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INDIAN LAW

I. NAVAJO-HOPI CONFLICT AND THE APPLICATION OF FEDERAL INDIAN LAW PRINCIPLES

A. INTRODUCTION

In *Sekaquaptewa v. MacDonald*[1] the Court of Appeals for the Ninth Circuit considered the conflicting claims of the Hopi and Navajo Tribes to reservation lands that make up the northeast corner of the State of Arizona. The history of this intertribal conflict extends over several hundred years and has resulted in numerous actions in federal courts.[2]

The histories of the tribes are important for an appreciation of the issues raised in *Sekaquaptewa*. The Hopi entered the contested area first, and by the 16th century had settled on portions of the land in question, established pueblo villages, and successfully farmed the semi-arid land.[3] The Navajo Tribe, a nomadic people, apparently first entered the area during the 17th century and initiated raids on Hopi settlements which continued through the 19th century.[4] Protected by their fortress-like pueblos, the Hopi endured the occasional depredations of the larger and more aggressive Navajo Tribe and continued their agrarian lifestyle.[5]

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1. 619 F.2d 801 (9th Cir. 1980) (per Skopil, J.; the other panel members were Anderson, J., and Bonsal, D.J.), *cert. denied,* 101 S. Ct. 565 (Dec. 1980).

2. *See* 619 F.2d 801, 803 (1980); Sekaquaptewa v. McDonald, 591 F.2d 1289 (9th Cir. 1979); Sekaquaptewa v. MacDonald, 448 F. Supp. 1183 (D. Ariz. 1978); all pertaining to the Act of 1934. *See also* Sekaquaptewa v. MacDonald, 575 F.2d 239 (9th Cir. 1978); Sekaquaptewa v. MacDonald, 544 F.2d 396 (9th Cir. 1976); Hamilton v. MacDonald, 503 F.2d 1138 (9th Cir. 1974); Hamilton v. Nakai, 453 F.2d 152 (9th Cir. 1972); Healing v. Jones, 210 F. Supp. 125 (D. Ariz. 1962), *aff'd,* 373 U.S. 758 (1963); all of which pertain to the 1882 Executive Order.

3. Healing v. Jones, 210 F. Supp. 125, 134 (D. Ariz. 1862), *aff'd,* 373 U.S. 758 (1963). See F. WALTERS, BOOK OF THE HOPI (1963), for a general history of the religious and social development of the Hopi Tribe.

4. Healing v. Jones, 210 F. Supp. 125, 134-35, 146-48 (D. Ariz. 1962), *aff'd,* 373 U.S. 758 (1963). *See also* J. TERRELL, THE NAVAJO 80 (1970).

5. Healing v. Jones, 210 F. Supp. 125, 134, 145. (D. Ariz. 1962), *aff'd,* 373 U.S. 758 (1963).

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The coming of white settlers into the southwest, particularly to New Mexico where the Navajo were principally located, dramatically changed the Navajo lifestyle.[6] In 1864, the United States Army defeated the Navajo in a major "Indian War," and confined a large portion of the tribe for several years at Fort Defiance, near the Arizona-New Mexico border.[7] In 1868 the tribal representatives signed a treaty with the United States[8] which required other bands of the tribe then in southern New Mexico to rejoin the tribe on land set aside for tribal use near Fort Definance.[9] The Navajo attempted to resume their traditional nomadic lifestyle, and began to move west into Hopi territory.

B. Legal History

The Treaty of 1868 between the United States and the Navajo granted the tribe reservation land in the northwest corner of New Mexico and the northeast corner of Arizona. This treaty placed the Navajo on the eastern boundary of the Hopi-claimed lands. Although the treaty restricted the Navajo to their reservation, the Army paid little attention to the Navajo's western incursions into Hopi-held land.[10] No action was taken in response to repeated requests by local Indian agents for the Secretary of the Interior to remove the Navajo from Hopi lands and to establish permanent boundaries between the tribes.[11]

In 1882, by Executive Order, the United States set aside a tract from public lands expressly "for the use and occupancy of the Moqui [Hopi] and such other Indians as the Secretary of the Interior may see fit to settle thereon."[12] Despite this specific al-

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6. *Id.* at 134-37.

