

Chronological: Issue re. Indian Sovereignty

Senator Daniel K. Inouye Papers

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STATEMENT OF SENATOR DANIEL K. INOUE
CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS
August 19, 1991

IN THE DAYS OF OLD, IMPORTANT SPEECHES WERE MEASURED BY THEIR LENGTH. INAUGURAL SPEECHES RAN FOR HOURS. STATE OF THE UNION MESSAGES TO THE CONGRESS RAN FOR HOURS. HOWEVER, HISTORY HAS DEMONSTRATED THAT IT IS THE SHORT SPEECHES THAT ARE THE ONES THAT ARE REMEMBERED.

IT IS SAID THAT WHEN LINCOLN GAVE THE GETTYSBURG ADDRESS, HE THOUGHT THAT NO ONE HEARD HIM. IN FACT, HE WAS CRITICIZED BY EDITORS WHO FOUND HIS SEVEN-MINUTE ADDRESS INSULTING. NO ONE REMEMBERS THE SENATOR WHO GAVE A LONGER SPEECH THE SAME DAY. NO ONE EVEN REMEMBERS HIS NAME.

I AM NOT SUGGESTING THAT MY REMARKS ARE TO BE COMPARED WITH THE GETTYSBURG ADDRESS, BUT THEY WILL BE SHORT.

MY REMARKS WILL BE DIVIDED INTO TWO PARTS, AND I WILL BEGIN WITH MATTERS OF IMMEDIATE CONCERN. IT SEEMS THAT WHENEVER WE GET TOGETHER, WE FIND OURSELVES NEEDING TO DISCUSS MATTERS OF IMMEDIATE CONCERN.

SOMETIMES IT SEEMS THAT THAT IS ALL WE DO, AND IT IS NO SURPRISE THAT THE SELECT COMMITTEE ON INDIAN AFFAIRS, OVER THE YEARS, HAS HAD TO CONCERN ITSELF WITH MATTERS OF IMMEDIATE CONCERN. HOWEVER, THERE ARE TWO MATTERS OF IMMEDIATE CONCERN THAT I WISH TO DISCUSS WITH YOU TODAY -- AND BOTH ARE FUNDAMENTAL TO YOUR SOVEREIGNTY.

THE FIRST IS THE DURO ISSUE. LAST YEAR, FOLLOWING THE SUPREME COURT'S RULING IN DURO v. REINA, YOU CALLED UPON THE COMMITTEE TO PROMPTLY ADDRESS THE SIGNIFICANT PROBLEMS IN LAW ENFORCEMENT THAT WERE CREATED IN THE WAKE OF THE COURT'S ACTION.

WE HELD HEARINGS, AND THEN WE ACTED -- TO RECOGNIZE THE INHERENT AUTHORITY OF TRIBAL GOVERNMENTS TO EXERCISE CRIMINAL MISDEMEANOR JURISDICTION OVER ALL INDIAN PEOPLE ON THEIR RESERVATIONS. AN AMENDMENT TO THIS ACTION MADE IT EFFECTIVE FOR ONE YEAR, AND THAT YEAR IS DUE TO EXPIRE ON SEPTEMBER 30, 1991 -- JUST 41 DAYS FROM TODAY.

IN THIS SESSION OF THE CONGRESS, BILLS WERE INTRODUCED IN BOTH THE HOUSE AND SENATE TO REMOVE THE ONE-YEAR PROVISIO AND TO MAKE THE RECOGNITION OF THE INHERENT AUTHORITY OF TRIBAL GOVERNMENTS PERMANENT. THE HOUSE PASSED ITS BILL, AND THAT BILL IS NOW PENDING IN THE SELECT COMMITTEE.

I HAVE SCHEDULED A COMMITTEE BUSINESS MEETING TO CONSIDER THE HOUSE BILL ON MONDAY, SEPTEMBER 16, 1991.

IN THIS SESSION OF THE CONGRESS, WE HAVE HELD NUMEROUS HEARINGS ON THE DURO ISSUE, AND WE HAVE SEEN THAT THE MEMBERS OF THE SELECT COMMITTEE ARE NOT OF ONE MIND ON THIS ISSUE. THEY HAVE ASKED HARD QUESTIONS, AND WE HAVE SOUGHT YOUR ASSISTANCE IN PROVIDING ANSWERS.

BUT NOW WE COME DOWN TO THE FINAL ACTION ON THE BILL, AND I AM

provisions. In addition to covering over 40 Federal offenses, the amendment also authorizes the death penalty for three categories of drug offenders. The bill authorizes the death penalty for the leaders of the largest drug enterprises, who are currently subject to a mandatory term of life imprisonment under title XXI. In addition, other leaders of drug enterprises who attempt to obstruct justice by attempting to murder persons involved in the criminal justice process are covered. It also covers other persons who commit murders in the course of drug felonies.

This amendment also includes a provision from the President's bill which permits the presentation of victim impact evidence at the sentencing phase of a death penalty case. It specifies that evidence may be presented at the sentencing phase of a death penalty case concerning the effect a vicious murder had on the victim and the victim's family. Such evidence may include the suffering of the victim and the victim's family's anguish and distress. Not only does this amendment allow for such victim impact evidence, it also deletes troublesome provisions from the underlying bill which would have mandated that the Government be bound by the Federal rules of evidence and criminal procedure in the sentencing phase of a death penalty case.

Senator BIDEN and I have also worked together to clean up the language which governs jury instructions. We have also worked to ensure that the bill contains an adequate list of aggravating factors. For example, this amendment will allow for consideration of the death penalty for murders committed by killers with prior records of firearms violence.

In closing, this amendment provides procedures similar to those put in place by the death penalty passed last year. It is time for Congress to pass a workable comprehensive death penalty. The law-abiding citizens and this Nation demand action and they demand it now. I am pleased that we have been able to work out a bipartisan Federal death penalty.

For these reasons, I urge my colleagues to support this amendment.

Mr. BIDEN. Mr. President, the Senator from South Carolina and I seem to have been doing this for a long, long time; that is, it is our responsibility to bring to the floor, hopefully get passed by the Senate, a meaningful anticrime and antidrug legislation. We always find ourselves in an area that is probably the most highly contentious, the most—how can I say it?

I guess the best way to say it is this: When the Senator and I bring a bill to the floor on a matter relating to anti-trust, or we bring a piece of legislation to the floor on conventional forces agreement, as we will soon, or we bring a piece of legislation to the floor regarding foreign policy, or even contentious nominations, most of our col-

leagues, the way this organization functions, acknowledge somewhat of an expertise as a committee and they tend to be guided, as we do, by the committee structure here, the will of the committee.

But if there is one area where everyone in the U.S. Congress views themselves sufficiently expert, to have a firm view on it, it is in the area of law enforcement, the criminal justice system, and national drug policy. I do not say this critically. It is easy for everyone to have an opinion on that.

So the Senator and I, over the years, have learned that unless we are willing to compromise we are not able to bring a vehicle to the floor here that can allow for reasoned debate and, to be very blunt about it, under the Senate rules debate in a relatively timely fashion, so we do not spend the entire summer on the crime bill.

We both, after having had the so-called big vote substitute or to amend the Biden amendment, Biden bill, which is at the desk, we decided that we should not both insist on everything we wanted, and in this very contentious area that we should try to reach a compromise so we could begin to narrow the differences, and also narrow the scope of the debate a little bit. That is what we have been about for the last 2 days, attempting to negotiate that.

It is true as the Senator says that the Biden-Thurmond compromise on matters relating to the death penalty area before us, and we both did agree. But as you will soon find out, each of us has reserved the right to amend some portion of the so-called Biden-Thurmond amendment we just sent up.

For example, there is a death penalty provision that I believe to be unconstitutional, and that is to allow the death penalty to be imposed where no death results from the crime. I believe the Supreme Court is fairly clear on that, and notwithstanding the fact that I believe it is unconstitutional, in order to get this moving I agreed to put it in this substitute provision.

So I will be moving to amend my own amendment here in a moment. But as arcane as it may seem to the people here in the gallery and many who listen to this on C-SPAN, it is necessary to get the debate underway. We both gave a good deal. My friend from South Carolina gave on repealing the drug penalty procedures, on mandating the death penalty where there are no mitigating offenses, and omitted some of the aggravating factors in the President's crime bill. So we both made concessions.

But that is the only way we are going to move. We both have been here long enough to understand in all likelihood where we are going to end up on this legislation. We just voted on this legislation a year ago. There seems to be a pretty broad consensus.

For example, instead of amending it the way the Senator wanted, we

agreed to not include the execution of the mentally retarded, a position I feel very strongly about, so we made some compromise. Now we are about to debate and vote in the order our unanimous-consent agreement called for.

