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**THESIS**

**FEDERAL-TRIBAL GOVERNMENT COLLABORATION IN  
HOMELAND SECURITY**

by

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September 2007

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**TRIBAL-FEDERAL GOVERNMENT COLLABORATION  
IN HOMELAND SECURITY**

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## ABSTRACT

Each day, more than fifteen hundred illegal immigrants enter the United States through the tribal lands of the Tohono O'odham Nation, and more than twenty-five other tribes also have land on or near the international borders or shorelines of the United States. Beyond borders, tribal lands cover fifty-six million acres of trust lands that include a wide variety of national critical infrastructure, that often provide the backbone of non-tribal regional infrastructure. Although federal-tribal relationships have long been rooted in a unique relationship defined by the sovereignty of each government, the Homeland Security Act of 2002 defines tribal governments as *local* governments. The shift virtually ignores decades of treaties and U.S. Supreme Court rulings that established the special relationship between tribes and the federal government. Despite the recent addition of the word 'tribal' to many Department of Homeland Security documents, this action fails to outline the mechanisms for collaboration with tribal governments in homeland security programs that adequately reflect and build upon the sovereign status of tribal governments. This research reviews aspects of social trust required for collaboration, explores successful federal-tribal collaboration efforts, and suggests legislative and policy changes that may provide mechanisms necessary for effective federal-tribal collaboration in homeland security.

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# TABLE OF CONTENTS

I.	INTRODUCTION.....	1
A.	BACKGROUND AND PROBLEM STATEMENT.....	1
B.	RESEARCH QUESTION.....	3
C.	REVIEW OF LITERATURE.....	4
D.	ARGUMENT.....	10
E.	METHODOLOGY.....	11
II.	COLLABORATION AND SOCIAL TRUST.....	13
A.	COLLABORATION IN HOMELAND SECURITY.....	13
B.	SOCIAL TRUST AND COLLABORATION.....	14
C.	TRUST BUILDING.....	18
D.	SOCIAL TRUST INTO THE TWENTIETH CENTURY.....	18
III.	ELEMENTS OF EFFECTIVE COLLABORATION.....	23
A.	BEHAVIORS OF HIGH TRUST LEADERS.....	25
1.	Talk Straight.....	25
2.	Demonstrate Respect.....	26
3.	Create Transparency.....	27
4.	Right Wrongs.....	28
5.	Get Better.....	29
6.	Confront Reality.....	29
7.	Clarify Expectations.....	30
8.	Keep Commitments.....	31
9.	Extend Trust.....	32
B.	SUMMARY.....	34
IV.	COLLABORATIVE ACTIONS.....	35
A.	TRIBAL/STATE COLLABORATION.....	39
B.	TRIBAL GOVERNMENT COLLABORATION EFFORTS IN ARIZONA.....	39
V.	RECOMMENDATIONS.....	43
A.	COLLABORATION OPPORTUNITIES.....	43
B.	ACTION AND TRUST BUILDING IN COLLABORATION.....	44
	APPENDIX.....	49
	BIBLIOGRAPHY.....	53
	INITIAL DISTRIBUTION LIST.....	55

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## I. INTRODUCTION

Terrorism, like wildfires and earthquakes, doesn't recognize federal, state or local government jurisdiction. But terrorist might use the gaps in security on Indian lands, against all of us. Tribes do not want to be the weak link in the chain, we stand ready to serve our country and homeland, and ask only that Congress give us the means.

— Anthony Picco, Chairman, Viejas Band of Kumeyaay Indians

### A. BACKGROUND AND PROBLEM STATEMENT

Each day, more than fifteen hundred illegal immigrants enter the United States through the tribal lands of the Tohono O'odham Nation<sup>1</sup>. As a result, Tohono O'odham currently spends more than \$7 million annually toward homeland security issues related to illegal immigration and medical care for illegal immigrants.<sup>2</sup> More than twenty-five other tribes, according to Terry Virden, Director of the Bureau of Indian Affairs, also have land on or near the international borders or shorelines of the United States. These are just some of the challenges that tribal nations across the country face in preparing for and responding to homeland security risks.<sup>3</sup>

Beyond borders, tribal lands cover fifty-six million acres of trust lands that include a wide variety of national critical infrastructure. Dams, water impoundments and reservoirs, electrical generation plants, drinking water, and wastewater systems situated on tribal lands often provide the backbone of non-tribal regional infrastructure. Although critical, tribal governments are ill equipped to protect this infrastructure. Tribal law enforcement is notoriously under-staffed

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<sup>1</sup> Vivian Juan-Saunders, Chairperson Tohono O'odham Nation, Testimony to the Senate Committee on Indian Affairs regarding S.578, 108<sup>th</sup> Congress, Session 1 (July 30, 2003).

<sup>2</sup> Ibid.

<sup>3</sup> . Terry Virden, Director, Bureau of Indian Affairs, Testimony to the Senate Committee on Indian Affairs regarding S.578, 108<sup>th</sup> Congress, Session 1 (July 30, 2003).

and under-equipped, and is rarely well integrated with non-tribal agencies. Tribal governments also have minimal emergency response and medical capacities, and are hard-pressed to afford appropriate planning teams.<sup>4</sup>

The terrorist attacks of September 11, 2001, brought the realities of terrorism home to those Americans who had previously viewed terrorism as a problem overseas. In passing The Homeland Security Act in 2002 (Public Law 107-296), Congress sought to foster inter-governmental collaboration as a means to improve the ability of the United States to secure itself against threats at home. The act required the consolidation of twenty-two disparate federal agencies into one department and laid out guidelines for interagency and intergovernmental cooperation and collaboration throughout the country. The Homeland Security Act was the foundation upon which the National Security Strategy and subsequent homeland security policies were structured.

The act, however, altered a long-standing foundation for collaboration between tribal and federal governments, which has the potential of weakening rather than strengthening cooperation on homeland security. Although federal-tribal relationships have long been rooted in a unique relationship defined by the sovereignty of each government, the Homeland Security Act of 2002 treats tribal governments the same as *local* governments. The shift virtually ignores decades of treaties and U.S. Supreme Court rulings that established the special relationship between tribes and the federal government.<sup>5</sup>

This change in the legislative definition of the relationship has fundamental consequences for homeland security. For instance, until very recently, the new definition in the act did not allow for direct funding of tribal governments in homeland security budget distributions. It also did not provide for consultation and collaboration of tribal governments when developing homeland security

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<sup>4</sup> National Native American Law Enforcement Association (NNALEA), *Tribal Lands Homeland Security Report* (Washington, DC, 2003), 1.

<sup>5</sup> J. P. Kalt and J. W. Singer, *Myths and Realities of Tribal Sovereignty; The Law and Economics of Indian Self-Rule* (Harvard University Faculty Research Working Papers Series, March 2004), section II. A.

policy. As pseudo-local entities, tribal governments had to work through various levels of government to reach federal policy and planning attention. Tribes were even required to apply through the states for homeland security money.

Tribes were also obstructed from engaging in the direct cooperation and collaboration that had long characterized their unique status. Many tribes, such as the Navajo Nation, cover areas in three states as well as an international border. Coordination through multiple states makes their strategies and collaborative efforts disjointed and difficult at best. With federal-tribal relations required to pass through states, tribal governments' concerns and needs related to Homeland Security were mediated by interagency relationships where they had no history of working together. Federal aid, in turn, flowed back through intergovernmental layers at state, regional and local levels.

## **B. RESEARCH QUESTION**

The purpose of this thesis is to review and highlight the problems that emerge from this homeland security-inspired realignment of the strategic relationship between federal and tribal governments. Any account of the situation of tribal governments in the United States, of course, must confront the history and persistent problems associated with the lack of trust in these relationships. In turn, the thesis examines ways in which the federal government could establish the social trust upon which effective collaboration and cooperation rests. Specifically, what types of measures related to homeland security strategy could include tribal governments in ways that respect and reinforce the historical relationships among sovereign, if dependent, nations? How would these improved relationships strengthen tribal governments' contributions to protecting the entire United States from terrorist attacks and their consequences?

### C. REVIEW OF LITERATURE

Tribal sovereignty was originally established through treaties between the United States government and various Indian Nations. These treaties, Kalt and Singer point out, “did not and do not absorb the tribes into the United States; rather, the reverse is true. The treaties recognize and preserve tribal sovereignty: In return for giving up almost all the land in the U.S., the U.S. made promises to the tribes. It promised to respect their rights over reserved land, and to recognize that those lands would be governed by tribes, not by the state governments. Those tribes that did not sign treaties were similarly protected by the doctrine that inherent sovereignty is to be respected by the United States.”<sup>6</sup>

Sovereignty, as a principle for tribal-federal relationships, has been upheld in the courts and supported by every Administration since 1960. On November 5, 2000, for instance, President Clinton signed Executive Order 13175, which restated the core principles:

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection.<sup>7</sup>

This legal framework outlines that, for the purpose of homeland security, the federal government has a requirement to protect tribal nations as sovereign domestic entities. This federal obligation is direct and does not devolve to requirements facing state or local governments. Protection is also a federal responsibility, and does not require tribal governments to work through state and local governments to receive federal protection.

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<sup>6</sup> Kalt and Singer, 9

<sup>7</sup> William J. Clinton, Executive Order #13175: Consultation and Coordination with Indian Tribal Governments (November 6, 2000).

While tribal governments, as sovereign entities, are under the protection of the United States, the Homeland Security Act and various post-9/11 legislation and directives have not sought to enhance collaboration along these lines. Rather, as tribes have expressed in numerous venues, efforts at collaboration and cooperation have been minimal. Senator Inouye, for instance, introduced a bill (S. 578) intended to correct the definition of tribal governments as local governments within the Homeland Security Act of 2002. Despite Senate hearings and vivid testimony by tribal leadership, the bill never progressed through Congress to become law.