7. *Id.* at 135.

8. Treaty With the Navajo Indians, June 1, 1861, art. XIII, 15 Stat. 667 (1934) ("The tribe herein named, by their representatives, parties to this treaty, agree to make the reservation herein described their permanent home, and they will not as a tribe make any permanent settlement elsewhere . . . .").

9. Healing v. Jones, 210 F. Supp. 125, 134 (D. Ariz. 1962).

10. *Id.* at 135-37.

11. *Id.* at 146-50.

12. Exec. Order of Dec. 16, 1882, *reprinted in* 1 C. Kappler, Indian Affairs Laws and Treaties 805 (1904) ("It is hereby ordered that the tract of country . . . is hereby, withdrawn from settlement and sale, and set apart for the use and occupancy of the Moqui [Hopi] and such other Indians as the Secretary of the Interior may see fit to settle thereon.").

The term "Moqui" is a Navajo term meaning "dead one" and was used by the In-

location, the Navajo continued to settle in and around the area of the Hopi Reservation. Subsequent to the establishment of the Navajo Reservation of 1868 and the Hopi Reservation of 1882, executive orders set aside additional tracts of public land for Indian use.[13] Several of these orders expressly added the new lands to the Navajo Reservation; others designated the lands only for "Indian purposes."[14] As these tracts were added to the reservations, the tribes remained in conflict over what the Hopi considered to be Navajo encroachment on Hopi lands, and what the Navajo considered to the Hopi settlement on lands granted to the Navajo.[15]

In the 1930's, the basic philosophy of federal-Indian relations changed dramatically. The Indian Reorganization Act of 1934 marked the end of allotment of tribal lands to individual tribal members and the beginning of encouragement of tribal reorganization and self-reliance.[16] During this time, Congress passed the Act of June 14, 1934[17] to consolidate title to the various reservation lands in that section of Arizona described in the Act and to define the final limits of reservation expansion in that area.

The Hopi Reservation of 1882 was explicitly excluded from the 1934 Act to ease Hopi fears of becoming completely dominated by the Navajo Tribe.[18] In addition, the Hopi were assured that the 1934 Act was phrased to protect their interests in tribal

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dian Office until 1923. L. KELLY, THE NAVAJO INDIANS AND FEDERAL INDIAN POLICY 1900-1935 (1970).

13. *See* Exec. Orders of Oct. 29, 1878, Jan. 6, 1880, May 17, 1884, Jan. 8, 1900, *reprinted in* KAPPLER, *supra* note 12, at 876-77.

14. *See* note 12 *supra*. *See, e.g.*, Exec. Order of Jan. 6, 1880, *reprinted in*, KAPPLER, *supra* note 12, at 876 ("as an addition to the present Navajo Reservation . . . ."); Exec. Order of May 17, 1884, *reprinted in* KAPPLER, *supra* note 12, at 876 ("set apart as a reservation for Indian purposes . . . .").

15. *See* Los Angeles Times, Sept. 16, 1979, at 1, col. 1.

16. Indian Reorganization Act of 1934, 25 U.S.C. §§ 461-479 (1970). The major provisions of this Act restricted future allotment of Indian reservation land to any Indian, provided funds to purchase land for landless Indians, empowered tribes to adopt democratic constitutions and by-laws, granted specific rights to tribes to incorporate and defined "Indian." For a discussion of the Indian Reorganization Act of 1934 and the Navajo, see KELLY, *supra* note 12, at 163.

17. Act of June 14, 1943, Pub. L. No. 352, 48 Stat. 960 (1934).

18. *Id.* ("nothing herein contained shall affect the existing status of the Moqui [Hopi] Indian Reservation created by Executive Order of December 16, 1882."). *See also* Sekaquaptewa v. MacDonald, 448 F. Supp. at 1193-96.

holdings which were outside of the 1882 reservation lands, but within the land affected by the 1934 Act.[19]