So with that very brief and somewhat tedious explanation on my part, we are about to settle over the next day and a half the issue relating to the death penalty. Then I hope we will be able to do the same with regard to habeas corpus, and then maybe the most contentious provisions except guns will have been debated, voted on, set aside and we are able to move on so we are ultimately able to get to the point where we can vote on the crime bill.

With that brief explanation, let me now yield the floor, to comply with the unanimous-consent agreement, to our friend from Hawaii who has been extremely generous in his cooperation allowing this process to go forward to introduce his amendment. I thank him again for his cooperation.

I might note parenthetically, we were in this negotiating process and he was not present. I said well, we do not have agreement on this one item: They said who is it? I said who is holding this up? They said Senator INOUE. I said Senator INOUE is one who always is compatible and to this he should understand that each of my Republican colleagues said that is true. We do not have a problem if it is Senator INOUE.

So I want to thank him again for his cooperation and thank him for the gentlemanly way in which he has allowed this process to go forward. I might note at the outset I strongly support the effort he is about to undertake which is to protect Indian land.

With that I yield the floor.

The PRESIDING OFFICER. Before recognizing the distinguished Senator from Hawaii, Senator THURMOND has 1 minute 51 seconds left on the time allocated to him pursuant to the unanimous-consent agreement. Does the Senator yield that time?

Mr. THURMOND. I am pleased to yield it.

The PRESIDING OFFICER. All time has been yielded by the Senator and the time allocated to Senator INOUE having expired, pursuant to the unanimous-consent agreement the Senator from Hawaii [Mr. INOUE] is now recognized.

* AMENDMENT NO. 370

(Purpose: To accord Indian Tribal governments a right similar to state governments to determine whether the death penalty should apply to offenses committed by Indians within their jurisdiction)

Mr. INOUE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

CONVINCED THAT IT WILL BE YOUR INVOLVEMENT THAT WILL DETERMINE THE OUTCOME OF THE VOTE IN THE SENATE.

AND SO THAT WE MIGHT ALL BE REMINDED OF WHAT IT IS WE HAVE TO CONTEND WITH IN THIS AREA, I THOUGHT I WOULD QUOTE TO YOU FROM THE TRANSCRIPT OF ONE OF THE COMMITTEE'S RECENT HEARINGS ON DURO -- THIS IS THE STATEMENT OF JUST ONE OF THE MEMBERS OF THE COMMITTEE, BUT IT MAY REFLECT A MORE WIDELY-HELD VIEW:

"THE FOCUS OF THIS HEARING IS THE IMPLICATIONS OF OVERTURNING A SINGLE SUPREME COURT DECISION. IN MY VIEW, HOWEVER, THE PROBLEM IS LARGER THAN ONE DECISION OF THE SUPREME COURT OF THE UNITED STATES."

"WHAT NEITHER THE PROPOSED LEGISLATION NOR THIS HEARING WILL ADEQUATELY ADDRESS IS THE FUNDAMENTAL REALITY OF LIFE ON AN OPEN RESERVATION...FOR EXAMPLE, TRIBAL GOVERNMENTS IN THE PAST HAVE UNILATERALLY VOIDED TRIBAL COURT DECISIONS WITH WHICH THEY HAVE DISAGREED. IN ONE CASE, THE TRIBAL COURT VOIDED A TRIBAL REFERENDUM ON REAPPORTIONMENT OF THE TRIBE'S COUNCIL DISTRICTS AND THEN BARRED THOSE WHO SUED TO OVERTURN THE COUNCIL'S DECISIONS FROM RUNNING FOR OFFICE."

"IN OTHER CASES, TRIBAL GOVERNMENTS HAVE REMOVED THOSE JUDGES WHO HAVE MADE DECISIONS WITH WHICH THEY DISAGREE. TRIBAL GOVERNMENTS HAVE UNILATERALLY TERMINATED EMPLOYMENT CONTRACTS AND THEN REFUSED TO ALLOW THE AGGRIEVED PARTIES FROM SUING IN TRIBAL COURT. TRIBAL COURTS HAVE IGNORED DEFENDANTS' RIGHT TO COUNSEL, EVEN WHEN THE DEFENDANTS HAVE PAID FOR THAT COUNSEL."

"THE FIRST PROBLEM WAS CAUSED BY THE SUPREME COURT RULING IN THE SANTA CLARA PUEBLO CASE WHICH REMOVED THE FEDERAL COURTS' ENFORCMENT OF THE INDIAN CIVIL RIGHTS ACT. CONSEQUENTLY, A POTENTIAL FOR CIVIL RIGHTS ABUSES BY INDIAN TRIBAL GOVERNMENTS AND COURTS WAS CREATED."

"IN OTHER WORDS, THE TRIBE COULD ONLY BE SUED IN TRIBAL COURT AND ONLY IF THE TRIBE HAD WAIVED ITS SOVEREIGN IMMUNITY EXEMPTION, A SOVEREIGN IMMUNITY EXEMPTION WHICH IS ALMOST EXCLUSIVELY THAT OF INDIAN TRIBES AND NATIONS AT THE PRESENT TIME. THEREFORE, CIVIL RIGHTS COMPLAINTS LIKE FREE SPEECH OR DISCRIMINATION BY TRIBAL ENTITIES WERE ONLY ENFORCEABLE IN TRIBAL COURT IF THE TRIBAL GOVERNMENT WAS WILLING TO WAIVE ITS SOVEREIGN IMMUNITY. I UNDERSTAND THAT MOST TRIBAL GOVERNMENTS HAVE NOT WAIVED THE TRIBE'S SOVEREIGN IMMUNITY, AND ANY WAIVER, POTENTIALLY, COULD BE REVOKED IN THE FUTURE."

"FINALLY, CONGRESS HAS INADEQUATELY FUNDED THE NEEDS OF THE TRIBAL COURTS FOR THE LAST SEVERAL DECADES. THIS UNDERFUNDING SEVERELY HINDERED EFFORTS TO IMPROVE THE QUALITY OF THE JUSTICE DISPENSED IN TRIBAL COURTS."

"OBVIOUSLY, THE PASSAGE OF THE DISTINGUISHED CHAIRMAN'S LEGISLATION WOULD ONLY SOLVE THE LAW ENFORCEMENT VOID CREATED BY THAT SUPREME COURT DECISION. NO CIVIL RIGHTS PROTECTIONS ARE MANDATED OR SOUGHT. THE TRIBAL GOVERNMENTS AND THEIR JUDICIAL SYSTEMS, WHICH WERE DEFINED LAST

The assistant legislative clerk read as follows:

The Senator from Hawaii (Mr. INOUE) proposes an amendment numbered 370.

Mr. INOUE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of title II, insert the following: "Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to a capital sentence under this chapter for any offense the federal jurisdiction for which is predicated solely on Indian country as defined in section 1151 of this title, and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has elected that this chapter have effect over land and persons subject to its criminal jurisdiction."

Mr. INOUE. Mr. President, the amendment before us has been before this Senate since Thursday when this body began the consideration of this crime bill. Up until a few moments ago this amendment was section 3598 of this bill. As part of the agreement reached by the distinguished chairman of the Judiciary Committee and the ranking Republican member, this section, section 3598, was taken up, and it is my intention to reinstate this section in the bill.

Mr. President, perhaps the most important point to understand about this amendment is that it is premised upon the sovereign status of tribal governments.

It may be difficult for most Americans to understand that Indian governments are sovereign governments. Accordingly, it has nothing to do with race or ethnicity. It has nothing to do with so-called special interest groups. Mr. President, we all should know that the U.S. Constitution and the debates in the Continental Congress recognize and address Indian nations based upon their status as governments. This has been true since the earliest of times in our history.

Mr. President, it is most appropriate that on June 14, 1991, just a few days ago, the President of the United States issued the following statement. I would like to read part of that into the RECORD. The statement reads as follows:

On January 24, 1983, the Reagan-Bush administration issued a statement on Indian policy recognizing and reaffirming a government-to-government relationship between Indian tribes and the Federal Government. This relationship is the cornerstone of the Bush-Quayle administration's policy of fostering tribal self-government and self-determination.

This government-to-government relationship is the result of sovereign and independent tribal governments being incorporated into the fabric of our Nation, of Indian tribes becoming what our courts have come to refer to as quasi-sovereign domestic dependent nations. Over the years, the relationship has flourished, grown, and evolved into a vibrant partnership, in which over 500 tribal governments stand shoulder

with the other governmental units that form our Republic.