In case there was any doubt, tribal governmental leaders and advocates have continuously expressed their strong desire to become involved in homeland security. As one advocate argued:

We Indians have always fought to protect our homeland. We always will. We ask the United States government to open its eyes to the contributions the tribes have made, and will continue to make, if we have the means to do so. Tribes share borders with other nations, with major infrastructure and with the open seas. Military reserves are our neighbors and we have jurisdiction over many natural treasures. Give us the tools and we, too, will help keep America safe for the generations to come.<sup>8</sup>

Tribal association reports continuously highlight the collaboration of tribal governments with each other to identify border, immigration, public health and other homeland security considerations on tribal lands. The National Native American Law Enforcement Association (NNALEA), for example, has held tribal summits focused on homeland security. The National Congress of American Indians (NCAI) has also held meetings to identify homeland security issues on tribal lands. Congressional testimony during hearings for S. 578, Tribal Government Amendments to the Homeland Security Act of 2002, also clearly

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<sup>8</sup> Billy Frank, Jr., Nisqually Indian Chairman, Northwest Indian Fisheries Commission, USMC Veteran, Korean War.

outlined the vulnerabilities that exist within tribal lands and the need and desire for tribal involvement in homeland security planning.<sup>9</sup>

Addressing specific homeland security issues, NNALEA and NCAI have analyzed current border security issues on tribal lands.<sup>10</sup> Their report details border issues and their cascading effects such as increased crime rates related to drug smuggling that affect national security. These problems are in large part exacerbated by the lack of federal government collaboration with tribal governments. As a reflection of their concern over this issue, tribal governments participated extensively in the border study. Of the forty-one tribes identified in the study as having lands within one hundred miles of a northern or southern international border, forty tribes participated in these deliberations<sup>11</sup>. The report also highlights the absence of federal collaboration with tribal governments and identifies the consequences of significant coordination gaps with the federal government. In particular, these gaps weaken homeland security. For instance, despite a combined total of 2.3 million non-natives reported crossing international tribal borders, 67.74 percent of the participating tribes reported that they do not have a specific strategy for protecting their respective borders primarily due to a lack of resources.<sup>12</sup>

The tribes' spirit of concern and cooperation, and the recognition of the need for collaboration, are strikingly at odds with the actions of the federal government to respond to the risks and vulnerabilities on tribal lands. Among the many bills reviewed by the Committee on Homeland Security and Governmental Affairs that mention tribal government involvement in homeland security, tribal involvement is not described in any detail. Close comparison of texts, for instance, shows that legislators have simply added the word *tribal* to the phrase

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<sup>9</sup> S 578 Tribal Government Amendments to the Homeland Security Act of 2002, Hearings before the Committee on Indian Affairs, July 30, 2003.

<sup>10</sup> NNALEA, Indian Country Border Security and Tribal Interoperability Pilot Program (TBS Pilot Program), March 31, 2006, Washington, DC.

<sup>11</sup> *Ibid.*, 6.

<sup>12</sup> *Ibid.*, 17.

*state, local, and tribal government.* These bills fail to outline the mechanisms for cooperation or collaboration with tribal governments in homeland security programs that adequately reflect and build upon the sovereign status of tribal governments.

An exception occurred in 2006, when Representative Frank Pallone Jr. of New Jersey introduced H.R.4871. The Tribal Government Homeland Security Coordination and Integration Act outlined the requirements for establishment of an Office of Tribal Government Homeland Security within the Department of Homeland Security. Within this Act, the Tribal Government Homeland Security Office was assigned responsibility for coordination and integration of Tribal governments within homeland security programs to include prevention, protection, and response activities planning. The Act also called for the treatment of tribal governments as state governments for the purposes of developing funding methodologies, planning, consultation, coordination, and eligibility for grant money. The Act was sent for review to the House Resources Committee and the House Homeland Security Committee. The fate of the Bill underscored the difficulties facing tribal governments as they seek to collaborate with the federal government. Congress failed to act on the bill and it was cleared from the books at the completion of the 109<sup>th</sup> congress.<sup>13</sup>

More recently, a bill introduced in the House by Republican Bennie Thompson on January 5, 2007, quickly cleared both the House and Senate and became Public Law 110-053 on August 3, 2007.<sup>14</sup> The law, entitled “To provide for the implementation of the recommendations of the National Commission on Terrorist Attacks Upon the United States,” amends The Homeland Security Act of 2002 in ways that allow some tribal governments to apply for homeland security grant funding. In doing so, the law makes a new distinction among tribes. It

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<sup>13</sup> Congress, *Tribal Government Homeland Security Coordination and Integration Act*. H.R. 4871, 109<sup>th</sup> U. S. Congress, 2<sup>nd</sup> Session <http://thomas.loc.gov/cgi-bin/query/D?c109:1:./temp/~mdbs0nRwgH> (accessed August 25, 2007).

<sup>14</sup> Congress, Public Law 110-053, Library of Congress, Washington, DC, 2007.

designates “directly eligible tribes” and “Indian tribes” based on eligibility to receive federal grant dollars for homeland security. The changes are as follows:

(4) DIRECTLY ELIGIBLE TRIBE.—The term “directly eligible tribe” means:

(A) any Indian tribe—

(i) that is located in the continental United States;

(ii) that operates a law enforcement or emergency response agency with the capacity to respond to calls for law enforcement or emergency services;

(iii)(I) that is located on or near an international border or a coastline bordering an ocean (including the Gulf of Mexico) or international waters;

(II) that is located within 10 miles of a system or asset included on the prioritized critical infrastructure list established under section 210E(a)(2) or has such a system or asset within its territory;

(III) that is located within or contiguous to 1 of the 50 most populous metropolitan statistical areas in the United States; or

(IV) the jurisdiction of which includes not less than 1,000 square miles of Indian country, as that term is defined in section 1151 of title 18, United States Code; and

(iv) that certifies to the Secretary that a State has not provided funds under section 2003 or 2004 to the Indian tribe or consortium of Indian tribes for the purpose for which direct funding is sought; and

(B) a consortium of Indian tribes, if each tribe satisfies the requirements of subparagraph (A).<sup>15</sup>

The new law then goes on to provide a separate definition for Indian tribe:

“(7) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given that term in section 4(e) of the Indian Self-Determination Act (25 U.S.C. 450b(e)).<sup>16</sup>

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<sup>15</sup> Congress, Public Law 110-053, Title I, section 101,

<sup>16</sup> Ibid.

These new definitions are applied only to the Homeland Security Grants section of the new legislation. Nowhere else in the new law, beyond the issue of grants, is the definition of tribal governments amended from its original treatment of tribes as local governments, as expressed in *The Homeland Security Act of 2002*. The original wording of the definition of tribal governments as local governments within the *Homeland Security Act of 2002* is as follows:

(10) The term “local government” means:

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or in Alaska a Native village or Alaska Regional Native Corporation; and

(C) a rural community, unincorporated town or village, or other public entity.<sup>17</sup>

Although the new definition and distinction — between “directly eligible tribes” and “Indian tribes” — at least opens up a channel of direct communication for a few select tribes, it has limited value in closing homeland security gaps on tribal lands. The purpose of the law appears to focus on determining which tribes may apply for homeland security grant funding and which do not qualify. No distinctions are made between states as sovereign governments to determine which states may apply for funding and which may not. States that do not share international borders or do not contain critical infrastructure are not precluded from applying for homeland security grants. They may receive less money based on the federal risk assessment formula, but they are not barred from the grant proposal process altogether.

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<sup>17</sup> The Homeland Security Act of 2002, Public Law 107-296, November 25, 2002, Definitions, Section 2 (10).

Even defined as “directly eligible tribes,” the tribal governments must first apply through a state, and then show that the state did not provide funding, before they may apply to the Homeland Security Grant Program for funding. Those “Indian tribes” that are not defined as directly eligible are simply out of the system entirely. The new law then proceeds to sprinkle the word “tribal” throughout the amendment by adding it to the phrase “state, local, and tribal.” In essence, the new law does little to improve the grant funding opportunities for tribal governments. They must still apply through the states first, and states are not demonstrably more successful than the federal government in their outreach and cooperation with tribal governments. In a National Governor’s Association survey completed in April 2006, for instance, only 57 percent of states that have tribes have invited their tribal government leaders to participate in the state strategic planning and grant process.<sup>18</sup>

#### **D. ARGUMENT**

The consequences of the treatment of tribal-federal relationships in the aftermath of 9/11 are extensive and may undermine the goal of increasing homeland security preparedness. Tribal governments’ sovereign rights have been instrumental to the wellbeing of their communities.<sup>19</sup> Legally supported tribal rights have protected tribes from detrimental, regional political and economic pressures. Tribal self-government has also helped to improve socioeconomic wellbeing in the face of declining federal budgetary support. Tribal sovereignty, far from a weakness in intergovernmental cooperation for homeland security, may be the core principle for collaboration that reaps the benefits of participation of critical partners.

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<sup>18</sup> National Governors Association, Washington, DC, 2006 Homeland Security Director’s Survey, April 3, 2006, <http://www.nga.org/Files/pdf/0604HLSDIRSURVEY.pdf>.

<sup>19</sup> Kalt and Singer, *Myths and Realities*.

At the Tribal Lands Homeland Security Summit in 2002, a collection of tribal government leaders and advocates outlined five goals for tribal government participation in homeland security:<sup>20</sup>

- Understand the threat
- Define the vulnerabilities
- Identify resources
- Identify mechanisms for cooperation
- Define the next steps for moving forward

The goals specifically identified the need for effective collaboration to close the strategic and tactical holes apparent between federal and state preparedness. These strategic and tactical holes related to border security control, critical infrastructure protection, public health response, and other emergency response capabilities. Tribal governments not only want to be fully involved in homeland security, they realize they must be involved to provide full protection to the United States.

Senator Ben Nighthorse Campbell of the Northern Cheyenne Tribe expressed the spirit and goal of tribal participation this way: “Native people are Americans first – and want to stand shoulder to shoulder with the rest of their countrymen in defending American lives and homelands from the threats now before us.”<sup>21</sup>

## **E. METHODOLOGY**

The history of tribal-federal relationships is certainly complex and full of deep tensions, conflicts, and mistrust. If lack of collaboration obstructs homeland security preparedness, a strategic goal for the federal government should be to overcome these difficulties. The primary goal of this thesis is to examine how to

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<sup>20</sup> NNALEA, *Tribal Lands Homeland Security Report*, 2.

<sup>21</sup> *Ibid.*, 3

reach that strategic goal. In Chapter II, I begin by focusing on the systemic obstacles to collaboration. In particular, I focus on the historical and structural dimensions of mistrust between tribal and federal governments. Chapter III updates these dimensions of mistrust, outlines overall, conceptual elements of social trust behaviors, and examines ways in which social trust has become essential to a wide range of interagency and intergroup relationships. These elements of social trust must improve if we are to address the government-to-government relationship problems and subsequent homeland security gaps created by this lack of social trust.

