Introduction

Chairman Campbell, Vice Chairman Inouye and distinguished members of the Senate Committee on Indian Affairs, I am pleased to be invited to address the Committee concerning tribal justice issues and specifically to address the development of tribal court drug courts or wellness courts. I am the Chief Judge of the Blackfeet Tribal Court in Montana and the Second Vice President of the National American Indian Court Judges Association (NAICJA). I have been invited here today to testify primarily concerning my experience as a tribal court judge who has implemented a tribal court drug court.

Tribal Justice Needs

First, I would like to start with a few points concerning tribal justice needs:

While the crime rate, especially the violent crime rate, has been declining nationally, it has been increasing substantially in Indian Country.

Both tribal court systems and tribal law enforcement are grossly underfunded.

Congress recognized this need when it enacted the Indian Tribal Justice Act (Public Law 103-176) in 1993 and included specific Congressional findings that "tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political
integrity of tribal governments" and "tribal justice systems are inadequately funded, and the lack of adequate funding impairs their operation".

While the Indian Tribal Justice Act promised more than $58 million per year in additional funding for tribal court systems starting in FY1994, tribal courts have yet to see any funding under this Act.

Since Congress enacted the Indian Tribal Justice Act in 1993, the needs of tribal court systems have continued to increase, but there has been no increase in funding for tribal court systems. In fact, the Bureau of Indian Affairs funding for tribal courts has actually decreased as a result of the elimination of the Special Tribal Courts Fund.

The joint Department of Justice-Department of the Interior Indian Country Law Enforcement Initiative proposes to significantly increase law enforcement funding in Indian Country and it would include $10 million to establish the Indian Tribal Courts Program. While this $10 million program is minimal in comparison to the $58 million per year promised under the Indian Tribal Justice Act, it is a good start and I strongly support the establishment of this Indian Tribal Courts Program and the other programs proposed as part of the Indian Country Law Enforcement Initiative.

Alcohol and/or substance abuse is involved in more than 90% of the criminal cases in most tribal courts, including the Blackfeet Tribal Court. These cases have always been very difficult to handle. Often, the same people appear before the tribal court over and over again - and the court has very limited options and resources to effectively address these cases. Because the current system does not generally subject either the adult or juvenile substance abuser to intervention measures that provide the sanctions and services necessary to change their behavior, most of these people repeatedly cycle through the system. The drug court concept, however, has proven effective in addressing these difficult drug and alcohol cases. Tribal courts, including the Blackfeet Tribal Court, are just beginning to adapt and implement the drug court concept and we are already receiving positive results. With adequate support and assistance, the drug court concept can prove to be an effective tool for addressing criminal justice issues in Indian Country.

The Drug Court Concept

The drug court concept involves leveraging the coercive power of the criminal justice system to achieve abstinence and alter criminal behavior through the combination of judicial supervision, treatment, drug testing, incentives, sanctions, and case management. A drug court is a special court given the responsibility to handle cases involving drug-using offenders through an extensive supervision and treatment program. Drug court programs bring the full weight of all intervenors (judge, prosecutor, defense counsel, substance abuse treatment specialists, probation officer, law enforcement and correctional personnel, educational and vocational experts, community leaders and others) to bear, forcing the offender to deal with his or her substance abuse problem. In addition, drug courts ensure
consistency in judicial decision-making and enhance the coordination of agencies and resources, increasing the cost-effectiveness of programs.

The design and structure of drug court programs are developed at the local level, to reflect the unique strengths, circumstances and capacities of each community. Many sectors of the community are integrally involved in the planning and implementation process of a Drug Court system, including: criminal justice, substance abuse treatment, law enforcement, educational and vocational entities and community anti-drug organizations.

Drug courts across the country rely on sanctions that typically include: frequent drug-testing, intensive supervision and terms of incarceration to respond to program violations. This same population currently receives little jail time, supervision, drug testing or treatment, giving these offenders little reason to change their behaviors.

The Justice Programs Office at American University reports that approximately 100,000 drug-using offenders have participated in drug court programs since their inception in 1989. In 1997, the Government Accounting Office (GAO) reported that 71% of all offenders entering drug courts since 1989 have either successfully completed their drug court program or are at the present time actively participating in the program. The Columbia University Center on Addiction and Substance Abuse (CASA, 1998) has concluded a definitive study of drug court research, evaluations, and literature, finding that drug courts provide the most comprehensive and effective control of the drug-using offenders' criminality and drug usage while under the court's jurisdiction. (I have included more detailed drug courts reports as attachments to this testimony.)

