

# Elevating Indian Policy in the Next Administration

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## INTRODUCTION

Mr. President, distinguished officers, delegates. My name is Philip Baker-Shenk. I am a partner in the law firm of Holland & Knight. Since 1976, I have been privileged to work on behalf of Indian tribes in Washington D.C.

Over those 32 years, I've become more and more certain that I know fewer and fewer answers. Nevertheless, my job for the next 15 minutes is to suggest some strategies for elevating Indian policy in the next Administration, regardless of who is President.

I will suggest several approaches. And then I will end with a brief overview of what I believe is the single biggest threat to federal Indian policy as we know it – a tsunami tidal wave of soaring deficits, swelling national debt and powerful Baby Boomer demands for entitlement spending that likely will impose sharp cutbacks in federal funding for Indian programs in the coming years.

But first, on a lighter note, here are some ideas for your consideration on how Tribes might elevate Tribal concerns in the next Administration, regardless of who is President.

## THE PSYCHOLOGY OF PERSUASION

Tribes must master the art of persuasion. We have to make our story compelling to others. We have to convince the next Administration that it can further its goals by furthering our goals.

Tribes must romance the next Secretary. We have to get in the Secretary's mind and heart, early and often, and win it over. We need a General Petraeus-style, counter-

insurgency, surge-like strategy that gets in close and earns respect by matching the Secretary's goals with ours.

Tribal leaders who attended Interior Secretary Gale Norton's marathon tribal leader consultation sessions on trust reform will remember how her eyes sparkled with promise and interest at first, then dimmed into what looked like a migraine slump as she appeared overwhelmed. Her interest burned out and never came back. Would a better Secretary have responded better? Perhaps. But is it possible we over did it? That we used sticks rather than carrots? There certainly is a time for both. The art and science of psychology and persuasion is in knowing which to use when – carrot or stick. We need to romance the next Secretary.

We do best to avoid bad news. Especially when we're making our first impressions on the next Administration. Are Indian Tribes presented as a "problem headache" or will we insist Tribes are an "opportunity" for do-able solutions.

We must tell the good news, in example after example, about how Tribes are expanding employment for members and neighbors, how Tribes are effectively caring for their people, how Tribes are reviving diverse cultures, and folkways, and languages; how Tribes are rebounding from tragedy with a vibrancy that is inspiring.

## THE POWER OF A NARRATIVE

Tribes would do well to refine our narrative, our story-line, our theory of the case, and then repeat it over and over again like a good campaign message. Tribes must do this to be persuasive. Presidential contenders do this to win votes. Trial lawyers do this to swing juries.

What would be an effective tribal narrative?

1. It must plainly explain tribal sovereignty, perhaps as the right to control what happens with our people, our land, and our guests thereon.

2. It must plainly explain the federal trust responsibility, perhaps as the solemn national duty to honor

the letter and spirit of treaties and other agreements made in exchange for peace, land and resources. It includes a permanent obligation to provide federal health, education and general welfare services and support for tribal government operations. And it includes protection of tribal powers and resources against predatory state, local and private sector interests.

3. It must plainly show how Tribes are the most effective entities to deliver vital government services to, and make decisions for, Indians. A Tribe is the best government to deliver services to Indians because it is the one closest to those served. It is the closest culturally, so it understands better than any other entity how best to serve. Because it is the closest geographically, it is the most efficient at serving. And because it is the closest politically to those served, it is more accountable and responsive than any other service provider.

Those are some examples of how we could form a narrative that is persuasive.

## THE PSYCHOLOGY OF CONNECTION

We must connect tribal objectives with national objectives we hold in common with the rest of America:

We share Security interests – we must talk more about the Warrior tradition of many Tribes and the many men and women warriors that Tribes have sent off to defend American freedom.

We share energy independence and sustainability interests - some of the greatest American energy reserves are on Indian lands. What federal and state government obstacles must be removed so Tribes can create a win-win for themselves and America?

Tribes contribute Diversity to America – Tribes bring color, beauty, and a rich variety to the American experience, making history come alive.

We share the goals of efficient expenditures of federal dollars. Tribes benefit from Efficiency – the

most effective expenditure of federal tax dollars on services for Indians is done by Tribes for Tribes.

We must show that -- what is good for a Tribe -- is good for its neighbors. And it's good for America. Jobs in Indian Country produce revenue and taxes that benefit all governments -- tribal, local, state and federal.

And we must demand tribal parity on service delivery. No one is better than a Tribe at delivering services in Indian Country. So Tribes best forge alliances with State/local governments where possible, and aggressively compete with them where agreement is not possible.