Chapter IV provides examples of where the tribal and federal government-to-government relationship is working effectively for some programs. In addition, it offers a few cases where state and tribal relationships are developing in the absence of federal guidance for homeland security. In Chapter V, social trust elements are tied to legislative and policy actions that may improve the federal and tribal government relationships, and allow all stakeholders to meet homeland security goals.

## II. COLLABORATION AND SOCIAL TRUST

### A. COLLABORATION IN HOMELAND SECURITY

Effective collaboration is necessary for national security and mandated through the *National Preparedness Goal, National Priority: Expand Regional Collaboration*.<sup>22</sup> The meaning of collaboration, used twenty-one times within the Goal document, varies depending on the user and purpose. Its core meaning and intent within homeland security, however, is simple — the “act of working jointly.”<sup>23</sup>

“Acting jointly” — collaboration — has been the focus of much discussion and research on how best to accomplish homeland security goals both because of the stinging criticism of the 9/11 Commission’s report on the federal government’s failure to “connect the dots” and the growing recognition that the enormous costs of preparedness requires joining forces. Collaboration is required by DHS in grant programs as outlined in the FY2006 Homeland Security Grant Program: Program Guidance and Application Kit:<sup>24</sup> “Each mission area includes a collection of capabilities that require integration and collaboration across multiple disciplines, jurisdictions, levels of government, processes, and procedures.”<sup>25</sup>

How these collections of capabilities are organized across jurisdictions, however, fundamentally matters for the success of the joint effort. The sovereign status of states is well recognized, for instance, when mutual aid agreements are

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<sup>22</sup> Department of Homeland Security, *National Preparedness Goal* (Washington, DC, Department of Homeland Security, December 2005), 15.

<sup>23</sup> Webster’s Dictionary <http://www.websters-online-dictionary.org/definition/collaboration>, accessed June 23, 2007.

<sup>24</sup> Department of Homeland Security, *FY2006 Homeland Security Grant Program: Program Guidance and Application Kit*, Washington, DC (Department of Homeland Security, December 2005).

<sup>25</sup> *Ibid.*, 3.

negotiated across state lines. Until recently, the annual DHS funding to states provided few means for combinations of jurisdictions to pursue collective, cross-jurisdictional projects. The sovereignty status of tribes has not been specifically recognized in any of these efforts, even though the jurisdictional status and collaborative structure between tribal and federal governments pose some of the most contentious and delicate problems in the nation's history. Defining away cross-boundary, multi-jurisdictional problems that arise from the value of including tribal governments undercuts the stated goal of fostering collaboration in homeland security.

## **B. SOCIAL TRUST AND COLLABORATION**

Social trust is an important component necessary for effective collaboration. As outlined in a study by The Century Foundation, both competition and distrust between federal, state, and local governments are significant barriers to developing effective collaboration in homeland security efforts.<sup>26</sup> Although money was often identified as a point of need for effective homeland security actions, Kettl points out that without better collaboration between the state and local governments, money alone will not improve the abilities of the states to prevent or respond to disaster events, whether manmade or natural. Funding is definitely necessary to increase assets and capacity at both the state and local levels, but the competition for the limited funding impedes the collaboration necessary to ensure the governments work seamlessly together for prevention and response activities. Improved trust between participants is necessary for collaboration to result in successful prevention and preparation activities. In a paper prepared for the Office of Domestic Preparedness through the Naval Postgraduate School, Hocevar et al., reiterate the point that distrust between federal, state, and local agencies is a

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<sup>26</sup> Donald Kettl, *The States and Homeland Security: Building the Missing Link* (The Century Foundation, New York, New York, 2003).

strong barrier to effective collaboration.<sup>27</sup> Interestingly, neither of these papers mention tribal governments as an organization to include in collaborative activities. The lack of social trust discussed in these documents is significantly magnified between DHS and tribal governments.

Yet, what is social trust? Jordan Boslego, with the *Harvard International Review* states, “A precise definition of social trust is difficult to pin down, but it has been encapsulated as an ongoing motivation or impetus for social relations that forms a basis for interaction.”<sup>28</sup> He further states,

Your only basis for whether to trust or distrust a complete stranger is your social conditioning, which may be influenced by your ethnic or cultural group, the characteristics and values of the society in which you live or grew up, your past experiences, and — more broadly — the historical tradition of your country.<sup>29</sup>

Boslego’s definition of social trust clearly puts the historical pattern of conflict and tension between tribal and federal governments at the forefront of a discussion of collaboration in homeland security. The historical experience of tribal governments is that by reaching out and giving an inch, they were stripped of a mile — or, in their case, millions of square miles.<sup>30</sup> In his paper, “September 11 and America’s War on Terrorism,” Wickham describes the American policy of manifest destiny that drove many tribes to the point of extinction.<sup>31</sup> The history of broken treaties and actions to deliberately mislead the indigenous people of the United States pervades this historical accounting. Wickham states, “Most scholars agree that manifest destiny ranks high among those reasons that displaced any hope of benevolent federal Indian policies in the nineteenth

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<sup>27</sup> Susan Hocevar, Erik Jansen, and Gail Fann Thomas, *Building Collaborative Capacity for Homeland Security* (Naval Postgraduate School, Monterey, CA, November 2004).

<sup>28</sup> Jordan Boslego, *Engineering Social Trust: What Can Communities and Institutions Do?* (*Harvard International Review: International Health* 27, no. 1, Spring 2005), 1.

<sup>29</sup> *Ibid.*, 2.

<sup>30</sup> John A. Wickham, *September 11 and America’s War on Terrorism* (*American Indian Quarterly* 26, no. 1, Winter 2002, 128).

<sup>31</sup> *Ibid.*, 116-144.

century and facilitated policies of land theft, genocide, and ethnocide.”<sup>32</sup> At a time when security of the entire country is at stake, how tribes are included in current national strategies is, to some extent, a measure and a reflection of how far relations between tribal governments and the federal government has evolved.

The diversity of relationships between the federal government and tribes has long, deep roots in North American history. So too, has the erosion of social trust between the federal and tribal governments. In a paper titled, “Exploiting Tribal Networks Through Conflict,” Joseph Peterson outlines tactics used to turn tribal governments against each other in order for an adversary to gain the advantage.<sup>33</sup> Within the paper, Peterson clearly outlines the historical use of the “Divide and Exploit”<sup>34</sup> tactic as well as the “Divide and Distract”<sup>35</sup> tactic employed by the early settlers of North America to conquer the Native Americans. Peterson outlines the detail of the early European tactic of “Divide and Exploit,” summing it up as follows:

...opportunity had presented itself to the New England colonies in the form of tribal in-fighting, local political ambitions, and active regional enmities. The colonists seized on these opportunities in order to offset their own martial and logistic shortfalls and achieve their objectives of survival and territorial security. To this end, they encouraged Indians to fight Indians. The colonies were effectively defended and territory secured.<sup>36</sup>

He then outlines the intricacies of the tactic of “Divide and Exploit,” summing it up as follows:

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<sup>32</sup> Wickham, 118.

<sup>33</sup> Joseph Peterson, *Exploiting Tribal Networks Through Conflict*, Naval Postgraduate School, September, 2006.

<sup>34</sup> Ibid., 14-18.

<sup>35</sup> Ibid., 18-24.

<sup>36</sup> Ibid., 18.

...opportunities to maintain control and influence rivals arose out of conflict. From conflict, critical social and economic vulnerabilities were exposed – vulnerabilities quickly recognized by the French. From these vulnerabilities, a carefully balanced campaign of patronage and deception was developed to offset French strategic weaknesses, inflict damage on their rivals, and protect key commercial and colonial interests.<sup>37</sup>

Although Peterson's purpose in citing these historical examples is to make a contemporary point about tribal networks in Afghanistan and Pakistan, he points out the long-term cost of engaging in inter and intra-tribal warfare. A key consequence is that the victor incurs an obligation to re-order and re-structure the tribal environment if it is to sustain long-term state objectives.<sup>38</sup> According to Kalt and Singer, the sovereignty status of tribal governments is under constant attack by inter-governmental pressures.<sup>39</sup> They state:

Over the last decade in particular, the Supreme Court has moved repeatedly to limit tribal powers over nonmembers. Lower courts have fed this process with decisions that increasingly rein in the ability of tribal governments to govern commerce and social affairs on their reservations. Congress, too, has seen increasing numbers of bills introduced to abolish the tribes' sovereign immunity, limit their taxation powers, and regulate their commerce.

With an historical track record of tactics for exploiting tribal governments through the use of social trust elements as weapons — in addition to the current federal policies that ignore tribal sovereignty — it is little wonder then that social trust is now a significant impediment towards effective collaboration with tribal governments in homeland security initiatives. It is the obligation of the federal government to move forward with legislation and actions that will improve the social trust necessary, and thereby improve collaboration so urgently needed in homeland security.

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<sup>37</sup> Peterson, *Exploiting Tribal Networks*, 23.

<sup>38</sup> *Ibid.*, 20.

<sup>39</sup> Kalt and Singer, 2-3.

### **C. TRUST BUILDING**

The value of the concept of social trust for understanding collaboration and inter-group relations has become the centerpiece of a wide range of academic and popular studies. In the massive literature on how organizations and companies prosper, social trust is the core ingredient of corporate success; it is why leaders excel. For example, the popular author of leadership guides, Steven Covey, outlines the basic principles of trust as well as actions that improve social trust both between individuals and among organizations.<sup>40</sup> *Behaviors* are defined as critical components in establishing and maintaining trust relationships. Covey states:

You can say that you recognize people as your most important asset. You can say that you will comply with the rules, that you won't engage in unethical practices, that you will respect a confidence, keep a commitment, or deliver results. You can say all of these things, but unless you actually *do* them, your words will not build trust; in fact, they will destroy it.<sup>41</sup>

### **D. SOCIAL TRUST INTO THE TWENTIETH CENTURY**

Even into the twentieth and twenty-first centuries, behaviors by the federal government continued to destroy trust between itself and the tribal governments. Promises of respect for tribal sovereignty were made, and executive orders were given for federal agencies to work with tribal governments on a government-to-government relationship, yet the federal government's contradictory policy actions wiped away the words of trust and any hopes for future collaboration building. During the 108<sup>th</sup>, 109<sup>th</sup>, and 110<sup>th</sup> Congress, a resolution was brought forward to formally apologize for actions taken against tribes. The stated intent of the resolution was: "To acknowledge a long history of official depredations and ill-conceived policies by the United States Government regarding Indian tribes

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<sup>40</sup> Stephen M. R. Covey, *The Speed of Trust*, Free Press, a division of Simon and Schuster, Inc. 2006.