Adapting the Drug Court Concept for Tribal Courts

The Drug Courts Program Office of the Department of Justice's Office of Justice Programs has already awarded planning or planning/implementation grants to the following 22 Indian or Alaska Native Tribes (this number should increase soon due to the fact that there are 30 tribal drug court applications currently being reviewed through the Drug Courts Program Office):

1. Salt River Pima-Maricopa Indian Community (Arizona)
2. Creek (Muskogee) Nation (Oklahoma)
3. Poarch Band of Creek Indians (Alabama)
4. Hualapai Tribe (Arizona)
5. Gila River Pima-Maricopa Indian Community (Arizona)
6. Blackfeet Tribe (Montana)

7. Eastern Band of Cherokee Indians (North Carolina)

8. Turtle Mountain Band of Chippewa Indians (North Dakota)

9. Confederated Tribes of the Umatilla Indian Reservation (Oregon)

10. Flandreau Santee Sioux Tribe (South Dakota)

11. Lower Brule Sioux Tribe (South Dakota)

12. Oglala Sioux Tribe (South Dakota)

13. Makah Tribe (Washington)

14. Native Village of Chevak (Alaska)

15. Native Village of Kwethluk (Alaska)

16. Pasqua Yaqui Tribe (Arizona)

17. Shoshone-Bannock Tribes (Idaho)

18. Passamaquoddy Tribe (Maine)

19. Fort Peck Assiniboine and Sioux Tribes (Montana)

20. Sisseton-Wahpeton Sioux Tribe (North/South Dakota)

21. Yankton Sioux Tribe (South Dakota)

22. Fort Belknap Indian Community (Montana)

The Drug Courts Program Office wisely determined that the drug court concept would need to be adapted significantly in order to meet the specific needs of Indian tribes. Consequently, they began a process to adapt the concept. First, a group of people with expertise concerning tribal courts and/or substance abuse were brought together last summer to help design an adapted curriculum for tribal drug court training sessions. Then, a series of three tribal specific training sessions have been held to date.
These training sessions have served a vital role in explaining the drug court concept and in working with the tribal representatives from each community to adapt the drug court concept to meet the needs of their individual communities. At each session, representatives from tribal courts, law enforcement, treatment providers, tribal government, and others come together to develop an action plan for drug court development in their individual community.

This process has identified many issues concerning the adaptation of the drug court concept to meet the needs of Native American and Alaska Native communities, including the following:

23. Alcohol abuse is the predominant problem in most Native American and Alaska Native communities. Although many of the current drug courts address alcohol abuse, it is not the primary focus of most drug courts. Many people in Indian Country have been confused by the term "drug courts" and have incorrectly assumed that alcohol abuse issues cannot be addressed by drug courts (Some tribal courts have used the term "wellness court" in part to deal with this misperception). Alcohol abuse, however, does present unique adaptation issues for tribal drug courts, including the need for creative approaches to alcohol testing programs.

24. Many tribes are planning and implementing drug courts which incorporate tribal custom and tradition into the process. First, many tribes are incorporating traditional substance abuse treatment modalities which have proved particularly effective in addressing Native substance abuse problems. Second, many tribes are incorporating traditional sanctions and incentives into their process. Third, some tribes are developing plans to utilize traditional dispute resolution mechanisms to function as the drug court.

25. Tribal court systems often have to face jurisdictional barriers - such as lack of criminal jurisdiction over non-Indians and the effects of Public Law 280 - which complicate their ability to implement an effective drug court process.

26. Tribes seeking to establish drug court systems often face a broad range of other problems not faced by most drug courts, including isolated rural locations, small community/confidentiality problems, lack of resources, lack of services, and lack of funding.

Despite these obstacles, there are already five tribal drug courts which are up and running with many more on the verge of implementation. The Blackfeet Tribal Drug Court has been up and running since January 3, 1998. These five tribal drug courts are being showcased this afternoon in connection with the annual conference of the National Association of Drug Court Professionals (NADCP). NADCP is the principal organization of professionals involved in the development and implementation of treatment-oriented drug courts. NADCP has been responsible for delivering the tribal specific drug court training sessions.

What Needs to be Done to Ensure the Continued Success of Tribal Drug Courts
At least three issues need to be addressed in order to ensure the continued success of the tribal drug courts as follows:

27. **Increased Funding for Drug Courts (including the Tribal Drug Courts).** Federal funding for drug courts has been static at $30 million per year over the past three years while the number of drug courts has more than tripled in that same period. In order to continue to expand the highly successful drug court model (including the expansion in Indian Country), increased federal funding to $90 million per year is needed.

28. **Allow Individual Communities the Flexibility to Develop Drug Courts which Meet the Needs of Their Individual Communities.** It makes no sense to limit drug court programs to the least serious substance abusers when the more serious substance abusers are exactly the ones who most need the comprehensive judicial monitoring, probation supervision, frequent drug testing, treatment services, and immediate sanctions that drug courts provide. The current federal drug court programs include restrictions - such as a prohibition against treating violent offenders - which could restrict the ability of the individual community to develop a program to meet their individual needs. For many communities in Indian Country, this means that the drug court may not be allowed to handle offenders who are creating the most disruption to the community, but the community is presented with no other viable alternative.

29. **Provide Adequate Funding for Training and Technical Assistance to Adapt the Drug Court Concept for Implementation in Indian Country.** It is vital that adequate training and technical assistance funding is available for the adaptation and implementation of the drug court concept in Indian Country. The limited tribal drug court training sessions provided to date have served a critical role in the adaptation, development, and implementation of the drug court concept in Indian Country. Much more is needed however. It will not be possible to successfully implement tribal drug courts without comprehensive tribal drug court specific training and technical assistance.