld from every other state entering the Union thereafter either by specific provision in the enabling Acts authorizing their formation or by implication based on the equal footing doctrine. Within the Indian country, states can exercise no jurisdiction over an Indian person or an Indian tribe except as specifically authorized by Act of Congress.

In relationship to the tribes, the plenary authority of Congress has been exercised even to the point of withdrawal of recognition from Indian tribes, compulsory destruction of tribal schools and government, and forced sale of tribal assets. The Congress recognizes that while the Commerce clause would not appear to authorize legislation affecting purely internal matters of tribes, it has in the past enacted such legislation and this legislation has withstood the test of judicial scrutiny. The Congress of the United States recognizes that while there is thus no apparent judicial restraint upon this plenary power, there is a moral obligation of the highest order to refrain from legislation which violates its solemn commitments to the Indian people.

2. The Congress of the United States hereby declares that Indian tribes and tribal governments are now and forever will be a permanent part of the American political fabric and it hereby dedicates itself to the development of an institutional framework which will give full support and expression to the legitimate aspirations of the Indian people for political recognition and participation in the American governmental processes.

3. The Congress of the United States recognizes that the power and authority of Indian tribes emanates from their recognized status as sovereign dependent nations; that the powers of the tribes do not derive from any grant from the Constitution of the United States nor from any Act of Congress; that the Indian tribes always have had and do now retain all powers of any sovereign except as to those powers which have been specifically limited by treaty or by federal statute. Within these limits, the Congress reaffirms its commitments to leave the Indian people within the Indian country free from state or federal authority and free to be governed by their own code of laws.

4. The Congress of the United States recognizes that since the founding of this Nation it has been the declared policy of the United States Government to preserve and protect the people, the property and the governments of the Indian nations. This policy and the Federal commitment to the Indian people has been manifested by treaties and by statutes and it remains the policy of the United States today.

5. The Congress of the United States finds that the policy of the United States reflected in the Westward Removal Act of 1830 and the General Allotment Act of 1887 to either remove the Indian people from the American body politic or break up Indian reservations, destroy tribal governments and forcibly assimiliate the Indian people into the mainstream of American life was ill conceived and is the primary cause of the conditions of deprivation of the American Indian today and the primary source of the problems which confront the governments of the Indian tribes today.

6. The Congress of the United States now hereby reaffirms the policy of the Indian Reorganization Act of 1934 to put an end to the allotment era, to restore to the Indian people an economically viable land base, to provide the Indian people with sufficient credit through a revolving loan fund that they might develop their own resources and business institutions, to recognize the rights of the Indian people to be self-governing, and to provide through the employment preference policy for eventual control by Indian people of the Federal agencies responsible for protection of their resources and delivery of services to them.

7. The Congress of the United States finds that the policy of withdrawal of Federal services and termination of Federal recognition reflected in H.C.R. 108 of 1953 and the various termination Acts enacted pursuant to that policy was an ill conceived policy which has caused irreparable harm to those affected by its application. It is a policy which has been rejected in fact by passage of the Menominee Restoration Act of 1973, the Indian Financing Act of 1974, and the Indian Self-Determination and Education Assistance Act of 1975. The Congress herewith rejects H.C.R. 108 in name as well as in fact, and commits itself to the development of general criteria which will facilitate the restoration of Federal recognition to those tribes previously terminated.

8. The Congress finds that the policy of the Indian Financing Act of 1974 to provide a credit mechanism to help develop and utilize Indian resources, both physical and human, to a point where Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living comparable to that enjoyed by non-Indians in neighboring communities is a sound policy and it is herewith reaffirmed.

9. The Congress finds that the policy of the Indian Self-Determination and Education Assistance Act of 1975 commiting the United States Government to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the plan-

ning, conduct and administration of those programs and services is a sound policy and it is herewith reaffirmed.

10. The Congress finds that the declaration in the aforesaid Act that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being is a sound goal and it is hereby reaffirmed.

11. The Congress recognizes that there are numerous tribes and groups of Indian people who have been denied Federal recognition for lack of a treaty relationship with the United States or lack of other contact with Federal authorities administering the Federal Indian laws. The Congress recognizes that the continued refusal by the Federal authorities to accord Federal recognition to these tribal entities or communities of Indian people is not premised on grounds of equity or justice but is premised on the lack of adequate appropriation of funds to properly serve those tribes and people who are already Federally recognized and because of the lack of any clear legislative guidelines to facilitate recognition. The Congress herewith declares its commitment to provide a mechanism for recognition of those Indian tribes or community groups who have previously been unrecognized and to couple this commitment with a commitment to appropriate such additional funds in the future as are necessary to provide services to these newly recognized entities without diminishment of services to those tribes already recognized.

12. The Congress recognizes that there is a substantial Indian population residing off-reservation in urban areas whose needs in matters of health, education, welfare, housing, job training and job placement, credit facilities and technical assistance in establishment of small business enterprises are not adequately met by the customary state and local government programs or through private sources. The Congress recognizes that many of these people are members of Federally recognized tribes and thus a partner in the unique political relationship which exists between the United States and the Indian tribes, but the Congress also recognizes that many more are persons whose tribes have been terminated or who otherwise lack a Federally recognized status. The Congress recognizes that whether or not these Indian people are members of Federally recognized tribes, they share a common historical, cultural and social background which has caused the existing urban social system to fail them and which justifies and requires a Federal commitment to the delivery of services through programs specifically designed to meet their needs without diminishment of services to the Federally recognized, reservation-based tribes.