<sup>41</sup> *Ibid.*, 128.

and offer an apology to all Native Peoples on behalf of the United States.”<sup>42</sup> Hearings conducted for S.J. Res. 15 on May 25, 2005, during the 109<sup>th</sup> Congress, showed mixed support for the apology resolution from tribal leadership. While some leaders felt the resolution was a step forward in healing trust, others were not so optimistic. The NCAI reached out to tribal leadership for reactions and input to the resolution. The mixed reactions were provided in testimony given by Tex Hall, President of the NCAI.<sup>43</sup>

Sections of his testimony directly reflect the current social trust issues related to collaboration in homeland security. In the following passages from that testimony, especially in the emphasized areas, Hall ties historical conflicts and mistrust to contemporary relations. President Tex Hall’s testimony in its entirety is found in Appendix 1.

First, it is important to recognize the intensity of the reaction of tribal leaders to the apology resolution, which demonstrates that the **destructive policies addressed in this resolution are not a fading, distant past for Indian people. They are present today and continue to be felt in very real ways every day.**

We continue to live with the legacy of the federal government’s misguided policies of the past as well as present day policies that continue to undermine our ability to live as robust, healthy self-determining people. **Tribal leaders have stressed that the apology must recognize contemporary and not just historical problems in Indian-Federal Government relations.**

Despite the drafting of a resolution to apologize to Native Americans for “a long history of official depredations and ill-conceived policies by the United States government regarding Indian tribes,” the federal government continues to develop ill-conceived policies regarding Indian tribes. Ignoring the sovereignty of tribal governments in homeland security policies, programs, and grant

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<sup>42</sup> S.J. Res.15.RS, H.J.Res.3.IH, S.J.Res.15.IS 109<sup>th</sup> Congress.

<sup>43</sup> Tex Hall, President, National Congress of American Indians (Senate Hearing 109-97, S.J. Res. 15, May 25, 2005, Committee on Indian Affairs, United States Senate), full testimony provided in Appendix 1, my emphasis added in these sections.

procedures does not reflect the actions of a government that intends to correct past wrongs and work with tribal governments within the foundations of a government-to-government relationship. Tribal leadership deserves a recognition and correction of current problems as well as past.

Many Government policies continue to reflect a reluctance to truly recognize tribes as sovereign governments. For example, tribes, unlike other governments, are limited in their ability to raise money by issuing tax-exempt bonds. **Tribes are also left out of the funds that the federal government has directed to every state for homeland security.** Tribal law enforcement agencies do not have the jurisdiction and resources they need to protect public safety, and **recent Supreme Court decisions have blurred the lines of jurisdiction at the borders between state and tribal lands.**

Federal government policies are inconsistent in the recognition of tribal governments as sovereign. This inconsistency leads to resource and jurisdictional complications, particularly when it comes to public safety and homeland security. This inconsistency also erodes social trust for those collaborating with the federal government. Trust requires consistency in action. Recent Supreme Court decisions have also created jurisdictional problems by giving tribal law enforcement no jurisdiction over non-tribal members on tribal lands.<sup>44</sup>

Tribal leaders have commented that an apology may be the first step in reconciliation between tribes and the U.S. government, but for this to be true, **the apology must be more than words on paper.** There is a lot of unfinished business that must be attended to before true reconciliation can be achieved. As one tribal leader said, apologizing does not in any way wipe the slate clean or let anyone off the hook. I had the opportunity to testify before this committee on the President's proposed fiscal year 2006 budget. I said at the time, Indian people are deeply disappointed that the budget did not support strong self-government and self-determination for tribes. There were drastic cuts to many of the programs vital to the health and wellbeing of our people, with health care and medical assistance being sorely needed and underfunded. These programs are guaranteed to us, as we know, by

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<sup>44</sup> National Congress of American Indians (NCAI) online newsletter, available at [http://www.ncai.org/Sovereignty\\_Protection.91.0.html](http://www.ncai.org/Sovereignty_Protection.91.0.html) , accessed September 2, 2007.

solemn treaties, and **tribes paid for these services by ceding approximately three billion acres of land** to the United States. A strong federal commitment to make good on old promises to provide resources for services, prevention programs and health care are badly needed.”

The NCAI website outlines the problems associated with failing trust obligations of the federal government. Some of these include decreased appropriations for health care and other programs guaranteed to tribes. The website describes this problem in the following statement: “The federal trust responsibility is the legal commitment made by the U.S. government to Indian tribes when Indian lands were ceded to the United States. This commitment is codified in treaties, federal law, executive orders, judicial opinions, and international doctrine. It can be divided into three general obligations: protection of Indian trust lands; protection of tribal self-governance; and provision of basic social, medical, and educational services for tribal members”.

These promises notwithstanding, the U.S. government has consistently failed to follow through with appropriations to match these fundamental obligations. In July 2003, the U.S. Commission on Civil Rights reported that the persistent under-funding of federal trust commitments to tribes constitutes “a quiet crisis.” In a comprehensive analysis of unmet needs in Indian Country, the study documented disproportionately lower funding for critical Indian services — including law enforcement, health care, and education — than for all other populations.<sup>45</sup>

Finally, NCAI President Tex Hall’s testimony sums up the general feeling of tribal leadership:

To many an apology rings hollow when the U.S. government has continued to fail to fulfill these treaty promises. **Only when coupled with a continued commitment to the government-to-government relationship and federal Indian programs, like health, education and housing, can the apology resolution**

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<sup>45</sup> NCAI online newsletter, available at [http://www.ncai.org/Federal\\_Appropriations.87.0.html](http://www.ncai.org/Federal_Appropriations.87.0.html), accessed September 2, 2007.

**truly begin to make a meaningful difference for Indian tribes. Another tribal leader put the resolution to be like apologizing for stepping on someone's foot while you continue to stand on that foot.**

This testimony clearly shows the distrust that remains due to actions by the federal government that continues to undermine social trust, from unfulfilled treaty promises, to the exclusion of tribal governments from necessary programs. While current practices in homeland security that largely ignore tribal governments pale in comparison to historical actions legitimized by the doctrine of manifest destiny, formal language in homeland security policies and strategies that promise inclusion, without active practices to keep those commitments, undermine collaboration.

The social trust required for effective collaboration must be restored through deeds, not words. Homeland security funding and jurisdictional issues must be resolved, so that homeland security program collaboration may improve. We must ensure collaboration between state, tribal, and local governments in order to provide a seamless defense against terrorism, both foreign and domestic. Homeland security is a national concern, best addressed through cooperative programs on federal, state, tribal, and local levels.

The repair of social trust will assist in collaborative actions on all levels and provide the seamless defense necessary to prevent, protect, and respond to disaster events both manmade and natural. The next chapter focuses on ways in which social trust can perhaps be strengthened for all involved in homeland security efforts.

### III. ELEMENTS OF EFFECTIVE COLLABORATION

The rather clear history of pervasive mistrust between tribal governments and the federal government, and the current reality of significant impediments to collaboration among these sovereign nations, should make establishing social trust a priority for homeland security doctrine. Social trust is a core theoretical element in research on collaboration, organizational success, and leadership. It is difficult to incorporate, however, into bureaucratic practices and program initiatives organized out of a federal department. As Kettl and others have argued, bureaucracy and formal rules among jurisdictions make successful collaboration and its root ingredient, social trust, nearly unattainable.

The purpose of this chapter is to attempt to uncover and highlight areas of potential trust building between tribal and federal governments. It takes a popular study of social trust and applies its core principles to the realities of tribal affairs. The result is not intended to be a recipe for confidence building and establishing trust. Yet, the goal is to suggest a range of specific behaviors and actions that could be used to initiate trust-building actions among homeland security leaders.

Leadership studies have, of course, exploded during the last few decades, both in academic research and popular guidance. One of the best known of these organizational and leadership writers is Stephen R. Covey, whose book, "Seven Habits of Highly Effective People," is required reading in many executive leadership training courses. With over 15 million copies sold, the book has been cited by over one hundred books, and untold articles since its publication in 1990.<sup>46</sup> It has been translated into twenty-eight languages and sold in over seventy countries worldwide. The first three habits are related to personal responsibility, leadership, and self-management, and are the foundation to

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<sup>46</sup> Covey, <http://www.amazon.com/Habits-Highly-Effective-People/>, accessed September 3, 2007.

improved professional relationships. At the time, the concepts created a paradigm shift in leadership thinking, with a focus on personal actions that improve professional relationships.

Sixteen years after publication, the author's son, Stephen M. R. Covey, published *The Speed of Trust*. The book focuses on how trust in relationships, both personal and professional, can propel positive change at rates much faster than a relationship that lacks trust. Leaders have warmly received the basic point. Steve Forbes, for one, says "Covey brilliantly focuses on that overlooked bedrock of democratic capitalism — trust. Like the air we breathe, we too often take this critical intangible for granted. As Covey makes clear, we do so at our ultimate competitive peril."<sup>47</sup>

Outside the corporate world, others have also found the focus on trust extremely valuable. Catherine Crier, media analyst, summarizes her reaction to the argument about trust as follows:

In the world of law and politics, the absence of trust has accomplished everything Stephen describes: promoting divisiveness and disillusionment, exacerbating bureaucratic rule-based relationships, and, ultimately, creating beliefs and behaviors that serve to destroy a free and civil society. Invaluable to every American, *The Speed of Trust* delivers the tools that can restore transparency, honesty, and confidence to a nation in need.<sup>48</sup>

The foundation of trust, according to Covey, exists as "waves of trust."<sup>49</sup> The first wave is self-trust, which includes four cores of credibility; integrity, intent, capabilities, and results. The second wave is "relationship trust" where he identifies several behaviors of high-trust leaders.<sup>50</sup> The third wave is organizational trust,<sup>51</sup> the fourth market trust,<sup>52</sup> and the fifth is societal trust.<sup>53</sup>

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<sup>47</sup> Covey, review section, Steve Forbes, President and CEO, Forbes.

<sup>48</sup> Covey, review section, Catherine Crier, Host of Catherine Crier Live.

