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Introduction

Ben Nighthorse Campbell

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INTRODUCTION

SENATOR BEN NIGHTHORSE CAMPBELL*

I want to thank the faculty and staff of the *New Mexico Law Review* for the invitation to contribute to the Indian law symposium. Indeed, the legal status of Indian reservation communities is often misunderstood by a great many people. For this reason, I believe the work being done by many institutions of higher learning to educate and clarify the historical misrepresentation of Indian people will have a great impact on those who walk in our footsteps.

Having personally experienced the harsh reality that comes with being an Indian person: the racist comments, the primitive stereotypes and the general apathy by many non-Indian people, I believe we have a long way to go in educating our peers. However, if there was ever a period where Indian tribes have a great opportunity to make great strides I believe the next few years may provide that opportunity. I am certainly optimistic that the Clinton administration will be sensitive to the issues that impact Native people and will make a concerted effort to bring greater agency support to Indian programs.

One of the greatest misunderstandings that many times has clouded the dialogue between Indian tribes and other parties is the legal status of reservation communities. As ratified in the Constitution, the notion that Indian affairs were solely within the jurisdiction of the federal government was adopted. Article I outlined the responsibility of Congress to regulate trade,¹ including that with the Indian tribes. Article II gave authority to the executive branch to negotiate treaties² and command troops. Further, in the landmark case of *Cherokee Nation v. Georgia*,³ Chief Justice Marshall defined the unique position of Indian tribes as both "distinct political societies" and "denominated domestic dependant nations,"⁴ laying the groundwork for what has come to be known as the "trust relationship" between Indian tribes and the federal government.

As a result, what has evolved over time is a body of law that is becoming increasingly complex and, in many cases, controversial. Today, tribal governments are responsible for carrying out a broad mandate and must effectively address the pressures that come to bear externally and internally. Whether it is complying with federal mandates to working with state authorities on jurisdictional and regulatory issues, or developing

* Senator Campbell, Democrat from Colorado, is a member of the Cheyenne Tribe and Council of 44 Chiefs. He has served in Congress since 1986, for three terms as a member of the House of Representatives, and was elected to the U.S. Senate in November 1992. He is presently the only American Indian serving in the United States Congress.

1. U.S. CONST. art. I, § 8.

2. *Id.* art. II, § 2.

3. 30 U.S. (5 Pet.) 1 (1831).

4. *Id.* at 15, 17.

comprehensive judicial systems and other programs that tribal governments are mandated to carry out success depends on how tribal governments can affectively address the needs of a diverse population, both Indian and non-Indian.

One issue that clearly represents the need for tribal governments to work cooperatively with state and federal authorities is that of crime. Currently the Congress is working towards consensus on one of the most comprehensive omnibus crime packages in history. As with most communities across the country, reservation communities have not been immune from the rapid rise in crime related activity. For example, in my home state of Colorado, on the Southern Ute reservation the rate of adult incarceration increased 87% during the period of 1987-1991. Even more compelling, this statistic represents a rate that is four times the national average.

While the debate continues over what are the best preventive and rehabilitative measures to limit the incidence of crime, one aspect is clear, effective law enforcement and judicial systems must be in place to meet the increasing workload. Unfortunately, most all tribal governments lack the resources to effectively develop and maintain suitable judicial systems.

If one were to research the history of tribal judicial systems, one need not wonder why many tribal judicial systems are still in their infancy and only now beginning to assert themselves to meet the challenge of the increased responsibility they face as a result of their development. For many years, Courts of Indian Offenses, authorized and administered by the Secretary of Interior were the only form of judicial systems on Indian lands.

It was not until the Indian Reorganization Act of 1934⁵ and, more recently, the enactment of the Indian Civil Rights Act in 1968,⁶ that Indian tribes were given clear and definitive incentives to develop their own judicial systems. Subsequently, with the enactment of the Indian Child Welfare Act in 1978,⁷ and a host of other federal environmental mandates, Congress affirmed the broad tribal exercise of tribal regulatory authority.

While tribal governments have responded to these laws by enacting tribal laws in all areas, including environmental regulation, taxation, land use, and natural resources, the largest obstacle to developing judicial systems is available resources. In many instances, tribal courts do not operate on a full-time basis and lack adequate staff and resources to effectively meet the needs of many communities.

A report prepared by the United States Commission on Civil Rights, June 1991, clearly indicated that inconsistent funding levels make it difficult to develop a court system that can grow to meet community needs. Frankly, I am amazed how 133 tribal courts and 22 Courts of

5. 25 U.S.C. §§ 461-479 (1988), also known as the Wheeler-Howard Act.

6. 25 U.S.C. §§ 1301-1303 (1988).

7. 25 U.S.C. §§ 1901-1963 (1988).

Indian Offenses can even begin to operate effectively and efficiently on the budget of \$11 million, as was appropriated in fiscal years 1992 and 1993.

Recognizing the critical need to address developing tribal judicial systems, Congress actively pursued legislation during the 101st and 102nd Sessions of Congress to provide funding and comprehensive mechanisms for strengthening court systems. Although these measures failed, largely due to the lack of support from the administration in office, Congress again responded with new legislation that was introduced during the first session of the 103rd Congress. This initiative that began nearly six years ago has, happily, culminated in legislation now being enacted into law.⁸ One of the crucial parts of this legislation is that tribal governments and tribal judicial bodies are given full autonomy to develop courts that represent and respect traditional Indian cultural values.

I do believe that the great dream of most Native American people is to walk in both worlds, to participate in mainstream society and yet preserve their traditional tribal cultures. I have great hope that in the coming years we will see tremendous change in Indian country, in the tribal judicial forums and the many programs that will benefit Indian people.

8. See Indian Tribal Justice Act, Pub. L. No. 103-176, 107 Stat. 2004 (1993).