TASK FORCE X

TERMINATED AND NON-FEDERALLY RECOGNIZED INDIANS

A NOTE ON THE MEANING OF THE PHRASE TERMINATION

> TERMINATION, the official Federal Indian policy from 1953 through the late 1960's, may be defined simply as the cessation of the Federal-Indian relationship, whether that relationshp was established through treaty or otherwise. The trust was to eliminate the reservations and to turn Indian Affairs over to the states. Indians would become subject to state control without any Federal support or restrictions. Indian land would no longer be held in trust and would be fully taxable and alienable, just like non-Indian land in the states. Federal health, education, and general assistance would end. (p. 1627)

CONCLUSIONS OF TASK FORCE X

TERMINATED INDIANS

The TERMINATION ACTS were passed by the Congress under uncommon and questionable circumstances. The legislation was handled in haste and was the work of a small number of legislators. Thus, the legislation was not given proper consideration and reflected the efforts of legislators to pass legislation at a time when nothing else was working to "solve the Indian problem" and at a time when the B.I.A. was at its worst. The Task Force has concluded that termination was an experiment which was ill-conceived, destructive and had no provisions for reversal.

The termination policy was not initiated by the Indians, nor was it fully understood by or consented to by them. B.I.A.'s evaluations of the tribes' readiness for withdrawal of federal protection and its recommendations to Congress led the Task Force to conclude that B.I.A. and Congress made the selections of tribes to be terminated in the experiment.

Termination has resulted in the loss of tribal lands and disintegration of tribal society. It weakened tribal organization and placed tribal cultural identity in jeopardy. Its worst effect has been on the young, the old and the sick, who do not have adequate programmes of help. It eliminated special federal services and rights, resulting in the exploitation of tribal members. The B.I.A. and the Secretary of Interior, in some cases, greatly mismanaged the trust assets of the tribes undergoing termination. The Executive Branch, in some cases, failed to follow the substantive and procedural dictates of the Acts.

The Task Force concluded that termination was a bad experiment which should be rectified and should not be repeated. In noting that the courts have held that Congress has plenary power over Indian Affairs, the Task Force states that "...with that power must also come responsibility." In playing with the lives of Indian peoples through termination, moral responsibility must rest on Congress and the Executive. The Congress and the Executive should act immediately to rectify the Termination Act's results "...through restoration of those tribes so desirous of returning to federal Indian status." In the interim period, there is a responsibility to aid these tribes in all possible ways.

NON-FEDERALLY RECOGNIZED INDIANS

Whereas the Termination Acts were explicit Congressional declarations, the existence of non-recognized tribes is an adminstrative determination of Interior within the Executive Branch. The determination of non-recognized tribes lacks substantive legal foundations and denies to them the expressed protections of the federal government as well as participation in federal services, programmes and benefits which are available through Interior, B.I.A. and other Executive agencies and departments.

The results of non-recognition have been devastating: erosion of tribal lands (including complete loss of said lands in some cases); deterioration of cohesive, effective tribal government and social organizations; elimination of federal services through denial of said services. These tribes, who are desperately in need, are perplexed by the idea of non-recognition and cannot understand why the government has ignored their existence as Indians. They have viewed their lack of recognition in disbelief and see their non-recognized status as degradeing and unjustified.

The Task Force found that the status of non-recognized was complex and devoid of both theoretical and practical rationale. This status has become a divisive tool which is used to the severe detriment of Indian peoples. Regardless of the controversial nature of recognition and non-recognition in the socio-political arena of Indian Affairs, the concepts of recognition and non-recognition are misunderstood, especially when applied to the so-called non-recognized tribes in light of B.I.A. programmes and services.

In reading the statutes from the Nonintercourse Acts, much of the confusion caused by administrative interference with the intent of the law is cleared up. The Nonintercourse Acts clearly restrict alienation on the lands of all tribes, thus automatically placing tribal lands under federal jurisdiction. This means that the realty and land trust statutes apply to all tribal lands. The non-realty services authorized by the SNYDER ACT to "Indians throughout the

United States" clearly also apply to all Indians. From this the Task Force concluded that the terms recognition and non-recognition are used arbitrarily to exclude Indians from services that were intended for all Indians as seen by the plain meaning of the statutes.

Historically, budgetary considerations have dominated Indian Affairs. The Task Force tried to project the added costs of inclusion of both terminated and non-federally recognized Indians. This proved impossible, however, due to the lack of detailed needs assessments and accurate population counts. High estimates of these costs have often been given as a method of perpetuating their exclusion. Government inaction and continued exclusion of these peoples from benefits and services seriously and unjustifiably limit the effectiveness of the Snyder Act.

According to the decision in the Passamaquoddy v Morton case, the trust relationship had its basis in the Nonintercourse Act. Thus, the trust relationship pertains to land transactions covered by the Act, with the trust relationship rooted in the rights and duties encompassed or created by the Act. If the trust relationship pertains to land and is created by statute, along with services and programmes which are created by statute, then the government-Indian relationship is a mix of privileges and duties which derive from statutes. If this is the case, then the trust relationship is not a result of some mysterious unexplainable relationship, but rather is one based on statutory derivation.

The restriction in the Nonintercourse Act imposed a responsibility of guardianship to all tribes with tribal lands. Since the realty statutes apply, according to their terms, to tribal lands restriced against alienation, the restrictions imposed on all tribal lands by the Nonintercourse Act make the realty statutes applicable to all tribal lands. This, in turn, imposes a trust obligation to all tribes with land, and therefore the realty trust services must be provided to them.

The Snyder Act services are separate and apart from the realty services. The statute means what it said: Indians throughout the United States to be included in the services. The amount and kinds of services provided to a tribe would then be contingent only upon needs assessment. Naturally, the amount of funding being appropriated by Congress presently is inadequate for additional service population and must be adjusted upward.