<sup>49</sup> Covey, 41.

<sup>50</sup> Ibid., 136-229.

<sup>51</sup> Ibid., 236.

While he states that all five waves build upon each other, resulting in societal trust, the four cores of the first wave are a foundation, the basic origin of subsequent waves. In other words, the first wave begins where the rock of trust first enters the pool. The second wave, emanating from the ripple effect of the first wave includes the various behaviors. These behaviors are critical to trust building. The behaviors are based on principles that govern trusting relationships, they grow out of the four cores, they are actionable, and they are universal.<sup>54</sup> These behaviors, balanced together, can generate trust between organizations, which will improve collaborative activities.

The question here, however, is whether and to what extent these popularized behaviors that are critical to trust building may instruct homeland security leaders to change their current practices. Below are selections of key trust-building behaviors, as developed in Covey's work. Each provides a practical lesson for homeland security leaders who should be dedicated to seeking and improving collaboration between the federal agencies and tribal governments.

## **A. BEHAVIORS OF HIGH TRUST LEADERS** <sup>55</sup>

### **1. Talk Straight**

The people who I have trouble dealing with...are people who tend to not give full information. The purposefully leave out certain parts of the story — they distort the facts.

*Shelley Lazarus, Chairman and  
CEO, Ogilvy & Mather*<sup>56</sup>

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<sup>52</sup> Covey, 261.

<sup>53</sup> Ibid., 272.

<sup>54</sup> Ibid., 126.

<sup>55</sup> Covey outlines thirteen behaviors that he feels are imperative for the trust necessary to form collaborative relationships. I will discuss several of the behaviors that I believe are critical to the collaborative relationships with federal, state, and tribal governments in homeland security.

<sup>56</sup> Covey, 136.

The federal government has a long history of failing to provide clear facts to the tribal governments concerning policy and programs. They have stated support for the Executive Order mandating a government-to-government relationship to the National Congress of American Indians while at the same time ignoring the required government-to-government relationship by defining tribal governments as local within *The Homeland Security Act*. This action has left the tribal governments out of the strategic planning for homeland security policy and programs, and denied the funding resources necessary to mitigate homeland security gaps on tribal lands. This behavior has led to the belief among many tribes that the federal government will not support the tribal government's requirements for homeland security programs.

In his discussion of talking straight, Covey uses the example of the Hans Christian Anderson story, "The Emperor's New Clothes."<sup>57</sup> The emperor and his attendants were told the clothes were made of magic cloth that could not be seen by stupid or unfit individuals. Rather than talk straight and say there is no cloth, the farce ran its course until someone pointed out the truth. The federal government has added the word *tribal* into many collaboration documents such that they read "state, local and tribal," yet DHS works with state and local governments without extending the same level of coordination and assistance to tribal governments. Many tribes are pointing out the truth of this disparity, yet the federal government has not provided a mechanism for the tribal governments to accomplish the collaboration in these documents.

## **2. Demonstrate Respect**

I try to treat people as human beings...If they know you care, it brings out the best in them.

*Sir Richard Branson, Founder and  
Chairman, The Virgin Group<sup>58</sup>*

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<sup>57</sup> Covey, 139.

<sup>58</sup> Covey, 146.

The federal government has a long history of disrespect towards the culture and values of the tribal governments. When developing the border between Mexico and the United States after the War of 1812, the international line was drawn through the Tohono O’odham Nation — dividing the tribe and families. No one gave a thought to the indigenous people and the tribes whose land was now divided. With the increased focus of illegal immigration across the southern border, members of the Tohono O’odham tribe are often stopped, searched, and returned to Mexico. Eileen Luna-Firebaugh argues that “The tribal governments have attempted to resolve these issues through meetings and conciliations, which to date have not shown much success. The federal officials have not indicated full support of tribal sovereignty, particularly if it would require seriously addressing tribal concerns. Instead, federal officials have generally responded to the concerns as if they were being communicated by a local government, rather than by a sovereign nation.”<sup>59</sup>

The respect that the federal government owes to tribal governments is not rendered in many cases. Testimony makes it clear that tribal leaders are given the opportunity to make statements to Congress, and there is a great deal of testimony regarding homeland security issues. Yet no action is taken to address the issues they bring to Congress.

### **3. Create Transparency**

*Try to be transparent, clear, and truthful. Even when it is difficult, and above all when it is difficult.*

*Jean-Cypril Spinetta, Chairman and CEO, Air France<sup>60</sup>*

There is currently no transparency between DHS and tribal governments related to homeland security policy, funding, and programs. There is no Office of

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<sup>59</sup> Eileen Luna-Firebaugh, “Att Hascu ‘Am O ‘I-oi? What Direction Should We Take?: The Desert People’s Approach to the Militarization of the Border,” *Washington University in St. Louis Journal of Law & Policy* 19:338.

<sup>60</sup> Covey, 153.

Tribal Affairs to provide the transparency afforded tribes through other federal agencies. As previously outlined in Chapter I, states often do not invite tribes to participate in strategic planning sessions or grant proposal meetings. According to the *National Native American Law Enforcement Association (NNALEA) 2002 Homeland Security Summit* report, states were recently asked to address the inclusion of tribes in their planning for Emergency Operations Centers. Only fourteen of the thirty-five states with Indian reservations did so. Of these fourteen, only one was willing to provide funds to tribes for staffing improvements in Indian response capabilities.<sup>61</sup> Transparency between DHS, states, and tribal governments would provide the mechanism necessary for tribes to fully understand and engage in homeland security programs and policies.

#### **4. Right Wrongs**

To know what is right and not to do it is the worst cowardice.

— *Confucius*<sup>62</sup>

Resolutions have been brought to the House and the Senate during the past three sessions of Congress to “acknowledge a long history of official depredations and ill-conceived policies by the United States Government regarding Indian tribes and offer an apology to all Native Peoples on behalf of the United States.” Yet the testimony offered during the hearings for the resolution shows that these are just words. The United States continues to ignore the tribal government’s rights to participate in federal decisions and policy making that affects tribal lands. It is an empty apology and, despite knowing the right thing to do, the federal government continues to take no action to do those right things. Hearings for S.578 have been held to correct the definition of tribal governments as local within The Homeland Security Act, and yet no action was taken to pass

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<sup>61</sup> NNALEA, 15.

<sup>62</sup> Covey, 158.

that bill. It was dropped from the legers after the 109<sup>th</sup> Congress due to lack of action, and has not been raised again during the 110<sup>th</sup> Congress.

## **5. Get Better**

You learn nothing from your successes except to think too much of yourself. It is from failure that all growth comes, provided you can recognize it, admit it, learn from it, rise [above] it, and then try again.

— Dee Hock, Founder and Former CEO, VISA International <sup>63</sup>

DHS would be best advised to follow the lead of other federal agencies that have developed a government-to-government relationship with tribal governments. The EPA has established a strong working relationship with tribal governments since 1994. The NNALEA report states of the EPA, “EPA maintains a smooth working relationship with Indian nations and tribes on a government-to-government basis. It has many grants and agreements with tribes and provides training, technical expertise and other assistance, as requested. The EPA believes that joint training and joint operations are essential before disasters occur. Its training serves the dual purpose of detecting environment crimes as well as preparing first responders for terrorist attacks involving chemical, radiological and other environment contaminants.”<sup>64</sup>

## **6. Confront Reality**

You must never confuse faith that your will prevail in the end — which you can never afford to lose — with the discipline to confront the most brutal facts of your current reality, whatever they might be.

— Admiral James Stockdale,<sup>65</sup>

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<sup>63</sup> Covey, 182.

<sup>64</sup> NNALEA, 13.

<sup>65</sup> Covey, 186.

“Confront Reality is based on the principles of courage, responsibility, awareness, and respect.”<sup>66</sup> The reality of Homeland Security as outlined in numerous congressional hearings and tribal association reports is that there are weaknesses in our homeland security plans by not including tribal governments in the process. It is important to secure our entire nation, not just pieces. Tribal governments are expected to meet the requirements for homeland security, yet they receive no funding from the federal government. Very often, the tribes are not provided the funding necessary for them to meet basic public safety requirements. According to the NNALEA Homeland Security Summit report,

Current funding for tribal law enforcement and first responders lags well behind that for non-tribal law enforcement and first responders. The result is that many Tribal law enforcement and first responder programs lack personnel, and the personnel they do have may need training, education, certification, experience, and sufficient technical assistance, while many experience burn-out resulting in low retention rates. Therefore, the cost will be higher to attain parity in law enforcement and first responder programs on Indian lands. According to Senator Campbell, “Indian tribal law enforcement officers are often the first and only responders to crimes committed against Indians and non-Indians on Indian lands.” In addition, Tribal lands have critical unmet needs for medical capacity, emergency response planning, and emergency service implementation.<sup>67</sup>

## **7. Clarify Expectations**

Almost all conflict is a result of violated expectations.

— Blaine Lee, Author of *The Power Principle*<sup>68</sup>

When treaties were signed with tribal governments, there was an expectation that the words on paper would be honored. When E.O. 13175 was written, mandating all federal agencies work with tribal governments in a

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<sup>66</sup> Covey, 185.

<sup>67</sup> NNALEA, 8-9.

<sup>68</sup> Covey, 193.

government-to-government relationship, there was an expectation that the order would be followed. In many cases, it was, and the EPA is a prime example. There is a respect between tribal governments and the EPA due the relationship created by the EPA as government-to-government with the tribes. When DHS was created, there was an expectation that tribal governments would be included in homeland security planning within a government-to-government relationship. Instead, they were defined as local governments, and that mistake has not yet been corrected, despite multiple hearings and testimony. There are often statements made by the uneducated in public and government service that the tribal governments should not be treated as “special.” Yet it has been through treaties and laws that the status of tribal sovereignty has prevailed. States respect each other’s sovereign status, and citizens are expected to follow the laws developed in each state, though they may differ from state to state. Homeland security leaders also respect the sovereignty of states and are accountable to the needs of the state governments as they relate to homeland security, sovereignty, and federalism. As such, the sovereignty of tribal governments should be provided the same respect and accountability of homeland security leadership.

## **8. Keep Commitments**

Always deliver what you say you will. Never make a promise that you can’t follow through on. The way you really build trust, in a sense, is through crucibles. You have to show that you will do your part, even if it is difficult.

