



BUILDING ECONOMIC SELF-DETERMINATION
IN INDIAN COMMUNITIES

Remarks of

THE HONORABLE JANET RENO, ATTORNEY GENERAL

on

Tribal Self-Government and Economic Self-Determination

Wednesday, August 5, 1998

1:45 p.m.

P R O C E E D I N G S

(1:45 p.m.)

ATTORNEY GENERAL RENO: Thank you so much, Dr. Trujillo. And thank you so much for the great work that you do with youth.

I would like to thank you all for coming so far. But I would really like to thank so many of you for educating me, for giving me the opportunity to learn firsthand from you and for welcoming me to your lands. It has been so important for me. And the time that some of you have taken to make sure that I understood the issues has been so critical for me.

We come from so many different places. So many different areas of the country are represented here. And I am delighted to see people coming together, to figure out what action we can take to spur growth and economic opportunity for Native American communities across this great continent.

My primary responsibility is law enforcement, justice, how do we make it work. And yet, as I solve one problem I think, but we won't really make it work unless we address the issue of economic development.

At the Wind River Reservation this past week, I had an opportunity to speak with tribal leaders. It was the same question: But we want to talk about economic opportunity and economic development.

From my travels to Indian country, I understand that although a few tribes have made significant gains, the need for economic development is one of the prime issues that we face.

The Census Bureau reports that 43 percent of American Indian and Alaska Native children under 5 years old live in poverty. As this number indicates, we will have to work hard to make a difference. Working in partnership, I believe we can make a difference.

In that light, I would like to briefly touch on tribal self-government, taxation, sovereign immunity, tribal courts, and our Indian country law enforcement improvement initiative. When we think about economic development in Indian communities, it is important to remember the first principle of Federal Indian law. Indian tribes are governments that exercise inherent powers of sovereignty.

(Applause.)

ATTORNEY GENERAL RENO: Now, sometimes you say the law and you do not think of the consequences. But important facts flow from this fundamental doctrine of tribal self-government. Tribal self-government is an important factor in generating opportunities for reservation economic development.

First, the tribal self-government doctrine greatly impacts the area of Federal, State and tribal taxation. In regard to Federal taxation, Indian tribes are recognized as governments and are not subject to Federal income taxation. Under the Indian Tribal Government Status Act, tribal governments are also treated as States for the purposes of certain Federal excise taxes.

In regard to State taxation, Indian tribes and Indians under tribal law are generally exempt from State taxation and regulation. The Supreme Court explains it this way: The Constitution vests the Federal Government with exclusive authority over relations with Indian tribes. As a corollary to this authority and in recognition of the sovereignty retained by Indian tribes even after the formation of the United States, Indian tribes and individuals generally are exempt from State taxation within their own territory.

In addition, when tribes generate value through tribal and individual Indian business and economic activities within their reservation, Federal law may also preempt State taxation of non-Indians engaged in commerce with them. For example, in *New Mexico v. Mesquero Apache Tribe*, in 1983, the Supreme Court explained that non-Indian hunters using a tribal hunting enterprise on reservation lands were exempt from State hunting regulations.

Perhaps more importantly, Congress has recognized the need for economic development in Indian communities and has enacted Indian investment and employment tax credits to spur new business development on Indian reservations. Understanding and utilizing these Indian investment and employment tax credits can significantly enhance new ventures, by assisting in the generation of positive cash flow in that very difficult start-up time when you need everything you can get.

Tribal sovereign immunity may also impact business development. But it is important to understand how to work with tribes on issues surrounding sovereign immunity. As governments, Indian tribes enjoy sovereign immunity from suit absent the consent of the tribal government governing body, just as Federal and State governments do.

In the area of contracts, Indian tribes and their business partners may approach the issue surrounding tribal sovereign immunity in a variety of ways. A prospective business partner may choose to contract with subordinate tribal corporations or entities that have waivers of sovereign immunity in their organizational documents.