## THE POLITICS OF PERSONNEL

Appointments can make or break policy. Cabinet and sub-cabinet nominations can determine a President's success or failure. Think Rumsfeld. Think heckuva-job-Brownie. The next President should be pressured to appoint tribal leaders to federal positions because they possess the most knowledge, best experience, proper attitude, and unique aptitude necessary to implement a successful federal Indian policy.

It's a little late to create an Indian Slate, but not too late. I would encourage you to dream big. I can think of no reason to limit your focus to just filling the Assistant Secretary – Indian Affairs and the IHS Director positions.

Why not promote two or three Indian candidates for the position of Interior Secretary? Why not several Indian candidates for EPA Administrator? Why not several Indians for Deputy OMB Director? Why not a couple of Indians for Director of the White House Office of Intergovernmental Affairs?

Why not the top jobs?

If non-Indians can master the Indian parts of those jobs, cannot Indians master the non-Indian parts of those jobs?

If you don't demand this, who will?

You can always promote separate lists for sub-cabinet posts like the Assistant Secretary – Indian Affairs, the Special Trustee, the NIGC Chairman, the IHS Director, and officials at ANA, HHS, HUD, Energy, Education, Agriculture. But why not, separately, the top jobs?

Likewise, we need to promote lists of Indian attorneys who the next President should appoint as judges to the federal courts, and who should be appointed as U.S. Attorneys. This is not an audacious demand – Hopi member Diane Humetewa is the U.S. Attorney here in Arizona, today, and there are dozens of Indian lawyers like her who are likewise qualified to serve. Today. If we don't demand this, who will?

One word of caution -- This promotion of Indian appointments must be done with strategic discipline. Candidates must be groomed. Support must be cultivated. And it will require a collective effort that mainly involves the promotion of reluctant draftees. Self-promotion tends to kill a candidacy. Others must do it.

Look around this room. There are many qualified Indian leaders. Talk them up. Media buzz must be created. It is not too early to begin pushing your highest expectations on the Obama and McCain campaigns.

## THIS IS A TIME OF UNPRECEDENTED PRESIDENTIAL POSITIONING FOR INDIAN COUNTRY

Each presidential campaign has released Indian statements. Each counts tribal leaders and advisers among their supporters. Each has a record on Indian issues. Each has promised spending increases and tax cuts to key constituencies. I've just identified some opportunities and sketched a strategy to exploit them. But I am compelled to conclude with a warning about a clear and present danger, a tidal wave that could swamp our boat.

## WHY THE ODDS ARE STACKED AGAINST US

The odds are stacked against Indian Country because a federal debt tsunami threatens to wipe out Indian funding. Tribes face fierce competitors in the coming battles to protect the tribal slice of a shrinking federal budget pie:

- Financial collapse and bailouts
- National security/war
- Entitlement spending
- Infrastructure needs
- State/local government funding crises
- Interest on a soaring national debt

CHART - Social Security, Medicare and Medicaid and interest alone are likely to consume all federal revenues over the next two decades.

And this chart was drawn before the \$700 billion bailout and next month's \$300 billion stimulus package jacked up the amount of interest we will owe on the national debt.

## NATIONAL DEBT HAS SOARED TO 10.3 TRILLION DOLLARS

The national debt is at 10.34 trillion dollars. To be added to that is what many experts predict will be a record one trillion dollar deficit in FY 2009.

Deficit spending by the federal government destroys credit markets and hikes interest rates, cutting consumer spending and business investment, and raises pay-as-you-go pressures that threaten to derail the \$2 billion PEP-FAR Indian initiative described by Senator Kyl yesterday. Deficit spending hikes the competition faced by Tribes chasing fewer and fewer federal dollars. As a result, I fear that Indian Tribes will find ourselves in the Mother of all battles to preserve federal Indian spending during the next President's term in office, regardless of who is President.

## RECAP -- PERSUASION, NARRATIVE, CONNECTION, PERSONNEL AND UNITY

In order to elevate Indian affairs in the next Administration, I have suggested a strategy that involves persuasion, narrative, connection and personnel.

But this will not be enough to preserve federal Indian funding. That, will require a shared unity of purpose between Tribes with enterprise revenues and Tribes who substantially rely on Federal funds.

Without tribal sovereignty protected by the federal trust responsibility, both groups of Tribes perish.

Without money, it is very hard to exercise tribal sovereignty.

Both groups of Tribes share a common identity and a common fate.

If this is true, we may soon see Tribes with enterprise revenues begin to fund a sophisticated, strategic initiative to protect and preserve federal Indian funding. That is my hope.

## CONCLUSION

These are my brief suggestions for how to elevate Indian issues in the next Administration, regardless of who is President. My hope is that you will develop these and other ideas into much greater thought and action. Thank you.