OTHER AREAS OF CONCERN

a) Eligibility and preference determinations of the B.I.A. are used by other federal departments and agencies. As a result of the Task Force's conclusions, "...and the impending restoration of terminated tribes..." other departments and agencies administrating Indian programmes must fund and serve all tribes;

b) The Task Force was advised of other tribes which have potential claims against states under the Non-intercourse Act. Without funding for legal assistance and without the U.S. bringing suits in behalf of these tribes to avoid state sovereign immunity claims, justice will not be done. Thus, legal service funds must be given, and statutes of limitation on such actions extended to allow for adjudication of these claims.

c) All tribes, organizations and communities now deemed terminated or non-federally recognized have indicated the need for technical assistance to effectively operate programmes. This technical service is not available now. Without training and technical assistance, many programmes will fail. Effective training and technical help are needed so that they may run their own programmes, provide services to their people and prepare to administer other programmes provided through the Snyder Act, the Johnson-O'Malley Act and the Indian Self-Determination Act.

d) In order to provide services and programmes, the government must have accurate population counts and characteristics. The Task Force found that current data were grossly inaccurate and that the Census will have to make every effort to obtain accurate census data.

e) CETA Indian Manpower Programmes have proved very poor, ranging from inadequate technical assistance to failure of prime sponsors to serve communities within their service areas. In terms of the latter, the Director and a staff member from Indian Manpower Programme in the Department of Labour told the Task Force that the provision of service is left up to prime sponsors. The Task Force concludes that the Department of Labour is not responsive to Indian employment needs, lacks a willingness to adequately monitor service delivery and isn't concerned with prime sponsor coverage of service areas.

f) Terminated and Non-federally recognized Indian communities equal about one-half of the Indian population, but computations for Fiscal 1975 ONAP grantees, which effect such communities, reflect only 10.87% of the total ONAP grantees. CETA prime sponsors which are terminated and non-federally recognized tribes comprise approximately 11.1% of the total number of fiscal year 1975 prime sponsors. Computations of the Indian Education Act - Title IV - grantees are about 10.87%. Regarding the programmes presently available, the Task Force concluded that terminated and non-federally recognized Indians do not administer a proportionate share of the programmes.

g) There will be some delay in the restoration of tribes and the provision of services to all Indians. In the interior, additional funding for upgrading of full-time leadership and adequate administrative and governmental capabilities are needed. The Task Force recommended that additional funds be supplied through the Office of Native American Programmes (ONAP) to serve as interest preparatory measures to initiate efforts towards effective administration and tribal government. These funds are to be added in addition to present ONAP funds. Once entered into the B.I.A. funding mechanism, tribal government development funds would replace ONAP set aside funds.

h) Education is vitally needed by these Indian peoples. Presently only Title IV graduate fellowships apply for terminated and non-federally recognized tribes. The Task Force recommended that in order to increase education and provide for future progress, a National Indian Scholarship Fund be established to serve all Indian undergraduates and graduates.

i) The Federal Regional Council/Indian Task Force in Region it has served to bring the needs of these Indian peoples to the government's attention and has provided them with policy and programme participation. The Task Force felt that this model has worked well and should be implemented in other regions where terminated and non-federally recognized Indians live.

j) The term Non-Federally Recognized should never be used again. The statutes do not make such a distinction. The Task Force concluded that this term should not be used in any additional way. The term Terminated Indian should not be used again as a distinction or classification upon restoration of the tribes.

TASK FORCE XI

REPORT ON DRUG AND ALCOHOL ABUSE

INTRODUCTION

The purpose of Task Force XI was to determine the extent of alcohol and drug abuse amongst Indians and Alaska native people. The Task Force's responsibility was to provide a basis upon which the A.I.P.R.C. could make recommendations for programmes, policies and legislative changes which would be responsive to drug and alcohol related problems. The work of the Task Force included extensive field hearings, visits to alcoholism programmes, literature search and analysis, examinations of proposed legislation and analysis of federal programmes.

HISTORICAL SCOPE OF THE PROBLEM

Native use of alcohol and drugs traditionally was strictly confined to ceremonies and religious rituals. With the coming of the white man, traders used alcohol as a method of stealing and trading for native goods. This introduced alcohol use for other than traditional purposes.

The Indian community did not have a traditional way to deal or cope with the actions of their people when under the influence of alcohol.

While such behavious was not acceptable, intoxicated persons were not considered to be in control of their actions. Moreover, the tribal system was not prepared to adminster strong restrictions or punishment to drinking or intoxicated tribal members. In an effort to intervene in the situation, Congress prohibited the use of alcohol by native people in 1832. This, however, only led to bootlegging. The prohibition on Indian consumption of alcohol was repealed in 1953.

> The ill effects of the introduction of distilled beverages into a socially unprepared society and resultant measures at control by a dominant society have played an important part in the formation of destructive drinking patterns by Indian people. (p. 4)

THE PROBLEM TODAY

The effect of drug and alcohol abuse in U.S. society is most visible and prevalent amongst Indian people. The I.H.S. in a 1970 report stated that the majority of accidents, especially accidents which are fatal (almost all homicides, assaults, suicides or attempted suicides) amongst native people are alcohol related. Most or the majority of arrests, fines and prison terms are also alcohol related.

The magnitude of the problem is reflected in the fact that some tribes reported alcohol abuse rates as high as eighty per cent. Death rates related to alcohol amongst Indians are 5.5 times higher than they are for non-Indians. Finally, toxic inhalants were found to be in use by Indian children, some as young as six years old.

SUMMARY OF FINDINGS

Indian people, tribal leaders and tribal health boards all identified alcohol and drug abuse as the most pressing problem which they face. Although the federal trust responsibility includes Indian health, Indian alcohol programmes were not started until the late 1960's, when the Office of Economic Opportunity (O.E.O.) funded some initial projects. In 1970 a Comprehensive Alcohol Abuse and Alcoholism Prevention, Rehabilitation and Treatment Act was passed. This act established the National Institute of Alcoholism and Alcohol Abuse under H.E.W.