—Dennis Ross, Former U.S. Ambassador<sup>69</sup>

Executive Order 13175 states that the United States will interact with tribal governments in a government-to-government relationship. The Homeland Security Act ignores that order by defining tribal governments as local governments. The *Homeland Security Act* states that the mission of DHS is to

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<sup>69</sup> Covey, 216.

(A) prevent terrorist attacks within the United States; (B) reduce the vulnerability of the United States to terrorism; (C) minimize the damage, and assist in the recovery from terrorist attacks that do occur within the United States; (D) carry out all functions of entities transferred to the Department, including acting as a focal point regarding natural and manmade crises and emergency planning.<sup>70</sup>

Tribal governments are unable to assist in meeting the goals of the Homeland Security Act based on their definition of local governments, since that definition denies them access to resources and funding that would enable them to participate in the mission.<sup>71</sup> The federal government has acknowledged the mistake, has acknowledged multiple broken promises to the tribal governments, and yet still no action is taken to correct those deficiencies. The federal government's responsibility is to address this issue, and work with tribal governments in a government-to-government relationship as promised through years of treaties, laws, and executive orders. Only then will tribes be able to fully participate in the homeland security mission and achieve the goals of security for their people and the United States.

## 9. Extend Trust

Trust men and they will be true to you; treat them greatly and they will show themselves great.

—Ralph Waldo Emerson<sup>72</sup>

In their paper, Kalt and Singer point out the benefits of tribal sovereignty and show how tribes move past dependency on federal funding and create their

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<sup>70</sup> 6 USC 111, Sec. 101, *The Homeland Security Act*, 2002.

<sup>71</sup> Eileen Sullivan, "Tribes Say State Homeland Security Funds Are Not Trickling Down," (*Congressional Quarterly Homeland Security*, July 25, 2005), [http://www.ncai.org/ncai/resource/documents/governance/homeland\\_security-cq\\_2005-07-25.pdf](http://www.ncai.org/ncai/resource/documents/governance/homeland_security-cq_2005-07-25.pdf), accessed September 12, 2007.

<sup>72</sup> Covey, 222.

own economic success through self rule. Through extensive research with the Harvard Project on American Indian Economic Development, they extracted these examples of success:

Supported by every U.S. President since the 1960s and bolstered, for a time, by a combination of federal court rulings and congressional policies, tribal self-rule – *sovereignty* – has proven to be the only policy that has shown concrete success in breaking debilitating economic dependence on federal spending programs and replenishing the social and cultural fabric that can support vibrant and healthy communities and families. While gaming enterprises of tribes' governments garner most of the attention, self-rule is creating more and more economic success stories in Indian Country – from the virtual elimination of tribal unemployment and the boom in non-Indian hirings in the factories and other operations of the Mississippi Choctaw, to the cutting of unemployment from 70% to 13% in six years via the non-gaming businesses of the Winnebago Tribe's (Nebraska) Ho-Chunk Inc. Gaming success itself is spurring self-sufficiency, as tribes such as Oneida (New York) and Mille Lacs (Minnesota) take the step of eschewing federal funding. And the success of self-determination is not solely economic – as when Mississippi Choctaw plows the fruits of economic development into dramatic improvements in public safety and health care delivery, Mille Lacs is able to invest in award-winning efforts to replenish Native language use, and Jicarilla Apache (New Mexico) and White Mountain Apache (New Mexico) are able to take control of wildlife and forest management with professionalism and results perhaps unmatched by any government anywhere.<sup>73</sup>

There are those within the federal government that feel it is too complicated to provide tribal governments direct homeland security funding.<sup>74</sup> Yet, even states are having a hard time meeting the funding mandates and required goals for grants they receive. In response, the federal government has provided guidance and assistance to the states. Tribal governments deserve this same level of respect and trust that they can use direct funding appropriately,

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<sup>73</sup> Katz and Singer. 1-2.

<sup>74</sup> Sullivan, 3.

once a mechanism is in place within DHS to provide the funding as well as the guidance and assistance on programs.

## **B. SUMMARY**

The security of the United States is weakened by the lack of collaboration between the federal government and tribal governments. Essential to collaborating successfully is to build a strong sense of social trust among the leaders and organizations. Each of the trust-building behaviors highlighted above offers an opportunity for homeland security leaders to change current practices to begin to foster that social trust. Currently, though, the lessons have not been learned.

The president has identified the need to build and support an effective homeland security leadership cadre across the federal agencies. The ability to work collaboratively with state, local and tribal partners, within the vast diversity of historical and legal guidelines, is a core leadership skill. Learning how to establish and sustain social trust where it has been missing is crucial to the success of a homeland security strategy.

## IV. COLLABORATIVE ACTIONS

Despite the many examples of distrust in federal-tribal relationships, there are some examples of effective trust relationships though federal agencies that have met the mandate of EO 13175 and developed a government-to-government relationship with tribes. Moreover, in the absence of federal guidance in homeland security issues, some states are reaching out and forming collaborative relationships with the tribal governments within their state. This chapter provides examples of relationships and collaborations that are both successful and effective because they incorporate the elements of social trust behaviors outlined in Chapters II and III, and improve collaboration with tribal governments in homeland security.

After ten years of direct government-to-government collaboration with tribal governments, the U. S. Environmental Protection Agency (EPA) established their Office of Indian Affairs in May 1994.<sup>75</sup> Since renamed the American Indian Environmental Office (AEIO), this office works closely with tribal governments to ensure all legislation developed by the EPA and impacting tribal lands is developed in close collaboration with tribal governments. The AEIO mission as stated on their website is: “The American Indian Environmental Office (AIEO) coordinates the Agency-wide effort to strengthen public health and environmental protection in Indian country, with a special emphasis on helping tribes administer their own environmental programs.”<sup>76</sup> They have also included on that website an “American Indian Tribal Portal” with the following mission: “The American Indian Environmental Office developed the tribal portal to help American Indian communities and supporters locate tribal related information within EPA and other government agencies.”<sup>77</sup>

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<sup>75</sup> Environmental Protection Agency, [www.epa.gov](http://www.epa.gov), website accessed February 23, 2007.

<sup>76</sup> Environmental Protection Agency, <http://www.epa.gov/indian/>, accessed September 4, 2007.

<sup>77</sup> Environmental Protection Agency, <http://www.epa.gov/tribalportal/>, accessed September 4, 2007.

Through these actions, the EPA is exhibiting several of the behaviors Covey has outlined as necessary for social trust building: talk straight, demonstrate respect, keep commitments, extend trust, and create transparency. Through the AIEO and website, they have talked straight by providing information to tribes regarding policies and programs in development; they have demonstrated respect by providing a mechanism for tribal input into the processes; they have kept commitments by maintaining a government-to-government relationship with the tribes; they have extended trust by utilizing tribal feedback in the EPA policy and programs process; and they have created transparency by providing an office and a website specifically designed to keep tribes aware of the policies and programs that affect tribal lands and governments. As a result of these behaviors, they maintain a good working relationship with tribal governments. As stated in the NNALEA report (and, although previously stated in this thesis, it bears repeating), “EPA maintains a smooth working relationship with Indian nations and tribes on a government-to-government basis. It has many grants and agreements with tribes and provides training, technical expertise and other assistance, as requested. The EPA believes that joint training and joint operations are essential before disasters occur. Its training serves the dual purpose of detecting environment crimes as well as preparing first responders for terrorist attacks using chemical, radiological and other environment contaminants.”<sup>78</sup>

The EPA is also exhibiting another of Covey’s trust behaviors by getting better. They have sponsored a Memorandum of Understanding between themselves, the U. S. Department of Agriculture, the U. S. Department of Interior, the U. S. Department of Health and Human Services, and the U. S. Department

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<sup>78</sup> NNALEA, 13.

of Housing and Urban Development to “improve infrastructure on tribal lands and to focus efforts on providing access to safe drinking water and basic wastewater facilities to tribes.”<sup>79</sup>

The Federal Emergency Management Agency (FEMA) finalized their agency policy for government-to-government relations with American Indians in September 1998 after initial development began in June 1997.<sup>80</sup> Sections within the FEMA policy state:

The Federal Emergency Management Agency acknowledges the trust relationship between Federal Government and American Indians and Alaska Native Tribal governments as established by specific treaties, court decisions, statutes, executive orders, regulations, and policies.

The Federal Emergency Management Agency will encourage cooperation and partnership between and among Federal, Tribal, State, and local governments to resolve issues of mutual concern related to emergency management.

FEMA policy clearly placed tribal government on equal footing with federal and state government. Despite being absorbed into DHS during the creation of the new federal department, FEMA has attempted to continue their previous work through the government-to-government relationship policy they had established by providing information to the tribes on various FEMA topics such as grants and training.<sup>81</sup> On their website, they have established a tribal government fact sheet to provide answers to questions regarding the grant process and eligibility.<sup>82</sup> They provide a specific section for their Pre-Disaster Mitigation Program grants. One outstanding feature they have developed within their training programs is a

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<sup>79</sup> Environmental Protection Agency, <http://www.epa.gov/tribalportal/mous.htm>, accessed September 4, 2007.

<sup>80</sup> Federal Emergency Management Agency, [www.fema.gov/government/tribal/natamerpolicy.shtm](http://www.fema.gov/government/tribal/natamerpolicy.shtm), accessed May 7, 2007.

<sup>81</sup> Federal Emergency Management Agency, <http://www.fema.gov/government/tribal/index.shtm>, accessed September 4, 2007.

course titled: “Building Partnerships with Tribal Governments.”<sup>83</sup> In the course description, they reiterate social trust and relationship elements as previously mentioned by Boslego and Covey: “Effective partnerships form and evolve because the individual partners have an understanding, appreciation, and respect for one another that they acquire through education and life experiences. This course is designed to provide the basic knowledge to build effective partnerships with tribal governments and to work in concert with them to protect native people and their property against all types of hazards.”<sup>84</sup>

The U. S. Department of Health and Human Services has a long relationship with the tribes through the Indian Health Service (IHS). IHS has provided healthcare to tribal people since the Snyder Act of 1921 provided federal funding for the provision of health care to Indian Tribes.<sup>85</sup> Public Law 93-638, The Indian Self Determination and Education Assistance Act, provided the opportunity for tribal governments to either assume administration and operation of the health care in their communities using IHS provided resources, or to remain within the IHS administered system.<sup>86</sup> Since the *Self Determination Act* passed, American Indian Tribes and Native Alaskan corporations administer 15 hospitals, 229 health centers, 116 health stations, and 162 Alaskan village clinics.<sup>87</sup> In 1976, Congress passed the *Indian Healthcare Improvement Act* in an effort to improve the health status of American Indians and Alaska Natives to at least parity with the rest of the U.S. population. The act was reauthorized four times, but expired in 2001, and has not been reauthorized since, despite

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<sup>82</sup> Federal Emergency Management Agency, [http://www.fema.gov/government/grant/pdm/pdm\\_tribal\\_fact\\_sheet.shtm](http://www.fema.gov/government/grant/pdm/pdm_tribal_fact_sheet.shtm), accessed September 4, 2007.