The authors of the 1934 Act anticipated that the two tribes would eventually either work out their own boundaries or become integrated.[20] By 1934 the tribal land holdings were widely intermixed and created a quilt-work pattern of Navajo and Hopi enclaves surrounded by land held by members of the other tribe.[21] As the Navajo Tribe, with its significantly larger population, expanded, it exerted increasing pressure on the Hopi land holdings.[22] The tribes failed to negotiate any disposition of the lands and conflict over settlements and the use of grazing lands continued. In response to the tribes' failure, Congress authorized federal court jurisdiction for a quiet title action between the two tribes as to the 1882 reservation lands.[23]

In *Healing v. Jones,*[24] an action initiated by the Hopi Tribe, the federal district court interpreted the phrase in the Executive Order of 1882 "for the use and occupancy of the Moqui and such other Indians as the Secretary of the Interior may see fit to settle thereon,"[25] as a grant to both the Hopi and Navajo Tribes.[26] The court found that the Navajo had been administratively settled on the 1882 reservation by federal acknowledgement and by tolerance of the Navajo settlements on the Hopi Reservation.[27] The district court, therefore, granted each tribe an undivided one-half interest in the 1882 reservation, with the exception of a small section found to be in the exclusive possession of the Hopi Tribe.[28] *Healing,* however, did not settle the dispute. The Hopi complained that the Navajo did not honor the court's decisions. Through a series of subsequent actions the Hopi attempted to

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19. 448 F. Supp. at 1193-96.

20. *Id.* at 1195.

21. *Id.* at 1185.

22. From 1864 to 1970 the Navajo population increased from approximately 10,000 to over 120,000. G. BOYCE, WHEN NAVAJOS HAD TOO MANY SHEEP at x (1974). Opening Brief for Appellant at 70 n.26, Sekaquaptewa v. MacDonald, 619 F.2d 801 (9th Cir. 1980).

23. Act of July 22, 1958, Pub. L. No. 95-531, 72 Stat. 403 (1958).

24. 210 F. Supp. 125 (D. Ariz. 1962), *aff'd,* 373 U.S. 758 (1963).

25. Exec. Order of Dec. 16, 1882, *reprinted in* KAPPLER, *supra* note 12, at 805.

26. 210 F. Supp. at 143-92.

27. *Id.* at 169.

28. *Id.* at 191-92.

force implementation of the court's decision.[29]

Similarly, both tribes continued to claim the area which surrounded the 1882 reservation and was described in the 1934 consolidation act.[30] In response, Congress enacted the Jurisdictional Act of 1974,[31] which authorized the tribes to bring a quiet title action in federal court.

On the basis of the Jurisdictional Act of 1974, the Hopi Tribe brought a quiet title action against the Navajo Tribe. In *Sekaquaptewa v. MacDonald,*[32] the federal district court determined what lands were included in the 1934 Act and the nature and extent of the respective Hopi and Navajo land rights. The court first determined that the purpose of the Act was to include all of the executive order reservation additions within the Act's boundaries.[33] The court found these reservation lands to be temporary withdrawals of public lands because they did not confer a compensable title and were revocable at will.[34]

In the most critical element of the decision—the determination of the respective tribal land holdings—the court focused on the legislative intent behind the Act. The court noted that the legislative history was sparse and that only one congressional hearing had been held, at which the minutes of several meetings between Bureau of Indian Affairs administrators and Hopi village leaders had been added to the record.[35] At those meetings the administrators assured the Hopi leaders that the wording in the proposed act, "as may already be located thereon", had been included to protect Hopi rights in the lands they occupied in that area and that their rights to these lands would be undisturbed.[36] At the time of these meetings, the proposed bill also included a provision authorizing the Secretary of the Interior to set apart, from time to time, lands within the Navajo Reserva-

29. Sekaquaptewa v. MacDonald, 575 F.2d 239 (9th Cir. 1978); Sekaquaptewa v. MacDonald, 544 F.2d 396 (9th Cir. 1976); Hamilton v. McDonald, 503 F.2d 1138 (9th Cir. 1974); Hamilton v. Nakai, 453 F.2d 152 (9th Cir. 1972).

30. Sekaquaptewa v. MacDonald, 619 F.2d at 801.

31. Act of Dec. 22, 1974; Pub. L. No. 95-531, 88 Stat. 1715 (1974).

32. 448 F. Supp. 1183 (D. Ariz. 1978).

33. *Id.* at 1189-91 n.7.

