

White House Listening Sessions with Tribal Leaders on Strengthening Government-to-Government Communication and Consultation

Meeting Summary
August 31, 2009

Background

On August 31, 2009, the White House Domestic Policy Council and Office of Public Engagement held two listening sessions with tribal leaders in Washington, DC. The purpose of the sessions, led by Domestic Policy Council Senior Policy Advisor for Native American Affairs Kimberly Teehee, was to bring together tribal leaders and White House staff to engage in an informal dialogue on strengthening communication and the tribal consultation. These meetings were intended to prepare the Obama Administration to address tribal consultation and the government-to-government relationship.

Prior to the meetings, the National Congress of American Indians provided tribal leaders with a background paper detailing the collective recommendations from tribes on tribal consultation and government-to-government coordination. This paper was developed from a review of comments and testimony provided by tribal leaders during various Committee meetings and comment periods during the development of federal agency consultation policies following Executive Order 13175—Consultation and Coordination with Indian Tribal Governments. The background paper was intended to assist tribal leaders in thinking about their experiences with tribal consultation and preparing their remarks for the two listening sessions on August 31st.

In the NCAI background paper, three specific recommendations to strengthen tribal consultation were made. They included:

- 1) Refocusing the Executive Order on tribal sovereignty, the trust responsibility and the goal of building consensus between nations;
- 2) Developing accountability provisions; and
- 3) Creating opportunities for both formal consultation on developed proposals and early informal scoping on tribal issues.

On September 1, 2009, NCAI held a national teleconference to brief tribal representatives on the background paper and offer an opportunity for tribes to coordinate their recommendations in advance of the listening sessions.

Summary of Listening Sessions

These three recommendations were discussed in detail during the listening sessions, with tribal leaders providing concrete examples of their tribe's positive and negative experiences with consultation as well as ideas for improving communication generally. Furthermore, building on the recommendations for possible ways to strengthen the consultation process between tribes and

the federal government, tribal leaders provided two additional recommendations that were not addressed within the background paper—the use of regional meetings and use of technology. These two recommendations were offered as ways to build tribal participation and consensus, and reduce resources expended during the consultation process.

1) Refocusing the Executive Order on tribal sovereignty, the trust responsibility and the goal of building consensus between nations

Tribal leaders felt that the Executive Order is viewed by many federal agencies as merely a procedural requirement with no focus on the substantive goals of tribal self-government and fulfillment of the federal trust responsibility. The history of consultation, according to tribal leaders, is often a one-way monologue where the federal government thinks they know best. Tribes are viewed as a grantee, customer, or client rather than an equal partner with the federal government. Oftentimes, there is little respect for or understanding of the government-to-government relationship. The federal government will send officials, who are often unfamiliar with tribal governments, and who have no decision-making authority to consult with tribes. This sends the message to tribes that the federal government does not respect their governmental status.

Furthermore, in a government-to-government relationship, tribal consultation should be redefined as a collaborative decision-making process with the goal of reaching a consensus before a decision is made or action is taken. The aim of consultation is to reach mutually agreeable decisions that acknowledge the interests of both the federal and tribal governments. Tribal leaders expressed their frustration with the lack of agency collaboration and inconsistencies in agency consultation processes. Many times tribes are working well with one agency, but also have to deal with other agencies who have not worked with tribes, who have different consultation processes, and may even have conflicting policies. This cumbersome process can be ineffective for tribal communities and a waste of federal and tribal resources.

Tribal representatives brought up the idea of reintroducing the intradepartmental council on Native American affairs, which previously served as a one-stop shop where agencies worked together on policy coordination and the development of grant programs. In addition, tribes suggested using existing regional intertribal organizations and forums to share information with tribes. While not a substitute for consultation or communication with tribes individually, this would improve communication with tribes as well as provide a conduit for input and consensus from more tribes.

2) Developing New Accountability Provisions

From the beginning, tribal leaders have been concerned with creating accountability under the Executive Order. The Office of Management and Budget is supposed to carry out the accountability provisions of the Executive Order, but it has not been effective. It has been too easy for federal officials to ignore the Executive Order when convenient.

On some occasions, federal agencies will ignore or refuse to carry out their responsibilities under the Executive Order, and there are no mechanisms for accountability. For example, tribal leaders

commented that at times they will attend meetings that are billed as “consultation,” but when they arrive to the meeting, they are told it is a listening session or dialogue. Tribal leaders often spend a great deal of time and resources engaging with a federal agency and receive little response about tribal recommendations. In order to increase federal agency accountability, a cause for action for failure to consult with tribal leadership should be developed.

3) Create opportunities for both formal consultation on developed proposals and early informal scoping on tribal issues

Tribes expressed the dilemma that most of the opportunities for sharing information and views on a policy or program happen very early in the decision-making process, long before any specific proposal has been committed to paper, yet it is difficult to comment on a proposal that has not been written down. On the other hand, once a proposal is on paper, decisions have already been made on the most fundamental questions regarding the need for action and the scope of issues to be considered. Therefore, tribes recommended that an open process in the initial stages of policy analysis and development creates better and more efficient consultation. Tribes reiterated the possibility of using regional meetings and technology to keep the lines of communication open throughout the policy development process.

There should be clarity in the consultation process as to when tribes and the federal government are expected to engage with one another—a consistent standard that federal agencies can follow. Tribes commented on the level of frustration and disrespect they feel when a consultation meeting is organized and decisions have already been made that cannot be changed. Materials and documents on the topics the consultation will focus on should be provided in advance in order for tribal representatives to share them with their councils for discussion and dialogue.

Furthermore, tribes expressed the need to have the authority to initiate a consultation session. Since tribes are more intimately familiar with what is happening with their communities, they ought to have the opportunity to propose consultation, rather than waiting for a federal agency to propose it.

Conclusion

Throughout both listening sessions, tribal leaders reiterated their support of the current Executive Order, but expressed significant concerns about the way it has been implemented. A number of suggestions for improvement were proposed. Many tribal leaders also applauded the Administration for appointing a significant number of American Indians to high-ranking positions with the executive branch. These listening sessions on the consultation process represented an unprecedented opportunity to speak before Native members of the Administration, who have for years championed Native causes and are now continuing their efforts at the White House.