Indeed, the Constitution only speaks in terms of governments: State governments, the national governments, tribal governments, and the governments of foreign lands. Thus, when we speak of "Indian country," we refer to a Federal jurisdictional framework that is based upon the jurisdiction of governments. The term "Indian country" instructs us as to which governments will have jurisdiction over lands defined as Indian country. This term does not refer to the people who may occupy or reside on lands that are defined as Indian country.

So, Mr. President, let us not allow ourselves to be confused by references to racial or ethnic groups. For those that are not familiar with the context in which we are discussing this issue, there may be a tendency to think of Indian people in racial or ethnic terms.

But, Mr. President, the Supreme Court has held that it is the government-to-government relationship between the United States and Indian nations—the political and legal relationship of tribal governments with the Federal Government—that distinguished laws enacted for Indians. The Constitution recognizes this relationship and vests in the Congress plenary authority over Indian affairs. It does so not based upon treaties, as some have mistakenly understood; rather, the United States entered into treaties with Indian nations because we recognize their sovereignty.

Mr. President, as many of us recall, by reports, speeches, and the CONGRESSIONAL RECORD, there was a time when these Indian nations sent ambassadors to the District of Columbia to be accredited with the President of the United States. There were hundreds of ambassadors representing Indian nations.

Within our constitutional framework, there are three domestic units of government: The national government, State governments, and the tribal government. With regard to the relations among those governments, tribal governments like State governments, have a direct relationship with the Federal Government.

Recognizing the equality of their governmental status as it relates to the Federal Government, this amendment accords to tribal governments a status similar to that of the State governments, namely that tribal governments, like State governments, can elect whether or not to have the death penalty apply for crimes committed within the scope of their jurisdiction.

Currently, Mr. President, Indian tribal government have criminal jurisdiction over all Indian people on their reservations. I repeat that: "All Indian people on their reservations." They do not have jurisdiction over non-Indians.

This amendment does not expand the criminal jurisdiction of the tribal government. The bill before us, S.

1241, would provide the death penalty for specific offenses committed on Federal lands or prosecuted in Federal courts.

In the context of its application in Indian country, Mr. President—this is important—we are not talking about capital crimes, such as treason or the assassination of the President of the United States, because for those crimes, the death penalty will apply without regard to what would otherwise be within the scope of a State or tribal jurisdiction. This Federal law will preempt the laws of the States and tribal government, as it refers to capital crimes.

But where the death penalty would apply only if a State elected to have it apply, this amendment would allow a tribal government to have the right to make the same election. To understand why the death penalty issue is one that affects the Indian country in a unique way, it is important to understand the context in which the proposed bill would apply.

First of all, of all lands subject to Federal court jurisdiction in the bill before us, only Indian reservations have significant permanent populations. We are not talking about the national parks where the permanent populations are made up of bears and antelopes; we are talking about reservations. Second, with some exceptions provided by the Congress, State law does not apply on Indian reservations. Thus, in most instance, it is tribal and Federal laws exclusively that apply on Indian reservations.

With regard to crimes defined under the Federal law, the provisions of the Major Crimes Act extend Federal law to crimes committed on Federal lands, including Indian lands. According to a recent article in the Washington Post, those that commit murder on Indian reservations comprise over 50 percent of those charged with first degree murder within the Federal court system. Because that is the only population there.

Further, testifying before the Committee on the Judiciary, Federal public defenders have suggested that as many as 70 percent of the total number of persons convicted of first degree murder in the Federal system are Indians. And yet, these Indians have committed less than 2 percent, or about 1.6 percent, of the crimes of the United States. Yes, they represent 1.6 percent of all offenders in the United States. Yes, they represent 1.6 percent of all offenders in the United States. Yet, because of the quirk in this law, 70 percent of those charged with first degree murder under the Federal law will be American Indians.

In the absence of some modification to address this differential impact, 70 percent of all death sentences imposed by this law would be imposed upon Indian people, without the right of election.

WEEK AS EVOLVING, UNDER-FUNDED, AND RARELY INDEPENDENT FROM POLITICAL CONSIDERATIONS, WOULD BE GRANTED NEW AUTHORITY WITHOUT ANY CHECKS ON THE USE OF THIS POWER."

NOW, I UNDERSTAND THAT ALL OF YOU HAVE IN YOUR PACKETS A COPY OF THE BILL THAT PROPOSES TO ADDRESS ONE OF THE ASPECTS OF THIS SENATOR'S CONCERN -- THE NEED TO ENHANCE FUNDING AND SUPPORT FOR TRIBAL COURTS.

WE HAVE MODELED THIS BILL AFTER THOSE INSTITUTIONS THAT PROVIDE SUPPORT TO STATE AND FEDERAL COURTS, AND MUCH OF THE WORK THAT IS CONTEMPLATED, WOULD BE CONDUCTED UNDER THE AUSPICES OF THE TRIBAL JUDICIAL CONFERENCE -- A CONFERENCE COMPOSED OF THE CHIEF JUDGE OF EACH TRIBAL COURT.

WE HAVE PLACED THE OFFICE OF TRIBAL COURTS IN THE ADMINISTRATIVE OFFICE FOR THE UNITED STATES COURTS, AND WE HAVE DONE THIS FOR ONE IMPORTANT REASON -- FOR YEARS, THE OFFICE THAT SUPPORTS THE FEDERAL COURTS HAS BEEN ACQUIRING EXPERTISE FROM LEGAL SCHOLARS AROUND THE WORLD, AND THEY HAVE ACQUIRED THE LATEST TECHNOLOGY, SOPHISTICATED RECORD-KEEPING AND CASE MANAGEMENT SYSTEMS, COMPUTER PROGRAMS THAT BRING THE BEST LAW LIBRARIES IN THE WORLD TO THE COMPUTER TERMINALS IN THE MOST REMOTE AND ISOLATED AREAS OF THIS COUNTRY.

SO, RATHER THAN HAVE AN OFFICE OF TRIBAL COURTS HAVE TO BEGIN FROM SCRATCH TO BUILD THESE SAME CAPACITIES, PUTTING THE OFFICE OF TRIBAL COURTS IN THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS ALLOWS THE TRANSFER OF ALL OF THIS INFORMATION AND EXPERTISE WITH MINIMAL COST.

A BILL THAT PROPOSES A LIMITED FEDERAL COURT REVIEW OF ACTIONS ALLEGING VIOLATIONS OF THE RIGHTS SECURED IN THE INDIAN CIVIL RIGHTS ACT, ONCE ALL TRIBAL COURT REMEDIES HAVE BEEN EXHAUSTED, IS ALSO BEING PREPARED. THAT BILL WILL BE THE SUBJECT OF THOROUGH HEARINGS, AND YOU WILL HAVE AMPLE OPPORTUNITIES TO EXPRESS YOUR VIEWS ON WHETHER THERE IS REALLY A NEED FOR SUCH LEGISLATION.

BUT WE DO ALL THIS TO MAKE CERTAIN THAT WE ARE FULLY ADDRESSING EVERY ASPECT OF CONCERN THAT IS LIKELY TO BE RAISED IN THE SENATE. WE WANT ALL THE ISSUES OUT ON THE TABLE, WHERE THEY CAN BE DEBATED AND DECIDED.

WE KNOW DURO AS PRIMARILY A LAW ENFORCEMENT PROBLEM. HOWEVER, MOST SENATORS KNOW NOTHING ABOUT DURO -- AND SO THEY WILL RELY UPON THOSE WHO MAKE THEIR VOICES HEARD IN THIS DEBATE.

THEY WILL RELY ON YOUR INFORMATION IF YOU PAINT THEM A PICTURE OF WHAT DURO HAS DONE AND WHAT IMPACT IT WILL HAVE, IF IT IS NOT PERMANENTLY REVERSED.

AND THEY WILL ALSO RELY UPON YOU TO UNDERSTAND THE CONTEXT IN WHICH THE REMARKS I QUOTED SHOULD BE VIEWED.

THEY WILL NEED TO SEE THE BIGGER PICTURE -- THAT WE ARE NOT JUST TALKING ABOUT OVERTURNING ONE SUPREME COURT DECISION -- BUT THAT WE ARE

The State of Hawaii, for example, has elected to have no death penalty. In the State of Hawaii we have so elected because the people have decided that they were against the death penalty. All we are asking by this amendment is to give the sovereign people in the sovereign governments of Indian country the same right.

Mr. President, as we all know the U.S. Constitution, Federal statutes, and Federal court decisions recognize Indian tribal government as sovereign entities.

In the exercise of their sovereign powers and authorities, tribal governments administer tribal law, and although State law does not generally apply on Indian reservations, tribal governments may elect to have certain State or Federal laws apply within their respective jurisdictions.

So, consistent with this sovereign status of tribal governments within the Federal system, I wish to call upon my colleagues to support this amendment because it will allow the death penalty to apply on Indian lands upon the election of a tribal government, the same right that our 50 States have at this moment.