34. *Id.* at 1189.

35. *Id.* at 1193-95.

36. *Id.* at 1194.

tion boundaries for the use of the Hopi. The district court noted, however, that this provision had been excluded in the resulting Act.[37] The court considered this deletion an indication of the congressional intent to limit Hopi land interests.[38]

From this interpretation, the district court found that the Hopi Tribe held only an undivided one-half interest in land that tribal members had used, occupied, or possessed prior to the enactment of the 1934 Act.[39] Both tribes appealed the district court's decision, and the Ninth Circuit accepted the appeal under 28 U.S.C. section 1292(b).[40]

C. The Ninth Circuit Opinion

On appeal, the Ninth Circuit considered the respective Hopi and Navajo property interests in the reservation land affected by the 1934 Act, and whether the district court had jurisdiction to consider the Hopi request for an accounting of Navajo activities on land in which the Hopi Tribe had an interest.[41]

The Hopi Tribe argued that the district court's limitation of Hopi land interests was contrary to the plain meaning and legislative history of the 1934 Act.[42] They also contended that the district court erred in deciding contrary to *Healing v. Jones*,[43] asserting that that case was precedent for this dispute, and that the decision conflicted with real property law principles.[44]

The Navajo Tribe contended that not all executive order reservations were meant to be included in the 1934 Act. They argued that the 1900 Executive Order's withdrawal of public land was intended to be a permanent part of the Navajo Reservation, and that the district court erred in holding that it represented only a temporary withdrawal of public land.[45]

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37. *Id.* at 1195-96.
38. *Id.* at 1196.
39. *Id.*
40. 619 F.2d at 803.
41. *Id.* at 804.
42. *Id.* at 806; *see also* Opening Brief for Appellant at 15-19, Sekaquaptewa v. MacDonald, 619 F.2d 801 (9th Cir. 1980).
43. 619 F.2d at 806-07 and Appellant's Opening Brief at 19-27.
44. *Id.* at 806 and Appellant's Opening Brief at 21-43.
45. *Id.* at 804-05 and Appellee's Opening Brief at 21-43.

In resolving the Navajo contentions concerning the executive order reservations, the Ninth Citcuit upheld the district court's finding that the overriding purpose of the Act was to consolidate ownership of the reservation lands.[46] The Ninth Circuit also noted that the executive orders cited by the Navajo did not specifically mention granting title to the Navajo Tribe.[47] The court, therefore, held that all the executive order reservations were meant to be included in the 1934 Act, except for the 1882 reservation which was expressly excluded.[48]

The court next determined the tribes' respective property interests by interpreting the legislative intent of the 1934 Act.[49] The appellate court rejected the Hopi argument that the district court's decision conflicted with real property conveyancing principles, and found that those principles have no application to federal-Indian law, particularly when they conflict with the intent of Congress.[50] Similarly, the court rejected the Hopi contention that the district court erred by being inconsistent with *Healing v. Jones*.[51] The court stated that even if the district court's holding was inconsistent, the legislative intent must control.[52]

As to the legislative intent, the court found that the 1934 Act primarily concerned Navajo affairs.[53] The Hopi were directly mentioned only in that section of the Act excluding the 1882 reservation.[54] The court then relied on the district court's interpretation of the phrase "[a]ll . . . lands . . . are . . . withdrawn . . . for the benefit of the Navajo and such other Indians as may already be located thereon,"[55] and found that it was not meant to grant a one-half interest in the entire reservation to the

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46. *Id.* at 804.

47. *Id.*

48. *Id.* at 804-05.

49. *Id.* at 806-08.

50. *Id.* at 806.

51. *Id.* at 806-07. In *Healing v. Jones*, the court noted that a 1958 statute withdrew the lands described in the Executive Order of 1882. The court found the Hopi Tribe to have an interest in all the land described in the Order, and the "other Indians" to have a one-half interest in the land they occupied.

52. 619 F.2d at 807.

53. *Id.* at 806.

54. *Id.*

55. *Id.* Act of June 14, 1934, Pub. L. No. 352, 48 Stat. 961 (1934).