Section 17 of the Indian Reorganization Act of 1934 authorized incorporation corporations which are chartered by the Secretary of the Interior and wholly owned by Indian tribes. These Section 17 corporation entities are legally distinct from the tribal government. Many tribes have Section 17 corporations, and their corporate charters often contain "sue" and "be sued"

clauses which resolve sovereign immunity issues by allowing suit against the tribal corporations without placing tribal governments' assets at risk.

Alternatively, a prospective commercial partner may negotiate transaction-specific waivers of sovereign immunity or security arrangements, such as escrow accounts, bonds or letters of credit, to ensure against financial loss from nonperformance of the contract by the tribal government. These mechanisms are available under existing law, and require sound business planning to implement them. But they are tools that can be very, very useful to you as you plan for economic development.

Tribal governments possess broad powers to regulate and foster business opportunities. Fundamentally, tribal government power includes the authority to choose the form of tribal government. And many tribes have chosen a tribal council form of government which provides for broad community input on public issues.

Tribal governments have recognized authority to determine tribal membership, regulate the business with the tribe and its members, levy taxes, maintain law and order, and administer justice. Through the tribal legislative process, many Indian tribes have established business laws and adopted commercial codes to promote business development. And just as

prospective business partners would familiarize themselves with State and local law, you should familiarize yourself with the law of the tribe where you intend to do business.

Some tribes retain their traditional form of government. But many Indian tribes have taken the opportunity to establish written constitutions under Section 16 of the Indian Reorganization Act. These constitutions are often referred to as IRA tribal constitutions, and they usually call for the establishment of tribal courts. Indian tribes that retain their traditional, or original, form of government often have established courts as well.

Today, these tribal courts adjudicate cases involving issues such as domestic relations, child custody, probate, tort, debt collection, commercial transactions, and misdemeanor criminal cases.

I had never considered the impact of courts on the economic process until I spoke with a businessman who was thinking of going into business in South America. He said, I choose where I go into business based on those countries that have courts that will permit an appropriate, fair, firm resolution of disputes that may develop in business. And so I think it is important that we work together to focus attention on tribal courts, and to do everything we can to make these courts real, to give them the resources necessary to do the job, and to make sure that they further tribal traditions.

At the Justice Department, we recognize that tribal courts are fundamental institutions of tribal self-government. In our policy on Indian sovereign and government-to-government relations with Indian tribes, we have committed to support tribes as they develop strong institutions of tribal government, including law enforcement, tribal courts and traditional justice systems.

A point that I would make to you is one that was made to me at a listening conference at, of all places, Harvard Law School some 2 and a half years ago. One leader stood up and said to me: Your system -- and he spoke of the criminal justice system -- is based on blame. Somebody is either guilty or not guilty, and you blame people. Our system is based on healing and peace and resolution of conflict. And you can probably teach us much in terms of what we can all do together to develop systems that enable us to resolve conflicts short of expensive litigation and in appropriate procedures that promote what you are trying to do.

In other words, we may have a situation in our courts here in Washington where we will sue somebody, a jury will return a verdict, and nobody will leave very happy. If we are into resolving conflicts the right way, we will develop alternative dispute resolution mechanisms that permit us to further the interests of both parties through the dispute resolution programs that can truly make a difference.

In our efforts to work with tribal justice systems, we have consulted with the Eighth, Ninth and Tenth Circuit Courts of Appeals and the Conference of Chief Justices of the State Supreme

Courts to promote tribal, Federal and State court cooperation. These Circuits have formed committees and task forces to promote cooperation between the court systems. The Justice Department is also working with several tribes on intertribal appellate courts.

The growing importance of tribal courts means that tribal business partners, now more than ever, must become familiar with and ready to work with tribal governments and their laws.

Finally, I would like to address another fundamental area of infrastructure development that, along with tribal economic development, will help to ensure a safe and a healthy future for tribal communities. That area is of course law enforcement.

Now, you ask how they go hand in hand, and I have given you one example. But I watched our system, which is often ineffective, because we will prosecute somebody, we will get them convicted of a crime, we will have an appropriate sentence imposed, but we do nothing when those people come out of the system to return them to the community with a chance of getting a job, of making a difference, of getting off on the right foot.