This provision serves the additional purpose of diminishing the differential impact that a Federal death penalty will have upon Indian people while at the same time conforming S. 1241 to the existing statutory framework affecting Indians and to our government-to-government relationship with Indian tribal governments.

Incidentally, Mr. President, the wording of this amendment reflects a refinement of the language of the amendment that was the subject of Senate debate in the last Congress which this body adopted.

It is carefully circumscribed to assure that tribal government's election as to the application of the death penalty will apply only to crimes defined under Federal law and only to those that come within the jurisdiction of a tribal government for criminal purposes, namely Indian people as they are defined in the Major Crimes Act. It will not apply to non-Indians.

Should a crime bill, the bill before us, be enacted into law, the death penalty will apply on Federal lands for Federal crimes.

State governments will still have the option of determining whether the death penalty will apply to crimes committed within their jurisdictions.

This amendment will accord tribal governments the same right to elect to have the death penalty apply to crimes committed within Indian country, consistent with their sovereign status within the Federal system.

And, Mr. President, I fervently believe that we must act to assure that the first Americans of this country do not become the unintended victims of a law that is otherwise designed to treat all governments equally.

Mr. President, American Indians are the first citizens of this land, first

Americans of this land, and as such, throughout the history of our relationship, they have assisted our Government in every endeavor. In every war, Native Americans have volunteered—and it may interest my colleagues to know that in the most recent war, the desert war, Desert Storm, Indian participation was seven times the national norm. Their representation was the largest of any ethnic or racial group and most of them served in combat. And thus has been the case in the Vietnam war, in the Korean war, in World War II, and World War I.

These are men and women who have shed their blood to indicate their love and allegiance to our Government but at the same time they are well aware that their governments by the Constitution of this land and by statutes of this land are sovereign. The least we can do is to recognize their sovereignty and to make it apply in this law.

How much time do I have remaining?

The PRESIDING OFFICER (Mr. BURDICK). The Senator has 4½ minutes remaining.

Mr. INOUE. I reserve the time.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. INOUE. Mr. President, I yield the remainder of my time to the Senator from New Mexico.

Mr. DOMENICI. I do not think I can use it all because I have to leave.

I yield myself 3 minutes.

Mr. President, this is a very forthright amendment. I am a cosponsor, and last year the U.S. Senate, by an overwhelming vote, approved a similar amendment on a similar crime bill. I hope they will do that again.

Essentially, this amendment boils down to a very basic proposition. I happened to check today to see how many States do not have the death penalty, and I think I am right. About 14 States in the Union do not even have the death penalty yet.

The Senator from New Mexico is for the death penalty, but I believe that you can be for the death penalty and be for something else, and I happen to be for something else, and that happens to be Indian sovereignty and Indian self-determination.

I frankly do not believe that it is fair for the U.S. Congress to determine the death penalty for the Indian people; that is, for Indians who commit murder on Indian reservations—and that is all we are talking about, our Indian people who commit crimes for which a State would have the death penalty. I do not believe it is right for us to do that automatically.

We ought to recognize the Indian people, their legislative bodies, and this amendment gives the Indian legislative bodies, their tribal councils, the authority to elect whether or not murder committed on their land by an Indian is subject to the death penalty

or not—very simply, basic fairness, as I see it.

Some will argue discrimination because, in fact, the Indian-elected group may not vote for the death penalty. Are they claiming discrimination as to the 14 States who do not have the death penalty? Their neighboring States have it. So when you walk across the State line and commit that crime, you will have the death penalty in one State and not the other, and it was not but 2 or 3 years ago there were many more States without the death penalty.

Frankly, I believe if I were an Indian leader, I would be pushing that tribal council to vote in the death penalty for the kinds of murder that entitles one to the death penalty. Sooner or later, the Indian people will make those kinds of decisions themselves.

So, essentially this is fairness, a recognition of Indian sovereignty, Indian self-determination. When it really counts, are we not going to count it, or are we?

And Senator INOUE and Senator DOMENICI say "yes." If they do not vote in through their tribal-elected officials the death penalty, then it will not apply on Indian country as to murder committed by an Indian. I think that is fair.

All the other first-degree, death penalty provisions of this new statute about killing an FBI agent, killing the President of the United States, we do not change that. They require the death penalty wherever it occurs anywhere in America. In fact, if a conviction for one of these crimes occurs in 1 of these 14 States, where there is no death penalty, the Federal provisions for the death penalty apply there also.

I think there are some who would argue that the Indian governments should not have the same rights as States. I believe they should have the same rights and that is why I join with my friend from Hawaii. Without this right, the high numbers of Indians receiving the death penalty are going to be absolutely deplorable. It is going to apply to all Indian people, who commit 60 to 70 percent of all murders on Federal land. Yet they have not even had a voice in whether or not the death penalty should apply unless we adopt the Inouye-Domenici amendment.

I yield the floor and thank the Senator for yielding me some time.

Mr. THURMOND. Mr. President, I must oppose this Federal jurisdiction amendment.

The proposed amendment would grant sovereign authority to Indian tribes to establish laws impacting upon the conduct of individuals within the boundaries of a Federal reservation. The amendment would allow an Indian tribe to choose whether to have the Federal death penalty apply to members of that tribe if the murder occurred on Indian country.

TALKING ABOUT MAKING A PERMANENT COMMITMENT TO ENHANCING THE CAPACITIES OF TRIBAL COURTS TO PROVIDE AN EFFICIENT AND FAIR SYSTEM FOR THE ADMINISTRATION OF JUSTICE.

IF SOME SENATOR RAISES CONCERNS ABOUT CIVIL RIGHTS -- IT IS YOUR INFORMATION THAT WILL ADDRESS THOSE CONCERNS.

WHAT I AM TRYING TO SAY IS THAT WE ARE DEPENDENT UPON YOU FOR THE INFORMATION THAT WILL DRIVE AND DETERMINE THE OUTCOME OF THE DEBATE IN THE SENATE. THIS IS AN IMMEDIATE TASK, WITH AN IMMEDIATE GOAL.

THE SECOND AREA OF IMMEDIATE CONCERN RELATES TO THE DEATH PENALTY. I BELIEVE THAT MOST OF YOU KNOW THAT WHEN THE VIOLENT CRIME CONTROL ACT WAS DEBATED IN THE SENATE, THE SENATE ULTIMATELY ADOPTED LANGUAGE, BY A VOTE OF 69 TO 29, TO PROVIDE THAT THE DEATH PENALTY WOULD NOT APPLY ON INDIAN LANDS UNLESS A TRIBAL GOVERNMENT AFFIRMATIVELY ELECTS TO HAVE IT APPLY TO CRIMES COMMITTED ON LANDS WITHIN THEIR JURISDICTION BY PEOPLE WHO COME WITHIN THE JURISDICTION OF A TRIBAL GOVERNMENT.

NOW THE DEBATE TURNS TO THE HOUSE. AS THERE WAS IN THE SENATE, THERE ARE TWO BILLS IN THE HOUSE -- A DEMOCRATIC BILL AND THE PRESIDENT'S BILL. THE DEMOCRATIC BILL CONTAINS THE SENATE LANGUAGE. THE PRESIDENT'S BILL IS SILENT ON THE ISSUE.

HOUSE MEMBERS PROJECT THAT THE PRESIDENT'S BILL MAY WELL BECOME THE LEGISLATIVE VEHICLE FOR CONSIDERING THESE MATTERS IN THE HOUSE, AND SO WE MUST ASSURE THAT THE LANGUAGE THAT IS CONTAINED IN THE SENATE BILL IS INCLUDED IN THE PRESIDENT'S BILL.

THIS IS A COMPLEX ISSUE AS YOU KNOW, BECAUSE IT REQUIRES A WORKING KNOWLEDGE OF THE COMPLEX NATURE OF JURISDICTION IN INDIAN COUNTRY.

IN THE SENATE, OPPONENTS OF THE LANGUAGE WANTED TO KNOW WHY WE WERE SINGLING OUT ONE RACIAL OR ETHNIC GROUP FOR SPECIAL TREATMENT. THEY WARNED THAT IF INDIANS WERE AFFORDED A SPECIAL STATUS IN THE LAW, OTHER SPECIAL INTEREST GROUPS WOULD COME TO CONGRESS REQUESTING AN EXEMPTION FROM A FEDERAL DEATH PENALTY. THIS IS THE PERSPECTIVE THAT WE CAN EXPECT TO ENCOUNTER IN THE HOUSE AS WELL.