The National Institute of Alcoholism and Alcohol Abuse, N.I.A.A.A., funded 153 Indian alcoholism programmes. These were funded as start-up grants with three to six years of assured funds. In 1973, again under H.E.W., the National Institute on Drug Abuse was founded. In spite of the establishment of these Institutes, the Task Force found:

> ...awesome the totality of unmet need, particularly in the area of research, development of a valid data base, development of standards of performance, training of counselors and professionals, developing of management capabilities, building of facilities, designing of new and innovative approaches, preventative education, etc... (p. 5)

An examination of the causes of the destructive use of alcohol and the treatment of such Indian people indicated a number of interesting conclusions. In treating the problem, it was found that most programmes for Indian people are structured in such a manner as to only arrest the process temporarily. The only long-range approach to prevention seems to be in the area of the provision of alternatives. This latter conclusion was supported by questionnaires to tribes and individuals. Tribes and Indian individuals also stressed the importance of "...returning to traditional heritage and culture, and utilizing the Indian culture and treatment programmes." (p. 6)

The Task Force took both of these ideas into account in its recommendation that:

> ...priorities of long-range strategy be placed upon prevention and emphasis upon traditional heritage and culture. This strategy must include further research into the identification of causative factaors, the betterment of education programmes, jobs and recreational opportunities which address theprevention of alcohol-related problems, and the provision of alternatives to drinking. (p. 6)

Overall, the Task Force felt that causative factors are symptomatic of larger influences such as unemployment, lack of education, poor housing and the like. For the Indian, the forces of non-Indian civilization, culture and government forced dependence on top of normal living pressures had created a push-pull anxiety with alcohol as a coping mechanism. Any long-range strategy must be founded with this as a premise. Additionally, the total federal, state and local programme packages fell far short of meeting the needs of Indian people. Existing programmes were fragmented and of uncertain duration.

In conclusion, three major recommendations were made. First, that prevention and comprehensive treatment receive the highest health priority at all levels of Indian policies and programmes. Second, that a joint resolution of Congress be undertaken to establish long-range continuing commitment for the resources which will be needed. Third, that a separate and distinct national Indian alcohol and drug abuse entity be established to pull together all of the resources, programmes and expertise in a co-ordinated manner. The status of this entity should be equal to the magnitude of the problem.

BUREAU OF INDIAN AFFAIRS MANAGEMENT STUDY

The management study team reviewed prior assessments of the B.I.A. in order to discover recurring references to potential problems. The team found that management practices, personnel administration and intergovernmental relations had received the most attention in the past. Accounting, including the budget process and management information, had received substantially less emphasis. Management principles of planning, organizing, leading and controlling had received insufficient emphasis.

A number of areas were found in need of increased attention. The need for management ability was found to be just as important to programme as capital. There was a need for the provision of executive leadership at all levels. A need for development of comprehensive, timely information for B.I.A. personnel to use in assuring effective planning and control was identified. A lack of long-range planning to direct B.I.A. activities was found to exist. Finally, it was discovered that the lack of effective implementation of prior assessments was a result of failure to provide an apparatus to perform the implementation.

OVERALL CONCLUSIONS

Throughout the B.I.A. there is an absence of managerial and organizational capacity. Decisions are made on a day-to-day basis with little long-range planning. Intergovernmental communication between levels is poor.

The study team found no evidence of critical analysis and determination of appropriate performance standards for key positions. Achievements in most areas were not measured against appropriate yard-sticks. This was coupled with a critical absence of information needed for efficient administration. Data was simply not available, directories and organization chartas were out of date.

Finally, employee attitude and morale suffered from the above problems. This situation was made worse by Indian Preference implementation, poor personnel practices and inadequate career development.

RECOMMENDATIONS

i) Budget

The budget process is unique in that the client is supposed to formally participate in the budget request through Band Analysis. Long-range planning capabilities do not exist, and budget and planning functions are fragmented and ineffective. A formal planning system needs to be created, incorporating comprehensive tribal needs analysis and long-range plans.

This would guide capital and human resource allocations to strategic areas.

Functions of budgeting, planning and intergovernmental relationships should be consolidated. This new central office organization would report directly to the Commissioner of Indian Affairs. Throughout the preparation and presentation process, B.I.A. should foster increased Indian participation in the development of budget information and materials. Implementation of this approach would provide increased visibility for Indian plans and needs.

ii) Personnel

Almost all areas of personnel management were found to be inadequate. The current interpretation of the Indian Preference policy adversely effects personnel actions. This policy should be modified to ensure effective operation without slowing the movement towards fullest employment of Indians in B.I.A.

Planning should take place through use of industrial engineering techniques to determine proper staff levels and position requirements. This would then be followed by an aggressive recruiting programme to get suitable Indian people. It would also change the current classification system in order to restore integrity.

Employee relations practices need major changes which can be achieved through consistent, formal training. A comprehensive needs analysis should be undertaken and programmes developed to meet needs requirements.

iii) Modernization

A modernization study is underway to update data processing. Its schedule should be moved up by fifty percent, with equipment revision to include milti-processing and communications abilities. An automated inventory system would realize a financial savings.

Management by Objectives (MBO) should be revised to set goals flowing upwards from lower levels and guidelines flowing downwards from upper management. This would be integrated into the budget process along with employee performance evaluations.

iv) Structure

The structure of B.I.A. is more in line with a single, common-need client. Indian people do not represent such a client. The B.I.A. lacks communication and has excessive spans of control and ineffective leadership. There is little indication of preparation for future Indian self-determination. Indian input and proximity to decisions is minimal, while Bureau response time is excessive.

v) New approach to organization concept

A new organization concept was developed, moving decision-making closer to the tribal level and providing dramatic leadership. This approach separates functional and administrative responsibilities. It also includes a major change in the responsibilities of regional service centre managers, resulting in increased responsibilities for agency offices.