<sup>83</sup> Federal Emergency Management Agency, <http://www.fema.gov/government/tribal/training.shtm#3>, accessed September 4, 2007.

<sup>84</sup> Ibid.

<sup>85</sup> Indian Health Services, <http://info.ihs.gov/Files/IHSFacts-Jan2007.doc>, accessed September 4, 2007.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

numerous hearings.<sup>88</sup> Although a disparity in health care between the general U.S. population and American Indians and Alaska Natives is recognized, there have been no studies conducted to determine if health care in tribally operated systems is better or worse than that those that remain in the IHS system.

#### **A. TRIBAL/STATE COLLABORATION**

In absence of federal guidance towards homeland security collaboration, some states are beginning to reach out to the tribal governments within their boundaries to develop cooperative agreements. Arizona has twenty-two federally recognized tribes that reside within the state. In an attempt to ensure the state has effectively collaborated with these sovereign nations in homeland security planning efforts, Arizona has included a tribal government representative in each of its homeland security Regional Advisory Councils (RACs).<sup>89</sup> The Arizona Department of Homeland Security states “five homeland security regions were identified to ensure the state — through the Regional Advisory Councils — strengthen its ability to work together at all levels to address common threat and vulnerability issues and encourage the sharing of resources across town, city, county and tribal lines.”<sup>90</sup> Although the stated goal is certainly a step towards collaboration, there is currently no evidence through RAC reporting that there has been consistent collaboration with tribal governments throughout the five RACs.

#### **B. TRIBAL GOVERNMENT COLLABORATION EFFORTS IN ARIZONA**

During the 25<sup>th</sup> Arizona Indian Town Hall meeting held June 6-8, 2005, over one hundred representatives from federal, state, local, and tribal governments gathered to discuss the current homeland security issues facing

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<sup>88</sup> Indian Health Services website.

<sup>89</sup> Arizona Department of Homeland Security, (Phoenix: Arizona Department of Homeland Security), [http://www.homelandsecurity.az.gov/Regional\\_AC.htm](http://www.homelandsecurity.az.gov/Regional_AC.htm), (accessed January 15, 2007).

<sup>90</sup> Ibid.

Arizona tribal communities.<sup>91</sup> While most participants agreed that DHS must work with tribal governments in a government-to-government relationship, until that takes place, participants agreed that tribes should continue to foster collaborative relationships with state and local governments to ensure the security of the tribal lands and populations. The report outlines multiple recommendations and outlines model collaboration programs within the state for other tribes to utilize. The Gila River Indian Community's emergency plan and program were cited as a model for other tribes to use. Gila River used the state's emergency plan and developed a plan incorporating cultural and community values. The Navajo Rangers interoperable communications system was also cited as a model. The Navajo Rangers are part of the Navajo Nation Parks Department and coordinated with the state for interoperable communications. Despite some of the positive models of collaboration, trust was again identified as a significant impediment to collaboration. Some tribal representatives felt that by signing Intergovernmental Agreements (IGAs) with the state or counties, they would compromise their sovereignty status.<sup>92</sup> There was also a reluctance expressed by some tribes to participate in regionalization.<sup>93</sup>

Participants in the town hall meeting cited the Northern RAC as a good model of coordination. It contains a tribal sub-committee of the eight tribes in the region, composed of tribal leaders, police chiefs, fire chiefs, and emergency responders.<sup>94</sup> Each RAC includes a tribal representative and, in the case of the Northern RAC, the tribal representative to the RAC serves as the chair of the tribal sub-committee. This process allows all the tribes in the region to express their concerns and to have those concerns brought to the regional council meetings. This mechanism effectively provides for tribal collaboration in the

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<sup>91</sup> Jack C. Johnson, Arizona Commission of Indian Affairs, Report of the 25<sup>th</sup> Arizona Indian Town Hall, June 6-8, 2005, Securing Arizona's Communities: Building a Model for State-Tribal Collaboration.

<sup>92</sup> Ibid., 4.

<sup>93</sup> Ibid., 6.

<sup>94</sup> Ibid., 4.

development of homeland security plans. Another area identified as a challenge during the town hall meeting was communication and information. Many tribal representatives in attendance felt uninformed regarding homeland security programs and policy, both at the state and federal level. Many were unaware of training offered by FEMA, both online and through grant programs. Others were also unaware of the resources used by some tribes such as Gila River and the Navajo for their collaboration efforts. Participants in the town hall meeting recommended that the Inter Tribal Council of Arizona take the lead in coordinating the outreach and education for Arizona tribes regarding resources available and how access to those resources can best be accomplished.<sup>95</sup>

The federal-tribal collaborative successes as well as the state-tribal collaborative success were direct results of trusted relationships. Tribes that had established trusted relationships with the state and local governments were, by far, more willing to collaborate than those that had not experienced those levels of trust or had antagonistic relationships with these entities. An organization such as the Inter Tribal Council of Arizona could help develop the trust and establish collaborative relationships as long as federal and state leadership worked equally as hard at establishing and maintaining the trust through their own behaviors.

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<sup>95</sup> Johnson, Arizona Commission of Indian Affairs, 4.

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## **V. RECOMMENDATIONS**

The current lack of policy or strategy for collaboration with tribal governments leaves weaknesses within homeland security. Without effective collaboration and communication with the over 560 tribal nations within the United States, we are unable to answer the National Preparedness Goal questions: How prepared are we? How prepared do we need to be? How do we prioritize efforts to close the gap?

### **A. COLLABORATION OPPORTUNITIES**

By its own strategic principles, the challenge before the Department of Homeland Security is to find ways to dramatically increase collaboration with tribal governments. Surprisingly, the path forward may not be as difficult as it appears given the dismal history of intergovernmental relations. An initial step would involve recognition of established grounds for cooperation — the sovereignty of tribal nations upon which relationships with the federal government have been based for several decades. DHS could lead this formal recognition and embrace conformity with legal and policy precedents.

DHS would also find opportunities for improved collaboration in the relatively small forums that have emerged to discuss homeland security needs in the absence of federal leadership. Forums that range from the NNALEA summits to Arizona Town Hall meetings, offer examples of serious, if small-scale, discussions of homeland security gaps on tribal lands. More importantly, they also gather tribal leaders who are actively interested in identifying mechanisms to help close the security lapses.

Perhaps the most difficult challenge for DHS leadership, however, is institutional and cultural. For DHS to form an effective collaborative relationship with tribal governments, it must embrace a strategy of leadership that fully acknowledges the crucial role of trust in achieving effective partnerships. Just as

trust-building measures are critical to difficult negotiations among independent nations; trust building is an essential part of constructing homeland security. No single office or liaison or speech will overcome the past decades and the current dismissive treatment of tribal governments. In each priority area, DHS needs to acknowledge the significance of tribal lands and tribal governments in sustaining a comprehensive, national strategy for homeland security.

The final chapter proposes several actions that the federal government, including both the executive and legislative branches, could take to transform collaboration with tribal governments. It begins with a few examples of cooperative activity to suggest that DHS does not have to work alone. These examples, however, are as comprehensive as the challenges before the Department of Homeland Security. The important first step, though, is to begin building trust by showing the respect that tribal governments deserve.

## **B. ACTION AND TRUST BUILDING IN COLLABORATION**

From the outset of this thesis, the argument has focused on the ways in which the language of the *Homeland Security Act of 2002* spun tribal-federal relations off into an unproductive direction. As a result, DHS' strategy should focus on a comprehensive legislative package to authorize and appropriate the funds to support a *Tribal Homeland Security Initiative*. Such legislation, however, will require a series of preparatory steps to identify direction and build widespread support.

A strategic planning process could involve three major steps:

First, Congress and the administration could establish a multiparty advisory commission to lead the review of tribal homeland security needs and interests. Tribal associations, including NCAI, NNALEA, and others, would participate in the commission as part of the process that would lead to a national tribal summit. The summit, hosted by tribal governments, would bring their

federal counterparts together to hear from states and local governments, as well as the private sector, about how to collaborate on homeland security needs.

Second, on its own initiative or under congressional direction, DHS should establish an Office of Tribal Affairs to incorporate tribal perspectives and interests within core homeland security policy and program deliberations. The office would need to be far more substantial than DHS' current tribal liaison, given both the number of individual tribes with which to consult and coordinate, and the range of homeland security issues with which tribal lands and governments overlap.

The EPA's American Indian Environmental Office offers useful ideas for such an institutional reform. Through this office, EPA has been able to provide valuable consultation to tribal governments and receive useful input on many projects of common concern and interest. Collaborative successes, for instance, have occurred in projects related to air quality, clean water access, and wastewater systems. Although the EPA and tribal governments have had their share of troubled encounters, they have also accomplished collaborative projects that were clearly founded on trusted relationships. EPA has organized itself in branches designed to work specifically with tribal interests or on projects involving tribal lands. These branches serve as transparent, routinized linkages directly between tribal members and federal government officials.

A separate office for tribal affairs is not the only way to organize collaborative relationships. Before integration into DHS, the Federal Emergency Management Agency (FEMA) had established a network approach to tribal involvement. FEMA's institutionalized role of providing grants and training opportunities for emergency planners and responders were routinely and transparently provided to all tribal leaders and Bureau of Indian Affairs representatives in all regions. FEMA's outreach and training on emergency management and disaster mitigation were able to reach tribal fire services, for instance, that allowed opportunities of extensive cooperation between tribal governments and federal, state and local first responders during crisis moments.