SO WE MUST SAY, FIRST, THIS IS A FUNDAMENTAL MATTER OF SOVEREIGNTY. IT ARISES FROM THE SOVEREIGN STATUS OF GOVERNMENTAL ENTITIES THAT ARE RECOGNIZED IN THE CONSTITUTION -- THE NATIONAL GOVERNMENT, STATE GOVERNMENTS, FOREIGN GOVERNMENTS, AND TRIBAL GOVERNMENTS.

AND JUST AS STATE GOVERNMENTS HAVE THE RIGHT TO ELECT WHETHER TO HAVE CAPITAL PUNISHMENT APPLY TO CRIMES COMMITTED WITHIN THEIR JURISDICTION, SO DO TRIBAL GOVERNMENTS HAVE THAT RIGHT.

SECONDLY, WE MUST MAKE CLEAR THAT WE ARE NOT TALKING ABOUT AN EXEMPTION FROM FEDERAL LAW -- BUT RATHER, THE RIGHT TO ELECT WHETHER TO HAVE THE FEDERAL DEATH PENALTY APPLY. JUST AS STATES DIFFER ON THIS ISSUE -- 36 STATES HAVE CHOSEN TO HAVE THE DEATH PENALTY APPLY, AND 14 STATES HAVE

This amendment is the result of the jurisdictional issues surrounding the operation of Federal criminal law on Indian reservations. Stated simply, most of the Indian tribes do not want to have this criminal provision apply to them. This amendment would have the effect of exempting Indians who commit heinous, vicious murders from the death penalty simply because their tribe does not like it. Let me repeat—it will exempt Indians residing on Indian lands from the Federal death penalty, even though they are under Federal jurisdiction, simply because they are Indian. This amendment would set a dangerous precedent. If it passes, what will prohibit every other special interest group from coming to the Senate and seeking an exemption from a criminal statute simply because they are opposed to it? The answer is nothing would.

Supporters of this amendment claim Indians would be treated unfairly under the present bill because they account for a vast majority of the murder cases in Federal court. These numbers ignore the fact that a vast majority of these cases are not capital cases. While many may qualify at first degree murders, they are not all capital murders. Simply put, the death penalty would be rarely, if ever, sought in these cases. Again, as in the case of the Racial Justice Act, statistics are being used in an attempt to weaken this bill.

Mr. President, the death penalty title of this bill applies to those who commit heinous, depraved offenses. The legislation applies equally across the board to anyone who commits such a crime within Federal jurisdiction. This death penalty proposal operates on the nature of the offense committed, not on whether the defendant is an Indian. Supporters of this amendment argue that if an Indian kills an Indian on Indian land in a State where there is no death penalty, he could face the death penalty. Whereas, if someone commits a murder outside Indian land in that same State, he would not face the death penalty. This argument ignores the fact that currently there are numerous murders presently occurring on Indian land, in as many as 36 States which authorize the death penalty, where the Indian defendant does not face the possibility of a death sentence. Further, this amendment would say that murder victims who are Indian, which account for most of the victims on Indian land, are worth less than other victims of murder where the Federal Government has jurisdiction.

Mr. President, we should view this amendment for what it really is—special interest legislation. The Indians want to control and define criminal law on Indian land. Yet, the question regarding who has criminal jurisdiction within Indian country is controversial and has been debated for decades. Time and time again Federal

courts have determined that the Federal Government has this authority. In cases which date back as far as 1831, the Supreme Court of the United States has determined that the Federal Government has the authority to enact criminal laws affecting Indian territory.

Mr. President, this amendment's proponents, in reality, are opening the door to expansion of the Indian territories' role in creating and defining criminal law. In other words, it expands Indian country autonomy despite the fact that the Federal Government has historically asserted and held criminal jurisdiction over Indian land. The supporters of this amendment now want the Federal Government to give up that authority. For the Senate to pass this amendment would be a major precedent which is contrary to decades of Federal law and policy. This amendment would exclude Indians from Federal criminal law by expanding sovereign authority beyond what is appropriate for Indian tribes. Indian tribes, to my knowledge and according to the Select Committee on Indian Affairs, have never had the authority to opt in or out of a particular Federal criminal statute.

Mr. President, any claim which asserts that to subject the Indians to the death penalty is without precedent is clearly incorrect. Violent crimes involving Indians in Indian country have been subject to Federal law since 1885 when Congress enacted the Major Crimes Act of 1885. Since that time, Indians on Indian land have been subjected to Federal penalties, including the death penalty, for murder, and other serious crimes against Indians. In fact, Indians are currently subjected to the death penalty for certain drug-related murders under the Controlled Substances Act. Federal death penalty statutes are nothing new to Indian country.

In summary, those who commit heinous, depraved murders should face the death penalty. There should be no exception. This legislation applies fairly to all who commit vicious murders.

For these reasons, I strongly oppose this amendment.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUE. Mr. President, how much time do we have?

The PRESIDING OFFICER. The Senator has 45 seconds remaining.

Mr. INOUE. Mr. President, I yield myself the 45 seconds.

Our Founding Fathers drafted the Constitution and decided that Indians were sovereign. We did not decide that. The wisdom of our Founding Fathers decided that.

In succeeding Congresses, our predecessors found it in their wisdom to continue this policy of the United States, and most recently on June 14, 1991, the President of the United States, the Honorable George Bush,

reiterated the sovereign and independent status of Indian nations.

All we are doing is to provide the Indian nations the same right as State governments have. Mr. President, not all States have opted for capital punishment. The State of Hawaii, I am proud to say, is one of the 14 that do not have capital punishment. Yes, we do have heinous crimes in our State, as they do in all States. But we have decided, our people have decided not to apply capital punishment upon our defendants.

Some of the Indian nations will opt for capital punishment. Some may not. But I think it should be their sovereign right to elect how their people will be treated.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, it does not make very much sense, if an Indian kills an Indian or anybody else who is not on the Indian territory, he can get the death penalty if the State has such a law. But if he kills someone and he just crosses the line onto the Indian territory, then he cannot get the death penalty. Does that make sense?

We have to be practical. Indians are American citizens. Are you not discriminating against them when you try to put them in a different category and characterize them in such a way? If they are American citizens, they should be treated like American citizens. They should be treated like everybody else, whether they are blacks, they are whites, they are reds, they are tans, or they are Indians. If they are Indians, American citizens, treat them all alike. Why make an exception because they are Indians?

According to the position that my good friend has taken—and he is my good friend—if an Indian on a reservation kills another Indian, or anybody else, it does not matter how vicious the crime, it does not matter how depraved the crime, he cannot get the death penalty. He cannot get that death penalty. Whereas if he was off the reservation, he could get the death penalty.

In other words, you have a line of demarcation here: Off the reservation, you can get the death penalty; on the reservation, you cannot. All you have to do is step over the line onto the reservation, then you cannot get the death penalty.

Mr. President, is that fair? Is that American? Is that jurisprudence that we want to have in this country? Why not treat everybody alike? We are all American citizens. Indians have every right any other American has. Why not hold them to the same responsibilities? I think most of them really feel that that would be just.

Mr. President, how much time is left?

The PRESIDING OFFICER. The Senator has 10½ minutes remaining.

Mr. THURMOND. I reserve the remainder of my time Mr. President. I

CHOSEN NOT TO HAVE IT APPLY -- IT IS SAFE TO ASSUME THAT TRIBAL GOVERNMENTS WILL ALSO DIFFER ON THIS ISSUE.

IT IS THE DISPROPORTIONATE IMPACT THAT A FEDERAL DEATH PENALTY WOULD HAVE ON INDIAN PEOPLE THAT GIVES RISE TO THE NEED FOR THIS LANGUAGE -- BUT IT IS THE FUNDAMENTAL SOVEREIGNTY OF TRIBAL GOVERNMENTS THAT JUSTIFIES THIS PROVISION.

THE CRIME BILL WILL BE CONSIDERED IN THE HOUSE OF REPRESENTATIVES IN THE MONTH OF SEPTEMBER AND EARLY OCTOBER, SO AGAIN, WE HAVE AN IMMEDIATE GOAL AND AN IMMEDIATE TASK AT HAND.

I AM CALLING UPON YOU TO JOIN HANDS WITH US, TO HELP THE SELECT COMMITTEE AND FRIENDS IN THE HOUSE OF REPRESENTATIVES TO FIGHT YOUR BATTLE AND OUR BATTLE.

YOU HAVE DEMONSTRATED IN THE PAST THAT YOU CAN DO IT, SO LET'S DO IT AGAIN.

THE SECOND PART OF MY REMARKS TODAY ARE REFLECTIONS ON THE AGENDA OF THE FIRST AMERICANS.

WHEN I BECAME CHAIRMAN OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, ALMOST FIVE YEARS AGO, THE FIRST QUESTION I ASKED WAS, "WHAT IS THE INDIAN AGENDA?"