And so what we want to do is, as we work with you to try to obtain monies for law enforcement for appropriate correctional and detention facilities, that we take into account how we prepare our young people for a chance to get off on the right foot in a prosperous and constructive way. Together with the Department of the Interior, we are working on an initiative on Indian country law enforcement.

Last August, under the government-to-government relations policy, President Clinton requested that Secretary Babbitt and I consult with tribes to address law enforcement needs in Indian communities. After consulting with tribal leaders, we developed a plan to strengthen tribal police and tribal courts, improve investigative services, build detention facilities, fight substance abuse, and fund prevention programs for young people.

Our first step, and an important step, is to get the resources necessary for effective tribal law enforcement out to Indian communities. For fiscal year 1999, in the budget that is now being considered by Congress, the Justice Department has requested -- we do not have it yet; we have requested it -- \$54 million for uniformed tribal police, \$52 million for tribal detention facilities, \$20 million for children at risk, \$10 million to fight substance abuse, and \$10 million for tribal courts.

(Applause.)

ATTORNEY GENERAL RENO: It is not in hand yet.

(Laughter.)

ATTORNEY GENERAL RENO: I am so committed to this initiative. I dream of a system where we can have tribal police working with FBI agents in a partnership, with the FBI agents handling the issues that tribal police cannot handle, that we have tribal courts that are sensitive and able to handle the cases, that we have detention facilities that are nearby the reservation or the tribal land so that the young person can come back to the land with a chance of coming in and being reintegrated with family and community in the right way, and that they come back with the tools they need to succeed.

We have got a long way to go, but we have made some progress. And I am committed to doing everything in my power to see that this appropriation is achieved and that we get the money out in the right way.

(Applause.)

ATTORNEY GENERAL RENO: These resources will assist Indian tribes in strengthening tribal law enforcement and tribal courts. Of course, under the Indian self-determination policy, as we assist tribes through these grant programs, we must work to ensure that our programs have the flexibility necessary to accommodate tribal traditions and to meet circumstances unique to Indian country.

But then, I suggest to you, we have got to talk more about how we distribute the monies. It is very difficult, if you have a little bit here and a little bit here, to parcel the money out the right way. But if we can see common traditions and common court systems come together, working together, I think that we will be able, if we can get these monies, to distribute them in fair and equitable fashion that can truly get the best return on the dollar, while at the same time maintaining tribal traditions.

It will be a challenge, because I have learned now, after listening and observing, the great wonderful diversity of tribal traditions and tribal experiences. But, sensitive to those, I think we can develop some distribution systems that can work.

Tribal justice programs should also include boys and girls clubs and other juvenile prevention programs. The Justice Department has helped support a boys and girls club on the Northern Cheyenne Reservation, with programs that reflect tribal traditions and culture, and give Indian youths an opportunity to find a sense of belonging in their own tribal community. These programs are important building blocks for long-term economic development.

You are going to hear many important comments from people who know a lot more about economic development than I do. And I look forward to hearing the results of your conference. It is important to view this conference as a starting point, not as an end in itself. I want to do everything I can to support the results that come out of here, so that we have something in hand at the end of the day, and that we can turn around in a year or in 2 years

and say, yes, there was a difference.

(Applause.)

ATTORNEY GENERAL RENO: In closing, this is an extraordinary country. For most of my life, I have spent it in Miami. I knew my friends, the Mikasukis. We had the opportunity to learn from each other. But now I came to Washington, afraid that I would lose my sense of community. I have discovered that instead of losing any community, I have only gained new friends and new communities and new tribes. And it has been such a wonderful experience for me.

I want again to thank you all, who have made me feel so welcomed and who have given me so many ideas and so many understandings of what I can do to be more effective. I also want to thank Tom LeClare and Mark Van Norman for the wonderful work they do in opening up the Department of Justice so you know where to come, in the Office of Tribal Justice, to find out what is happening that is affecting you. We want to continue that government-to-government, sovereign-to-sovereign communication.

And thank you for being here today.

(Applause.)

(Whereupon, at 2:15 p.m., the remarks of Attorney General Reno were concluded.)