An established office, however, may make sustained, successful outreach more likely, especially on a wider range of homeland security issues. The recently formed National Native American Fire Chiefs Association (NNAFCA), for instance, provides a clear view of the value of an institution that incorporates the perspective and experience of tribal firefighters and first responders. The president of NNAFCA described their goal as follows:

We want our members to develop and maintain relationships with neighboring jurisdictions, counties, and states to ensure each other's capabilities and limitations are identified and work to fill the gaps together, particularly in regard to homeland security issues.<sup>96</sup>

These efforts, however, also demonstrate the limits of relatively narrow outreach programs. The primary problem is that many tribes are unaware of the training and collaborative opportunities. Comments made during the Arizona Indian Town Hall meetings described in Chapter IV, for example, clearly showed that many tribal participants were simply unaware of these resources. Trust, as shown in Chapter III, involves both communication and transparency. Neither tribal governments nor the federal government can reach out effectively without greater knowledge of each other.

The state-tribal collaboration in Arizona seems to work well because its Inter Tribal Council (ITCA) organizes and sustains this communication. The ITCA maintains a website, for example, that lists representatives for each of the collaborative projects underway in the area. These include state-tribal projects, federal-tribal projects, and tribal-tribal joint programs. Although the website offers details of specific environmental projects in which tribes partnered with the EPA, it includes very little information on homeland security. No information is included, for instance, on the homeland security Regional Advisory Councils (RACs), which is Arizona's way to organize joint discussions and planning efforts in which tribes could participate.

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<sup>96</sup> Chief Craig Encinas,  
[http://www.ncai.org/ncai/resource/documents/governance/homeland\\_security-nnafca\\_2005-07-01.pdf](http://www.ncai.org/ncai/resource/documents/governance/homeland_security-nnafca_2005-07-01.pdf), accessed September 12, 2007.

The Indian Health Service should also be represented in this new office. IHS is the conduit that many tribes currently turn to for their public health capabilities and planning. These include medical surge capabilities and emergency medical services. The IHS currently serves under the Department of Health and Human Services. DHS's Office of Tribal Affairs should maintain an awareness of the security and planning gaps that currently exist within the IHS-DHHS framework and a capability to offer tribal governments a coherent, direct federal-to-tribal government strategy toward preparedness for health-related risks.

The third element of a process that leads to a comprehensive legislative approach to tribal engagement in homeland security would involve a concerted risk identification and needs assessment process. Perhaps as part of the national commission, or an independent congressional directive, a thorough assessment is necessary to fully document the range of homeland security issues that involved tribal governments and tribal lands. The legal obligation of the federal government — in its relations with the sovereign, yet dependent tribal nations — is to identify and acknowledge the risks, vulnerabilities, and potential consequences for tribes and surrounding governments of all-hazards threats.

For state and local governments, this comprehensive assessment is made through various grant applications and sector specific programs, such as those involving port security or critical infrastructure. As noted earlier, tribal governments do not have much of an opportunity to express their views and vulnerabilities in grant processes when they have to compete with local and state government needs, especially when they have to work through the state to have their projects even recognized.

From the outset, however, the focus of such assessments should not be devoted to the perceived or proclaimed special needs of tribal governments. Legislative and DHS strategic goals require collaboration. The purpose of realigning the grant processes and various programs to incorporate tribal governments should be to empower them to collaborate with their federal

partners. NNALEA's participation in the Border Security study (described in Chapter I) demonstrates one of myriad ways in which federal and tribal authorities and security interests overlap and intertwine. The nationwide tribal assessment should produce an agenda for a joint federal-tribal approach to overcoming the homeland security weaknesses found on tribal lands.

Finally, although these legislative, institutional and research outcomes are critical objectives, the strategic planning process leading to a comprehensive legislative response is itself an opportunity at trust building and, therefore, successful, interagency collaboration. The process would produce, even require, trust behaviors, as described earlier in Chapter III, which demonstrate respect, create transparency, and confront reality.

Trust behaviors would also be embedded in the legislation. In order to produce effective legislation, the process would need to clarify expectations. Currently, the confused definition of tribal authorities and responsibilities in homeland security, the new distinction between eligible and not eligible tribes, and the overall neglect of tribal concerns directly weakens homeland security programs and projects by obstructing participation of key communities.

The test of how successful the process and the legislation would be is relatively straightforward. At the beginning of this chapter, I observed that, without effective collaboration between federal and over five hundred and sixty tribal governments — many of which occupy critical lands and locations for homeland security — it was impossible to answer the core preparedness questions: How prepared are we? How prepared do we need to be? How do we prioritize efforts to close the gap? Trustworthy, collaborative efforts between sovereign tribal governments and their federal and state partners must result in the ability to describe what the security risks are and how, working together, they will be overcome. The task is a shared responsibility, allowing and encouraging tribal members and all citizens to take up and share a great common cause as Americans.

## **APPENDIX**

### **Tex Hall, President National Congress of American Indians**

### **Testimony S.J. Res 15, Apology Resolution**

**May 25, 2005**

### **Senate Committee on Indian Affairs**

Dosha! Good morning Chairman McCain, Vice-Chairman Dorgan and members of the Committee. My name is Tex Hall, and I am President of the National Congress of American Indians and Chairman of the Mandan, Hidatsa and Arikara Nation of North Dakota.

NCAI is the oldest and largest American Indian organization in the United States. I sit before you today representing over 250 tribal governments and thousands of Indian people. NCAI was founded in 1944 in response to termination and assimilation policies that the United States forced upon the tribal governments in contradiction of their treaty rights and status as sovereign governments. Today NCAI remains dedicated to protecting the rights of tribal governments to achieve self-determination and self-sufficiency. On behalf of NCAI, thank you for giving me the opportunity to testify in regard to S.J. Res. 15, which would acknowledge the many misdeeds of the United States in its interaction with Native Americans and recognize and honor the importance of Native Americans to this land and to our nation - in the past and today. I also want to thank Senator Sam Brownback for his leadership in introducing this resolution and Senators Boxer, Dodd, Inouye, Dorgan, Cochran, and Akaka for co-sponsoring the Apology Resolution.

We all know the atrocities wrought against Native people in the United States — the holocaust, the land theft, the forced removals, the boarding school experience completely wiping out the language and cultures of our Native brothers and sisters, the broken treaties, and the attempts to undermine our

status as sovereign nations. Passage of the Apology Resolution would mark the federal government's first effort to extend an official apology for the years of wrongdoing in interactions with Indian tribes. It is a long-time coming.

A similar Apology Resolution enumerating the various wrongdoings of the United States government in relation to the Native Hawaiians and the Kingdom of Hawai'i was passed and signed into law by President Clinton in 1993. The Canadian government likewise apologized to its First peoples in 1998. The NCAI leadership worked with Congressional leadership in the last Congress to analyze the impact of this landmark resolution, which was first introduced during the 108th Congress by Senator Brownback, for himself, Senator Ben Nighthorse Campbell and Senator Inouye. NCAI solicited responses to the proposed language from tribal leaders and facilitated discussion among tribal leadership and Congress on the issue. Tribal leadership across Indian Country continues to give a variety of responses to the Apology Resolution, and I would like to share some of those responses with you today.

First, it is important to recognize that the intensity of the reaction of tribal leaders to the Apology Resolution demonstrates that the destructive policies addressed in this resolution are not a fading distant past for Indian peoples; they are present harms that continue to be felt in very real ways every day. We continue to live with the legacy of the federal government's misguided policies of the past, as well as present day policies that undermine our ability to live as robust, healthy, self-determining peoples. Tribal leaders have stressed that the apology must recognize contemporary, and not just historical, problems in Indian-government relations.

Many government policies continue to reflect a reluctance to truly recognize tribes as sovereigns. For example, tribes, unlike other governments, are limited in their ability to raise money by issuing tax-exempt bonds. Tribes are also left out of the funds that the federal government has directed to every state in this nation for emergency response and homeland security. Tribal law enforcement agencies do not have the jurisdiction and resources they need to

protect public safety, and recent Supreme Court decisions have blurred the lines of jurisdiction at the borders between state and tribal lands.

Tribal leaders have commented that an apology may be the first step in a reconciliation process between tribes and the United States government, but for this to be true, the apology must be more than just words on paper. There is much unfinished business that must be attended to before true reconciliation can be achieved. As one tribal leader has said, apologizing does not in any way wipe the slate clean or let anyone off the hook.

I had the opportunity recently to testify before this committee on the president's proposed budget for FY 2006. As I said at the time, Indian people are deeply disappointed that this budget does not support strong tribal self-government and self-determination. The president has proposed drastic budget cuts to many of the programs that are vital to the health and wellbeing of our people. For example, American Indians and Alaska Natives have a life expectancy five years less than all other races in this country and suffer from high rates of diabetes, heart disease, suicide, cancer, and alcoholism. Despite these health disparities, the per capita expenditure for American Indian and Alaska Native medical services is less than one-third of the average annual expenditure for individual Medicaid assistance, and is even less than the nation's per capita health expenditure for federal prisoners. These programs are guaranteed to us by solemn treaties, and tribes paid for these services by ceding about three billion acres of land to the federal government. A strong federal commitment to make good on old promises to provide resources for services, prevention programs, and healthcare facilities is badly needed to turn around the troubling health statistics in Indian Country and is an important step toward reconciliation.

To many, an apology rings hollow when the United States government is continuing to fail to fulfill its treaty promises. Only when coupled with a continued commitment to the government-to-government relationship and to federal Indian programs like health, education, and housing, can the Apology Resolution truly

begin to make a meaningful difference for Indian tribes. Otherwise, as one tribal leader put it, the Resolution will be like apologizing for stepping on someone's foot while you continue to stand on it.

The message I would like to leave you with today is that passage of the Apology Resolution may be an important and meaningful first step toward reconciliation. Native Americans have come through extraordinarily trying times over the past two centuries, and we have emerged strong. Native Americans are the fastest-growing segment of the population by percentage — in the face of policies aimed at ensuring our destruction, we have chosen survival. However, we have a long way to go. An apology implies a recognition that an injustice occurred, and the importance of this recognition cannot be underestimated. It also implies, however, that there is a will to try to do something about the harms that caused by that injustice. True healing must begin with a recognition of the harm, but it cannot stop there. An apology cannot substitute for upholding the hundreds of treaties made with Indian nations and fully living up to the federal trust responsibility. Tribal leaders have cautioned that the apology will be meaningless if it is not accompanied by actions that begin to correct the wrongs of the past and the present. Indian sovereignty is still under threat, and Indian people are still being left behind in this country. We look forward to working with you as we move forward in taking the next steps toward reconciliation and securing the future for Indian peoples.

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