WHEN I BECAME CHAIRMAN OF THE DEFENSE APPROPRIATIONS COMMITTEE, I KNEW THERE WAS A VERY DEFINITE DEFENSE AGENDA. I KNEW THAT AGENDA INCLUDED RESEARCH AND DEVELOPMENT, COMBAT READINESS, PRODUCTION OF WEAPON SYSTEMS, THE MORALE AND HEALTH AND WELL-BEING OF THOSE WHO SERVE THIS COUNTRY, THE CARE OF THEIR DEPENDENTS, THE ESTABLISHMENT OF NATIONAL MILITARY PRIORITIES, THE DESIGNATION OF FUNDS TO MEET THOSE PRIORITIES.

THE AMOUNTS INVOLVED IN THE DEFENSE AGENDA ARE MIND-BOGGLING. BUT IN MANY WAYS, CARRYING OUT THE DEFENSE AGENDA IS SIMPLE, BECAUSE THE PATH IS CLEARLY MARKED, AND THE TURN SIGNS ARE APPROPRIATELY DESIGNATED.

BUT WHEN I ASKED, "WHAT IS THE INDIAN AGENDA?", NO ONE WAS ABLE TO TELL ME, BECAUSE APPARENTLY, WE HAVE NEVER HAD AN INDIAN AGENDA.

I UNDERSTAND THIS, BECAUSE EACH TRIBE IS CONFRONTED WITH SUCH IMMEDIATE AND HORRIBLE PROBLEMS, THAT IT IS DIFFICULT TO COME TOGETHER TO FORMULATE A NATIONAL AGENDA. EACH TRIBE HAS ITS OWN AGENDA, AND THAT AGENDA IS SURVIVAL.

BUT WHAT DOES SURVIVAL INVOLVE? WILL IT BE THE CONTINUED DIMINISHMENT OF SOVEREIGN RIGHTS, THE WORSENING OF HEALTH CONDITIONS, EVER INCREASING RATES OF UNEMPLOYMENT, ALCOHOLISM, DROPOUTS, SUICIDE?

SOME PROBLEMS IN INDIAN COUNTRY ARE WORSE THAN THOSE IN THE SO-CALLED THIRD WORLD COUNTRIES. AND I THINK IT IS A TRAGEDY THAT THESE PROBLEMS SHOULD BE HAPPENING RIGHT HERE IN THESE UNITED STATES.

suggest the absence of a quorum.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. Does the Senator withhold?

Mr. THURMOND. I have no objection, Mr. President.

Mr. KERREY. I thank the Senator from South Carolina.

Mr. President, I am going to ask unanimous consent that without any time being charged to either side, I be allowed to speak as in morning business for a period of 7 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE ADMINISTRATION'S HEALTH CARE POLICY: LEAPING THE CHASM IN TWO JUMPS

Mr. KERREY. Mr. President, I rise to offer comments on four stories on health care in America which appeared in yesterday's and today's newspapers.

The first, in yesterday's New York Times, reported that President Bush decided to delay additional funding for childhood immunization, even though last week the President announced he was sending some of his senior officials out in the field to find out "why kids aren't getting immunized."

The second, in this morning's Washington Post, reports Sunday's speech by Secretary of Health and Human Services Louis Sullivan to the American Medical Association in which the Secretary warned doctors to hold down medical costs if they want to avoid "a total Government takeover of health care."

I must, with respect, inject my amazement at Secretary Sullivan's willingness to use the old routine, "The Government is going to get you if you don't watch out," to the American Medical Association. Of all people, Secretary Sullivan must know the American Government already has doctors in a growing web of paperwork and cost shifts. He must also know Government pays for 42 percent of all health care today, plus an additional 10 percent in the form of an income tax deduction.

Mr. President, the American Medical Association must have been amazed themselves, since a month ago during a visit with Governor Sununu, they were chastised for simply raising the issue of the urgent need for national reform of our health care financing. I suspect the AMA was also amazed by the President's emphasis on childhood immunization; apparently word of the President's reversal had not reached the Secretary.

The third and fourth articles, which I call to the attention of my colleagues, appeared in today's Wall Street Journal. They talk about the trouble President Bush and the Republican Party are having responding to America's health care crises of rising cost and diminishing coverage.

I ask unanimous consent that the text of all four articles be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. KERREY. Mr. President, these articles are noteworthy for several reasons. They suggest the administration is finally waking up to the reality of our health care crisis. Dr. Sullivan correctly identified the core of that crisis, an explosion of health care costs, when he said:

We must be concerned that consuming ever larger portions of GNP on health care necessarily diverts resources from other good uses. For example, increased wages, savings, capital investment, research and development, and human services.

And the President correctly identified one of the many inexcusable coverage gaps in our Nation's health care system by drawing attention to a dangerous recurrence of measles and other preventable diseases.

Last year saw over 27,000 cases of measles, including 89 deaths. Mr. President—the worst outbreak since 1977.

These numbers are not unrelated to the cost crisis that Secretary Sullivan described. Our system of financing health care—the fragmented, inefficient system that lets costs soar—has systemic ways of responding to higher costs. First, when costs go up, it gives employers and insurers an incentive to cut back on coverage rather than giving society incentives to restrain costs. Thus, the number of Americans without health insurance is millions higher than a decade ago. Second, even as costs go up, our financing system continues to encourage expensive procedures, like MRI and CAT-scans, at \$1,000 a shot, but does not encourage an employer—or a President—to fund preventive services such as immunizations, which may cost \$25 a shot.

These are the problems of a system of financing health care that is simply out of control. But the question occurs: Why is the administration just waking up to these problems now? After all, health care costs have been on a wild trajectory up, and health care coverage has been on an alarming trajectory down, for over a decade. The President himself in the campaign of 1988 promised to allow Americans to buy into Medicaid, but apparently after examining the costs has decided against that worthy objective.

The two Journal articles suggest why this awakening is occurring now. The first notes that Republican Members of Congress have begun to hear an outcry from their constituents. And the companion article suggests that even though White House Chief of Staff John Sununu seems comfortably unconcerned about America's health care crisis, that crisis has nonetheless begun to strike the Republican Party in a very personal painful way—the

same way it has struck millions of Americans.

The article relates a very sad but all too typical story about what often happens when Americans do get sick. It said that when Lee Atwater, the late Republican chairman, was tragically stricken with a brain tumor, the Republican National Committee's insurance carrier threatened to triple the RNC's rates if they did not drop Mr. Atwater's coverage. It is hard to imagine such callousness. It is difficult to fathom what Mr. Atwater and his family must have felt at that moment. But it is even harder to stomach a system of financing health care that permits and even encourages insurers to risk-skim in this fashion.

Not surprisingly, the RNC responded as hundreds of other small- and medium-size businesses in similar circumstances have been forced to do—they changed insurance companies. But even so, the new rates are higher, and the RNC's new chairman, Clayton Yeutter, laments to the reports, "many of our not-very-well paid young people can't afford the coverage." But in spite of that observation, Mr. President, Chairman Yeutter recommends doing nothing about health care before the 1992 election.

Despite this very regrettable encounter with the problems in our system of financing health care, the administration seems to have settled on a strategy of much talk and little action. It is a strategy that invokes the moral leadership of the Oval Office to identify problems, but never to solve them. It is a strategy that recalls something that Otto von Bismark once said: "When a man says he approves of something in principle, it means he hasn't the slightest intention of putting it into practice." It is a strategy that looks squarely at ruinous health care costs, 33 million uninsured, 27,000 cases of measles, and tells America to take two aspirin and call the morning after the next election.

Surely, if an outbreak of measles and other childhood killers is serious enough to dispatch a team of very senior administration officials, it is serious enough to dispatch a sum of money that amounts to less than one ten-thousandth of Mr. Bush's budget proposal. Surely, if rising medical costs are so dangerous that they threaten to erode the very foundation of our economy, they are serious enough to enact a comprehensive plan to control those costs—rather than relying on selfless cost-consciousness by America's physicians. And, surely, if our health care financing system has failed even Lee Atwater and the RNC, it must be failing millions of less prominent and powerful individuals and firms, and surely the time for reform has arrived.

Mr. President, the British Prime Minister David Lloyd George once said, "The most dangerous thing in the world is to leap a chasm in two

SO HOW DO WE GET 550 SOVEREIGN ENTITIES, 550 GOVERNMENTAL UNITS WITH DIFFERENT LANGUAGES, WITH CULTURALLY DIFFERENT BACKGROUNDS, URBAN INDIANS, THOSE FROM THE DESOLATE DESERT, THOSE FROM COLD COUNTRY, THOSE FROM WARM COUNTRY, THOSE FROM THE NORTH, FROM THE SOUTH, FROM THE EAST AND FROM THE WEST -- THOSE WHO HAVE NOTHING IN COMMON EXCEPT THAT THEY ARE THE FIRST AMERICANS AND THEY ARE FIGHTING FOR THEIR SURVIVAL -- HOW DO WE GET THESE DISPARATE PEOPLE TO COME TOGETHER?