Two consolidated functions, human resources and natural resources, would be established at the central office. Reporting of school superintendents to the Bureau would be strengthened and mechanisms for Indian participation in educational decisions established.

B.I.A.-Interior conflicts would be partially resolved by elevating the Commissioner's position to that of Assistant Secretary.

The B.I.A. must have its own legal staff to pay timely attention to Indian needs. The establishment of such a legal staff would overcome conflict-of-interest problems with Interior.

The study team predicted a substantial savings, and quantified some of this savings, on the basis of implementation of its recommendtions.

vi) Implementation

The team called upon Congress to develop a positive vehicle to implement the recommendations. This would have to support the team's report, endorsing both its concepts and intent.

The called for a MANAGEMENT IMPROVEMENT REVIEW OFFICE to be located in the Office of Management and Budget. Quarterly reports and updates in special situations would go to the Commissioner of Indian Affairs, Secretary of Interior, Congressional Committees and the Executive Office. These would chart progress, pinpoint delays and problems. Management team

members would counsel and review implementation strategy with Review Office personnel. The Commissioner of Indian Affairs and Secretary of the Interior would be required to highlight essential features of these reports in annual budget presentations to Congress.

SPECIAL JOINT TASK FORCE REPORT ON ALASKA NATIVE ISSUES

HISTORICAL BACKGROUND

The United States purchased Alaska from Russia through a treaty in 1867. Under the terms of that treaty "...uncivilized tribes will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country." At the time of the treaty, the U.S. government was putting Indian people in the contiguous U.S. on reservations. By 1871, however, the Congress forbade further treaties with Indians on the federal government's behalf. This 1871 act prevented early settlement of the claims of Alaska natives.

With the Organic Act of 1884, Alaska's status changed from that of a customs district to that of a land district. This had the effect of extending the U.S. mining laws, especially the Minerals Location Act of 1872 to cover Alaska. This became important shortly thereafter with the discovery of gold near Juneau. The Organic Act noted the unusual position of Alaska's native peoples:

> ...the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them, but the terms under which such persons may acquire the title to such lands is reserved for future legislation by Congress.

This statement became the basis for a legislative rather than a judicial settlement of the Alaska claims.

Because little was known of Alaska native peoples, Congress established a special commission to look at the Alaska native situation. This Commission was to report on native conditions, lands which might be reserved for native peoples, provisions for education and the rights by occupation of settlers including recognition of these rights. The Commission recommended that the general land laws of the U.S. be extended to Alaska and stated that native peoples claimed "...only the land on which their homes are built, and some garden patches near their villages." On this basis the Commission encouraged settlers to go to Alaska to open and develop the area's resources.

Congress acted on these recommendations and extended the general land laws, including the homesteading laws. The latter laws proved of little value, however, as most of Alaska had not been surveyed nor was the majority of the area good for farming. Since native peoples were not citizens, they were unable to obtain land titles under the homestead acts.

From the 1880's on, settlers came to Alaska to mine copper and gold, which became the economic base of the area. During this period the government was pursuing assimilationist policies towards Indians in the contiguous U.S. through the Indian Allotment Act of 1887. In southeast Alaska, white settlement was encroaching on the hunting and fishing areas traditionally used by the Tlingit and Haida Indians.

These peoples wrote to the Secretary of the Interior concerning these matters. The Secretary wrote back saying that the situation was outside of his powers and authority. The peoples then wrote back and asked for a reservation, but since reservations were not the policy being pursued at the time, this request was denied.

No major change took place in the situation of Alaska native people until 1906 when, in the case of Berrigan v U.S., the Supreme Court ruled that the government had an obligation to protect the property rights of its Indian wards. As a result of this decision, Congress passed the equivalent of the Indian Allotment Act for Alaska natives in 1906. This granted to Indian and Eskimo (but not Aleuts) 160 acres of land for homesteading on non-mineral land. This land was to come from vacant, unappropriated public domain -- i.e., unreserved federal lands. The measure of the inappropriateness of this approach is reflected in the fact that fifty-four years later only eighty such allotments had been taken out. Most of these were in the southeast.

Under Theodore Roosevelt, large tracts of land in Alaska were set aside as national forests, national parks, petroleum reserves and wildlife refuges. In removing these lands from the public domain, little attention was paid to native interests or native settlements. At a later date the Supreme Court would rule that the government owed the Tlingit and Haida $7.5 millions for lands taken for the Tongass National Forest.

Mineral lands continued to be removed from the public domain, and in 1908 the President was enabled to continue such removal without Congressional approval through the Picket Act.

In 1912 Alaska became a territory. Without knowing what its authority limits were, the territorial legislature immediately enfranchised its native population. Citizenship was granted to Alaska natives in 1924 when Congress granted citizenship to all native peoples in its territorial limits.

By 1943 the Secretary of the Interior created several native reservations, pending approval of 30 per cent of the native population. Non- native Alaskans were concerned by this action, feeling that half of the territory might be given up to reservations. Ultimately only six reservations were created, a number of others were voted down by native people. One was disbanded by the courts due to

improper procedures in establishment, and eleven more never reached the stage of voting. As late as the 1950's, ninety villages petitioned for reservations, but these petitions were ignored since the government was then following a policy of termination.

Throughout a long period (starting in 1946) there had existed an Indian Claims Commission which offered redress to Alaska native peoples. This Commission had a 1951 deadline for claims filing and was very little used as most natives were unaware of its existence.