I HAVE DISCUSSED THIS ON MANY OCCASIONS. IN THE FALL OF 1988, TWO YEARS AFTER I BECAME CHAIRMAN OF THE COMMITTEE, I WAS VISITED BY DICK TRUDELL, AND HE OFFERED THE SERVICES OF HIS ORGANIZATION TO HOST A GATHERING OF INDIAN LEADERS FROM DIFFERENT REGIONS OF THIS VAST LAND MASS.

WITHOUT HESITATION, I ACCEPTED HIS INVITATION AND COMMITTED MY SUPPORT TO THIS EFFORT. I HAVE PERSONALLY ATTENDED ALL BUT ONE OF THESE MEETINGS OF TRIBAL LEADERS.

AT TIMES, WE HAVE PROCEEDED IN A CLUMSY WAY. AT TIMES, WE HAVE GROPED TO ENDEAVOR TO COME FORWARD WITH A CONSENSUS. BUT I THINK WE ARE ON THE RIGHT PATH.

ONE MANIFESTATION OF THIS IS THAT FOR THE FIRST TIME, A GATHERING, A SUMMIT OF TRIBAL LEADERS, NATIONAL AND REGIONAL INDIAN ORGANIZATIONS IS BEING HELD.

SOME HAVE ASKED WHY THESE MEETINGS ARE IMPORTANT. SOME HAVE ASKED WHY I INSISTED UPON INDIAN INPUT AND CONSULTATION WHEREVER AND WHENEVER POSSIBLE. MY REASONS ARE SIMPLE.

IT DID NOT TAKE ME LONG TO REALIZE THAT THROUGHOUT ALL THESE YEARS, THE GREAT TRUSTEE, THE UNITED STATES GOVERNMENT, CARRIED OUT ITS TRUSTEE RESPONSIBILITIES LIKE THE ALMIGHTY, ALL-WISE PATRONES OF THE PAST.

THE GREAT TRUSTEE SAID, "WE KNOW WHAT IS GOOD FOR YOU. TAKE WHAT IS GIVEN TO YOU AND DON'T COMPLAIN, AND WE WILL GET ALONG WELL."

THIS IS A SAD COMMENTARY FOR A MEMBER OF THE UNITED STATES SENATE TO HAVE TO RECOUNT, AND IT IS HARD FOR ME TO ACCEPT. BUT IT IS WHY I AM CONVINCED THAT SOLUTIONS MADE IN WASHINGTON BY THE GREAT TRUSTEE DON'T WORK.

I HAVE SAID THIS A HUNDRED TIMES, OR MAYBE A THOUSAND TIMES, BUT SOLUTIONS TO PROBLEMS IN INDIAN COUNTRY CAN ONLY BE FOUND IN INDIAN COUNTRY.

THAT IS WHY I AM ALSO PLEADING WITH YOU FOR YOUR WISDOM, OR AS WE SAY IN HAWA'I -- YOUR MANA'O -- YOUR SOLUTIONS.

THERE ARE SOME TRIBES THAT ARE DOING BETTER THAN OTHERS. THEY HAVE ACHIEVED SOME DEGREE OF SUCCESS AND PROGRESS IN THE AREA OF ECONOMIC DEVELOPMENT. SOME MEMBERS OF THESE TRIBES MAY FEEL SUFFICIENTLY COMFORTABLE, AND MAY NOT FEEL THREATENED BY THE RAVAGES OF POVERTY AND

102D CONGRESS
1ST SESSION

S. 963

To confirm the jurisdictional authority of tribal governments in Indian country.

IN THE SENATE OF THE UNITED STATES

APRIL 25, 1991

Mr. INOUE introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

A BILL

To confirm the jurisdictional authority of tribal governments in Indian country.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Indian Tribal Justice
5 Recognition Act of 1991".

6 **SEC. 2. DECLARATIONS AND FINDINGS.**

7 The Congress, after careful review of the Federal
8 Government's historical and special legal relationship
9 with, and resulting responsibilities to, American Indian
10 tribal governments and people, finds and declares that—

DEPRIVATION.

MY REACTION IS SIMPLE. THE ISSUES WE DISCUSS AFFECT EVERY TRIBE -- RICH OR POOR, EAST OR WEST, NORTH OR SOUTH.

THESE ISSUES STRIKE AT THE SOUL OF SOVEREIGNTY, AND THEY ARE THE RAISON D'ETRE (THE REASON FOR BEING) OF INDIAN COUNTRY.

I AM NOT SUGGESTING THAT ONE INDIAN NATION BE FORMED. THAT WOULD BE INSULTING TO YOU AND TO YOUR DISTANT ANCESTORS.

YOUR ANCESTORS HAD EVERY RIGHT TO BE SOVEREIGN, AND YOU WHO HAVE INHERITED THEIR MANTLE OF LEADERSHIP, DESERVE THE SAME SOVEREIGN RIGHTS AS YOUR ANCESTORS.

I PLEDGE TO YOU THAT I WILL STAND SIDE BY SIDE WITH YOU TO DEFEND AND PROTECT YOUR RIGHTS.

WHAT I AM SUGGESTING IS A CONFEDERATION. NOT TO SPEAK ONE LANGUAGE, OR PRAY TO THE SAME GODS OR OBSERVE THE SAME RITUALS. NO, A CONFEDERATION -- A POLITICAL CONFEDERATION.

THERE WAS A TIME WHEN INDIANS NUMBERED IN THE MILLIONS -- SOME HAVE SUGGESTED AS MANY AS FIFTY MILLION. BUT BECAUSE OF WARS AND TRAGIC EVENTS, YOUR NUMBERS WERE REDUCED AT ONE POINT TO 250,000.

TODAY, YOU NUMBER ALMOST THREE MILLION. SOME SMALLER TRIBES HAVE LESS THAN FIFTY MEMBERS. THE NAVAJO NATION HAS MORE THAN 200,000.

AS SEPARATE UNITS, YOUR POLITICAL IMPORTANCE ON A NATIONAL SCENE WOULD BE LIMITED AT BEST. YOUR NUMBERS ARE SO SMALL THAT POLITICIANS CAN IGNORE YOU WITH IMPUGNITY, AND THEY HAVE DONE SO.

BUT IN THE BRIEF PERIOD THAT WE HAVE BEEN WORKING TOGETHER, YOU HAVE DEMONSTRATED THAT YOU CAN WORK TOGETHER FOR YOUR POLITICAL SURVIVAL -- DURO, THE DEATH PENALTY, REPATRIATION, RELIGIOUS FREEDOM, PROTECTION OF YOUR SOVEREIGN RIGHTS AND NATURAL RESOURCES -- YOU HAVE SHOWN THAT THERE IS MUCH THAT BINDS YOU TOGETHER.

YOU HAVE HERE IN THIS ROOM THE MAKINGS OF A POLITICAL CONFEDERATION -- A CONFEDERATION TO DEBATE ISSUES OF SOVEREIGNTY, TRUST RELATIONS, HEALTH, POLICE POWER, JUDICIAL POWER.

ALL OF THESE THINGS SHOULD BE DISCUSSED, NOT BY ONE TRIBE, BUT BY A CONFEDERATION, PURSUED AS A CONFEDERATION, AND THE IMPACT YOU WILL HAVE WILL BE MUCH MORE POWER THAN EVER BEFORE.

THERE ARE ISSUES BEFORE THE CONGRESS THAT SHOULD BE DISCUSSED FIRST AT A CONFEDERATION LEVEL.

IT SADDENS ME TO SEE TRIBES FIGHT OVER FEDERAL ACKNOWLEDGEMENT.

1 (1) the United States has a government-to-gov-
2 ernment relationship with American Indian tribes,
3 whose inherent sovereign authority predates the
4 Constitution;

5 (2) Indian tribes have reserved the inherent
6 sovereign authority to establish their own tribal jus-
7 tice systems;

8 (3) tribal courts are an essential element of
9 tribal sovereignty, of Indian self-determination, and
10 of assuring justice in Indian country;

11 (4) tribal courts are fully capable of providing
12 fair, efficient, and effective justice to all persons
13 subject to their jurisdiction, but are seriously ham-
14 pered in their operations by the inadequate funding
15 available to them;

16 (5) inadequate funding of tribal courts limits
17 the ability of tribal courts to fully carry out the obli-
18 gations imposed by Federal laws, including the Indi-
19 an Civil Rights Act of 1968 (25 U.S.C. 1301-1303);

20 (6) substantial new funding is necessary in
21 order to enhance the operating and capital budgets
22 of tribal courts and to enhance the technical assist-
23 ance and support available to tribal courts;

24 (7) the Federal Government exercises jurisdic-
25 tion over major crimes committed in Indian country

WHY NOT HAVE A BODY WITHIN A CONFEDERATION TO CONSIDER AND ADOPT A SOLUTION AND SUBMIT IT TO THE CONGRESS?

OTHERWISE, YOU ARE IN ESSENCE CALLING UPON THE UNITED STATES TO DETERMINE YOUR SOVEREIGNTY BECAUSE YOU ARE NOT ABLE TO DO IT YOURSELF.

DO YOU WANT TO HAVE THE CONGRESS APPROVE SOMETHING FOR ONE TRIBE AT THE EXPENSE OF ANOTHER?

THIS CONFEDERATION COULD ALSO SERVE AS A CLEARINGHOUSE OF INFORMATION. THERE ARE MANY NATIONS AND MANY TRIBES NOW SAILING INTO UNCHARTERED WATERS OF ECONOMIC DEVELOPMENT. THEY DO NOT KNOW WHAT TO EXPECT.

MANY HAVE SUCCEEDED. YOU CAN OFFER A HELPING HAND TO THOSE WHO ARE NOW STRUGGLING.

YOU CAN SLOWLY BUILD YOURSELVES A CONFEDERATION IN WHICH YOU ARE DEPENDENT UPON EACH OTHER AND NOT DEPENDENT ON THE GRAND TRUSTEE.

THEN TOGETHER, YOU CAN INSIST THAT THE UNITED STATES GOVERNMENT CARRY OUT ITS OBLIGATIONS AS A TRUSTEE.

WHAT IS SOVEREIGNTY WORTH IF YOU BECOME WHOLLY DEPENDENT UPON ANOTHER GOVERNMENT?

A CONFEDERATION CAN ALSO LOOK INTO THE MATTER OF INDIAN EDUCATION. I WOULD HOPE THAT A CONFEDERATION WOULD COME FORWARD TO TELL US IF THERE IS A NEED FOR AN AMERICAN INDIAN UNIVERSITY.

ALL WE HAVE TODAY IS 27 TRIBALLY-CONTROLLED COMMUNITY COLLEGES -- BRAVELY STRUGGLING. THE GOVERNMENT COULD HELP YOU TO CREATE A NATIONAL INSTITUTION FOR AMERICAN INDIANS, AND THE TRIBAL COLLEGES COULD BE THE ARMS OF THIS NATIONAL INSTITUTION.

THE GOVERNMENT DID THIS IN CREATING HOWARD UNIVERSITY, WHERE THE FEDERAL SUPPORT FOR EACH STUDENT IS MORE THAN \$13,500 A YEAR. THAT COMPARES WITH LESS THAN \$3,000 AVAILABLE TO THE TRIBAL COLLEGE STUDENT.

YOU SHOULD MAKE A STUDY TO TELL CONGRESS WHERE AN INDIAN UNIVERSITY SHOULD BE ESTABLISHED. I WOULD THINK IT WOULD BE IN INDIAN COUNTRY. AND HERE AT THE AMERICAN INDIAN UNIVERSITY, YOU COULD TRAIN YOUR JUDGES, YOUR LAWYERS, YOUR NURSE PRACTITIONERS, YOUR MEDICAL ASSISTANTS, YOUR DOCTORS.

THESE ARE NOT DREAMS. THEY ARE ALL ACHIEVABLE. I KNOW THEY ARE, BECAUSE AFTER ONLY A FEW SHORT YEARS OF WORKING WITH YOU, WE ARE NOW LOOKING FORWARD TO GROUND BREAKING ON THE NATIONAL MALL OF THE NATIONAL MUSEUM OF THE AMERICAN INDIAN.

YOU HAVE ACHIEVED A PROCESS FOR THE APPROPRIATE REPATRIATION OF THE REMAINS OF YOUR ANCESTORS. THESE ARE ACHIEVEMENTS -- ACHIEVEMENTS OF A

1 when either the victim or the perpetrator of a crime
2 is an Indian;

3 (8) traditionally, tribes have exercised criminal
4 jurisdiction over all Indians on their reservations but
5 this traditional pattern of jurisdiction was seriously
6 disrupted by the Supreme Court's ruling in *Duro v.*
7 *Reina*, 110 S. Ct. 2053 (1990), holding that Indian
8 tribes have lost their inherent criminal jurisdiction
9 over Indians who are members of other tribes;

10 (9) despite the Supreme Court's ruling in *Duro*
11 *v. Reina*, the Congress has never acted to explicitly
12 divest tribal governments of their inherent authority
13 to exercise criminal jurisdiction over all Indians on
14 their reservations; and

15 (10) the practical needs of reservation law en-
16 forcement, the special obligations of the United
17 States to Indian tribal governments, and the provi-
18 sion of fair, efficient, and effective justice in Indian
19 country require that inherent tribal jurisdiction over
20 all Indians, including members of other tribes must
21 be recognized and reaffirmed.

22 **SEC. 3. PURPOSES.**

23 Congress declares that this Act shall be implemented
24 in accordance with the following Federal policy:

NATIONAL SCOPE. THIS IS THE WORK OF YOUR CONFEDERATION.

YOU CAN LEARN SOMETHING FROM THE STATES IN THIS REGARD. YOU FIND THAT STATES FORM POLITICAL CONFEDERATIONS FOR THEIR OWN SURVIVAL -- WHETHER IT IS IN THE AREA OF WATER RIGHTS, ENVIRONMENT, TAXATION, JURISDICTION, LAND MANAGEMENT --THEY WORK IN CONCERT. YOU CAN DO THE SAME THING.

THERE ARE MANY COMMON PRESSURES ON STATE AND TRIBAL GOVERNMENTS THAT WILL INEVITABLY FORCE YOU TO WORK TOGETHER. THIS IS ALREADY HAPPENING IN THE FIELD OF ENVIRONMENTAL QUALITY REGULATION AND GAMING -- BUT YOU WILL ALSO BE FORCED TO RECONCILE YOUR SOMETIMES COMPETING INTERESTS IN THE AREA OF TAXATION, LAND MANAGEMENT AND JURISDICTION.

AT LEAST FORM A CONFEDERATION TO WORK WITH THE STATES, OR FORM A CONFEDERATION TO SUPPORT EACH OTHER IN YOUR OPPOSITION TO WHAT THEY PROPOSE. BUT DO WHAT THEY DO -- DEFINE AND SHAPE YOUR POLITICAL SURVIVAL BY WORKING TOGETHER.

SO WHY NOT BEGIN YOUR DISCUSSION TODAY ON WHETHER THERE IS A PLACE FOR A POLITICAL CONFEDERATION, AND WHETHER YOUR SURVIVAL WILL BE ENHANCED BY WORKING TOGETHER.

IF YOU WISH TO INCLUDE ME IN THIS PROCESS, I WOULD BE HAPPY TO JOIN YOU. OR IF YOU WANT TO WORK TOGETHER, AND THEN SHARE YOUR CONCLUSIONS WITH ME, I WILL AWAIT YOUR GUIDANCE.

I RESPECTFULLY SUGGEST THAT THIS PROCESS CAN WORK, AND IF YOU AGREE WITH ME, LET'S NOT WAIT. LET'S START NOW.

1 (1) The Federal Government shall fund tribal
2 courts at a level equivalent to State courts of general
3 jurisdiction performing similar functions in the same
4 or comparable geographic region.

5 (2) Federal funding to tribal courts shall be ad-
6 ministered so as to encourage flexibility and innova-
7 tion by tribal justice systems and to avoid encroach-
8 ing on tribal traditions that may be manifested in
9 tribal justice systems.

10 (3) The United States shall provide funding for
11 tribal justice systems in a manner that will minimize
12 Federal administrative costs.

13 (4) Inherent tribal jurisdiction over all Indians,
14 including members of other tribes, is recognized and
15 reaffirmed.

16 (5) Full faith and credit be extended to the
17 public acts, records, and proceedings of tribal courts.

18 **SEC. 4. DEFINITIONS.**

19 For the purposes of this Act, the term—

20 (1) “Indian tribe” means any Indian tribe,
21 band, nation, pueblo, or other organized group or
22 community, including any Alaska Native entity,
23 which is recognized as eligible for the special pro-
24 grams and services provided by the United States to
25 Indian tribes because of their status as Indians.