When the push for statehood began, most people were aware that there were native claims but felt that this was a separate matter which the federal government had to settle and that it should not interfere with statehood. In granting statehood, the federal government was more generous in granting public domain lands. This was a result of several factors. Most of Alaska had not been surveyed and so the old school section method would not work. Land values vary considerably, in place grants would have transferred to the State many lands which would not have been of economic value. Finally, small tracts of state land in isolation would have been unwieldly. Alaska also benefited from transfer of certain mineral lands which, in the case of Alaska, a non- reclamation state, would yield 90 per cent of the mineral revenues to the state.

With statehood in 1958, the state of Alaska had 92.4 million acres in different types of federal reserves, the federal government held in trust another 4 million acres as Indian reserves, and the state itself had a public domain of 271.8 million acres from which the state was entitled to 103 million acres. The federal government thus kept approximately one-fourth of the state as federal lands.

Native peoples in Alaska were generally unaware of the effects which statehood might have upon them. Their major concern was, as a result of the Organic Act's demand of a legislative settlement, that their claims would not be totally abandoned. The various governmental authorities had differing impressions of the situation. Some did not believe that there were valid claims. Others, especially persons in Alaska, wished to leave the entire matter in the lap of the federal government, seeing the situation as a federal matter. Prior to statehood, the Department of Justice had warned the Senate not to even mention the idea of claims, even if by way of disclaimer. A disclaimer, however, was included in the Statehood Act of 1958:

> As the compact with the United States and said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this act the right or title to disposition by the United States and to any lands or other property including

> fishing rights the right or title to which may be held by Indians, Eskimos, or Aleuts...or is held by the United States in trust for said natives; that all such lands or other property including fishing rights the right or title to which may be held by the United States in trust for said Natives shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority...

This disclaimer became the basis upon which Congress decided that it had a right to settle the Alaska claims.

In 1961 the B.I.A. filed protest against Alaska on behalf of four native villages. The claim argued that the state had patented 1.7 million acres which was contained within a claim by these villages of 5.8 million acres. This started a flood of claims in which the Interior Department ruled that "Indian Title" was at question. Further, since the Bureau of Land Management did not have the authority to deal with these claims, local land offices were ordered to dismiss all claims on said grounds, except for 160 acre allotments.

B.L.M. and B.I.A. were clearly at odds and caught up in a conflict of interest. B.I.A. was telling natives to file their claims, while B.L.M. was dismissing these claims as fast as they came in. The native people became increasingly organized in protesting state land selections. In 1964 the Secretary of the Interior, Mr. Udall, refused to grant Alaska title to lands which the state had selected due to Indian protests. In the same year, 1966, the Indians protested the federal oil and gas lease on the North Slope. Udall responded by freezing the disposition of all federal lands and suspending the North Slope lease until native claims were settled. This action continued under the new Secretary Hickel. The effect of this history, as well as the freeze and lease suspension, was to put all major actors (state, federal, native and energy companies) on the side of settling the claims. As the Special Study Team noted "...(T)he effect of the freeze on creating the political climate and pressure for a settlement canot be underestimated."

THE ALASKAN NATIVE CLAIMS SETTLEMENT ACT AND ASSOCIATED PROBLEMS

The Alaskan Native Claims Settlement Act (A.N.C.S.A.) is a highly complex piece of law which reflects the compromises which were made as a result of political pressures at the time. The Act's policy was one of recognizing claim and need for settlement, but at the same time refusing to create reservations, wardships, or racially defined institutions. For purposes of the Act, a native was a person who was a quarter breed or more, or who, in the judgement of the community, had parents who were regarded as natives. All rights of an aboriginal nature (including hunting and fishing) were extinguished in return for fee simple title to 40 million acres and a shared cash settlement (the Alaska Native Fund) of $962,500,000.00.

By Congressional mandate, 12 state-chartered, profit-oriented corporations were created. These corporations are regional, following common heritage lines. Corporations hold both surface and subsurface rights to lands selected by some village corporations, and subsurface rights to all village-selected lands. A 13th Corporation was permitted to be created for non-resident natives, if that was their desire. All natives in each region were to receive 100 shares of stock in their regional corporation.

Congress also mandated the creation of village corporations which could be profit or non-profit in nature and which were to receive subsurface rights to the lands they selected. A village was defined as any place with a population of 25 or more; land allocation was on the basis of a population formula. Village corporations had to convey title to all tracts which were primary places of residence, business, subsistence campsites or headquarters for reindeer husbandry. It was also required that a conveyance of not less than 1,280 acres go to the municipal government (or be held in trust by the state until such a government was created).

Funds from the Alaska Native Fund are disbursed over a specified time period to the regional corporations in a proportion based upon the corporations stockholders verses the total number of all stockholders. Seventy percent of all revenues which come from subsurface minerals and timber from any regional corporation was subject to revenue sharing amongst all corporations (that is, regional corporations). This is done on the basis of the proportionate number of stockholders. Not less than 10 per cent of the funds from the Alaska Native Fund and from the shared revenues must go to stockholders. Finally, not less than 45 per cent (after five years 50 per cent) of monies received by the regional corporations must be distributed to the village corporations in its region, apportioned on the basis of stockholder numbers. The village corporations must make a proportionate cash distribution to nonresident stockholders.

Land selections come mainly, but not totally, from public domain lands. Within three years village corporations were to select lands from native village sites that were contiguous, compact and in whole (1,280 acres) sections. This accounted for 22 million acres in which the villages would eventually receive surface title, while the regional corporations would receive subsurface rights. If these subsurface rights were impaired, the regional corporation would be permitted selection of an equivalent subsurface amount elsewhere. The difference between actual total village selection and the 22 million acre allotment (surplus) would be given to regional corporations who, in turn, would allocate to village corporations on the basis of equitable need. An additional 16 million acres were allotted from which regional corporations could select lands if they had already achieved their full acreage entitlement pursuant to other sections of ANCSA. Finally, 2 million acres were set aside for the selection of historical and cultural sites by the regional corporations.

All of these conveyances were subject to existing valid rights such as leases, contracts, rights-of-way, easements, mining patents, etc.. Once selections were made, a form of title called Interim Conveyance was to be issued by Interior which would permit use of selected lands. Fee simple title required that the land be surveyed. There was no time limit placed on the U.S. for conveyance of these lands. In terms of these lands, a joint federal-state land use planning commission was to be established, in part, to make recommendations regarding easements to attach to said land conveyances to native corporations.

The problems of easements in the case of the ANCSA is interesting in that it differs from the usual procedure. Normally, easements are determined and compensated for in a judicial forum or through negotiation. In the case of the ANCSA, easements are to be established at the time of the conveyance.

With the Act, all reservations which had been completed and established in Alaska, save the Metlakatla reservation, were revoked. These lands could be held in completer fee simple, but doing so (which also gave subsurface rights) meant that the peoples in question would not share in the monetary part of the settlement. As with reservations, the Allotment Act was revoked but was subject to applications by native applicants.

Revenues from the Alaska Native Fund were not taxable nor were stock receipts. Income produced from investment was taxable. All lands which were non-productive were tax free for a period of twenty years, and capital gains tax was to be computed by use of fair market value at the time of receipt.

The stock which natives received in their regional corporations was nonalienable for a period of twenty years. Thus under no circumstances could this stock be sold, transferred, etc.

The federal government set aside 80 million acres for national parks and the like. It is unclear if natives are prohibited from use of these lands for subsistence purposes.

With the above settlement made, the freeze was taken off both the pipeline and the selection of lands by the State. Transfer of the lands mentioned above was originally seen as a quick process. In fact, it has been anything but quick. A fixed timetable for selection was provided for the corporations, and the corporations did stay within that timetable. Alternatively, however, there was no fixed timetable for the determining of easements or the conveyance of title, although the Act uses the word immediately. In theory, the process involves the selection of land, determination of easements, issuing of Interim Conveyance, surveying and the issuing of fee simple absolute title. The easement policies and procedures are extremely complex.

In process B.L.M. suggests tentative easements which are circulated for 60 days. Revised B.L.M. proposed easements are then sent to the Joint Planning Commission, where the package is reviewed, revised and sent back to B.L.M., 60 days. B.L.M. reviews the package again and publishes its intent to convey subjet to the recommended easements, 30 days. Finally, there is a 30-day appeal period prior to issuing Interim Conveyance. The minimum process then is six months, which has resulted in the fact that to date only 500,000 acres of Interim Conveyances have been issued.

A second problem revolves around the type of easements sought. The standards for easement are broad and all-encompassing. The Act refers to periodic easements, while Interior is seeking 25 feet/coastal continual easements, 15-feet continual easement on streams, plus numerous easement trails. Where native selection is for subsistence, easements seem to provide full access to native lands by non-natives, thus threatening user intent.

Additionally, a floating transportation corridor easement is sought which potentially would restrict use of large land areas based on some future possibilities of corridor use. ANCSA contemplates that Secretarial withdrawal of land for transport or utility corridors would mean that native corporations would not select such lands, but would select their lands from other holdings. Thus, Congressional intent was probably non-diminishment of native selections by such corridors.

As mentioned, above, ANCSA calls for 70 per cent of each regional corporation's revenue from minerals and timber to be shared between all regional corporations on a proportionate enrollment basis. Revenue, however, it not defined. Questions of legitimate deductions, depreciations, etc. are unanswered. Moreover, with 12 different accounting systems, co-ordination, systematization and trust have not developed. The entire sharing concept may inhibit corporate development decisions. Finally, revenue sharing and disbursing sections may act to necessitate use of outside capital, leading to third party or leasing arrangements.

ANCSA set up the Alaska Native Fund. The arrangement was that the Federal Treasury would provide all but 2 per cent of the nearly $1 billion over an 11-year period. The remaining 2 per cent was to come from royalty of mineral leases on federal and state lands. To date, all monies have come from Congressional appropriations. Much of the money in this fund was to be used by the corporations for land development. As a result of the minimal lands transferred to date, most of the monies have been used to fight the federal government in order to try and secure the lands. At the village level, which is also the lowest revenue level, management of village affairs pending land transfer is costing $70,000. per village job. The overall net

worth of the settlement is diminishing, due to inflation and due to failure to receive the 2 per cent royalty. Cost overruns in the Alaska pipeline as well as delays put receipt of those royalties further off. Corporate lawyers estimate the effective payment has been reduced to a $250 - 300 million level.

Taxation of lands transferred was not to start until 20 years after the settlement. This, however, assumed that there would be immediate and continuing development on these lands. Further, it must be asked, when the survival rate of new corporations in the United States in considered, whether all 12 of the regional corporations will survive? At the village level, where there are 205 corporations, there is a serious lack of infrastructure and management personnel needed for economic development. Many villages selected lands for subsistence and isolation; taxation will force development regardless of user intent. Some natives have suggested that undeveloped lands remain permanently non-taxable, while others have suggested that the 20 year-period of non-taxation start only at the date of actual land transfer.

Under the ANCSA, stocks in the corporations cannot be alienated for a period of 20 years. After that period stocks will be like any other asset. If native people are to retain control over their land, they must retain control over these stocks. Potentially, natives could lose control of the corporations and thus their lands.

> Some Native organizations, particularly those not involved in day-to-day economic management, have begun to rethink the mechanics of ANCSA and the stock issued pursuant to it. The stocks embody Native heritage, a heritage which was received from ancestors, and which should be passed on to their children. The question arises as to whether any person receiving stock under ANCSA should be viewed as a sole beneficiary simply because they were alive at the appropriate time. If stockholders are viewed as sole beneficiaries, then ANCSA may be viewed as a delayed per capital payment not very different from previous methods of settling Indian claims.
> This line of reasoning has lead some Alaska Native leaders to rethink their prior opposition to trust status and reservations. (p. 20)

ALASKA NATIVE VILLAGES

In 1963 a federal policy urged native villages to incorporate under Alaska laws. Those communities which were already incorporated under the IRA of 1934 had their constitutions and bylaws revised and incorporated into a city charter. The city council became the sole political entity, while the IRA council continued its existence operating and controlling federally financed businesses or services. By 1973 some 84 villages had become Alaska municipalities. Today there are three types of governments under which native villages operate: 1) state incorporated; 2) IRA councils; 3) traditional, non-IRA.

One impact of the incorporation policy is the possible loss of native control over native villages. By Alaska law, there are four types of cities: first, second, third, and fourth class, with type being determined by population size. The only difference between their powers is that all save the fourth class city can levy property taxes. The fourth class city is not responsible for the operation and maintenance of its schools and can only tax by means of a sales tax which comes about by a ballot and cannot exceed 3 per cent.

Once a native village incorporates as a local government unit there are no safeguards against non-native takeover. The change from tribal to municipal government engages the 14th Amendment "equal protection," meaning that non-natives cannot be exlcuded from the political process.

i) INDIAN REORGANIZATION ACT AND TRADITIONAL NATIVE GOVERNMENTS

Most native villages operate under the Indian Reorganization Act or traditional governments. The future of these governments under ANCSA is not clear. ANCSA does not force incorporation; however, its intent clerly was not to create "permanent racially defined institutions.

ANCSA definitely restricts the abilities of native villages in powers of self-government. As a result, many villages have no law enforcement or judicial powers. Potential passage of Senate Bill 2010, Improvement of Indian Law Enforcement, may not apply to Alaska villages since it is not clear if the villages constitute Indian Country. The State of Alaska has taken the position that retrocession of exclusive state criminal and civil jurisdiction back to the federal government and villages would violate ANCSA by establishing permanent racially defined institutions. Villages which are not incorporated also have little or no access to specific kinds of funds, although incorporated villages seem to fare as badly as unincorporated villages as far as funding goes for law enforcement and funds to pay other municipal officials.

Generally, native villages suffer a lack of revenue to support their governmental operations. This seems to be true for both incorporated and unincorporated villages. In some cases revenue powers have passed to the village corporation rather than the village council.

Apparently IRA and traditional village governments can prevent non-native control, but it is not clear that they can prevent non-native habitation. Thus, should land be parcelled out for residential lots it may be necessary to sell to native and non-native alike.

INDIAN SELF-DETERMINATION ACT

The Indian Self-Determination Act defines an Indian Tribe as:

> ...any Indian Tribe, band, nation or other organized group or communicy including nay Alaskan Native village or regional or village corporation as defined or established pursuant to the ANCSA (85 Stat. 688) which is recognized as eligible for the special programmes provided by the United States to Indians because of their status as Indians. (p. 24)

In Alaska this includes six different types of organizations, councils and villages.

In trying to deal with tribal uniqueness in Alaska, Congress created the problem of recognizing from one to three possible authorities for village, making it possible that regional non-profit associations might be recognized as tribes. In practice, regional and village profit-making corporations will probably not seek powers under the Self-Determination Act.

Finally, it is not clear if incorporated villages are tribes within the meaning of the Act. B.I.A. has included them in the grant section of the Act. City councils apparently are not eligible, since they are local government units of the state. Should non-profit associations be included in the definition of Indian Tribes, the issue will be who should receive or be eligible for grants and who should be eligible to contract?

RECOMMENDATIONS

The complexity and confusion of the situation is quite clear from the above discussion. On the basis of this complexity and confusion, the Task Force made six recommendations.

First, that Interior allocate the needed resources to BLM in order to complete all Interim Conveyances by 1981. If Interior's resources were insufficient, they should seek additional authorizations and appropriations from the Congress, which for its part should pass reasonable requests to this end. Congress should increase its oversight re Interior with respect to ANCSA implementation. In cases where litigation becomes necessary to gain Interior's compliance, the U.S. should pay attorneys' fees in successful cases.

Second, The easement provision of ANCSA should be repealed, easements would then follow normal proceedings and legal principles. In the interim, Interim Conveyances should be forthcoming, with easements to be settled at a later date by negotiation or litigation.

Third, ANCSA should be changed so that the 20 year non-taxable period starts only with fee simple title to all ANCSA lands.

Fourth, all undeveloped lands received from ANCSA (that is lands which continue to produce non-commercial income), should remain tax exempt permanently.

Fifth, In 1981 Congress should establish a special committee to determine if ANCSA will assure future viability of native communities. The committee should consider the following options:

i) Permanent nonalienability of Corporation Stock;
ii) Establishment or reestablishment of reservation status.

Sixth, The Indian Self-Determination Act should be changed so that:

i) Self-determination grants should go to native village governments, either IRA, traditional, or municipal.

ii) Where an IRA and municipal government co-exist, the IRA government should have prior right. It could waive this right in favour of the municipal government if it so wished.

iii) Regional non-profit corporations should be eligible to contract under the Self-Determination Act, subject to preemption by individual Native vilalges to the extent of their proportionate share of the total contracting funds available to the region.

iv) Any recognized regional tribal government should be exclusively eligible for both self-determination grant funds, and contracting.