Hopi.[56] On the basis of this interpretation, the court affirmed that portion of the district court's finding that the Hopi interest was limited to the areas they used, occupied or possessed prior to the enactment of the 1934 Act.[57] The appellate court, however, disagreed with the district court's finding that the Hopi were entitled to only an undivided one-half interest in the areas they used, occupied or possessed, and held that the Hopi have an exclusive interest in those areas.[58] To support this interpretation, the court again relied on the legislative intent behind the 1934 Act. Recognizing that Congress was not committed to exclusive tribal areas in 1934, the court reasoned that the intent to limit Hopi interests to areas settled was "clear enough."[59]

This interpretation resulted in the finding that the Hopi have an exclusive interests in those areas within the boundaries of the 1934 Act that they had settled prior to its enactment, with the residue being the exclusive interest of the Navajo Tribe.[60]

The court then turned to the Hopi request to the district court for an accounting of Navajo activities on land found to be within Hopi interests.[61] The Hopi contended that jurisdiction for an accounting was provided expressly and impliedly by the 1974 Act authorizing jurisdiction for the quiet title action and that an accounting is an integral part of the partition authorized by the Act.[62] The court noted that jurisdiction to bring suit against an Indian tribe requires the express consent of Congress, and strictly interpreted the jurisdictional act.[63] The court found no express allowance for an accounting in the 1934 Act, although there was such an allowance made for the 1882 lands previously partitioned.[64] The court held that an accounting was not authorized and added that an accounting would not clearly aid in the quiet and peaceful enjoyment of the reservation lands.[65]

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56. 619 F.2d at 806.
57. *Id.* at 807.
58. *Id.* at 808.
59. *Id.*
60. *Id.*
61. *Id.* at 808-09.
62. *Id.* at 808, and Appellant's Opening Brief at 63-73.
63. 619 F.2d at 808-09.
64. *Id.* at 809.
65. *Id.*

D. CRITIQUE

In reaching its holding in *Sekaquaptewa v. MacDonald*, the Ninth Circuit relied solely upon the legislative intent behind the Act of 1934. Had the dispute arisen between an Indian tribe and the federal government, rather than between two tribes, the court would have applied additional principles of federal-Indian law which would have dictated a significantly different outcome.[66] Similarly, had the court applied federal-Indian law principles to the 1934 Act itself, rather than assuming the validity of the Act, the result might have differed.[67] The Ninth Circuit's decision effectively imposes the status quo Congress sought in 1934 on the reality of fifty years later.[68]

The court's opinion demonstrates the failure of this Ninth Circuit panel to apply federal-Indian law principles that have evolved from federal versus tribe and state versus tribe issues to the Navajo versus Hopi controversy,[69] although their application to an intertribal conflict appears appropriate, particularly when the basis of the dispute is considered. The title conflict between the two tribes is, like many legal disputes involving Indian tribes, directly related to earlier acts by the federal govern-

66. The evolution of federal Indian law has resulted in the formulation of basic rules for resolution of Indian disputes. Central to these rules is the theory of reserved rights, which holds that powers of Indian tribes are not granted by Congress, but derive from tribal sovereignty based on the original possession of the land. United States v. Winans, 198 U.S. 371 (1905). In addition, courts require that ambiguous provisions of treaties be construed as the Indian signatories would have understood them. McClanahan v. State Tax Comm'n., 411 U.S. 164 (1973); Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 551-53 (1832). Ambiguous provisions are to be interpreted in a light most favorable to the Indians. Choctaw Nation v. United States, 318 U.S. 423, 431-32 (1943). In interpreting treaties and statutes the purpose and circumstances surrounding the Act are to be considered in determining the legislative intent. Alaska Pacific Fisheries v. United States, 248 U.S. 78, 87 (1918). Encompassing these principles is the status of the federal government as a trustee to the Indians. As a trustee it is incumbent upon the government to protect Indian interest in land as well as education and welfare. *See also* Carter, *Race and Power as Aspects of Federal Guardianship Over American Indians: Land Related Cases 1887-1924*, 4 AM. INDIAN L. REV. 197 (1976) for a discussion of federal guardianship theory.

67. The court did not question the validity of the 1934 Act, although the misconceptions surrounding the settling of the Navajo in the Hopi territory were noted in Healing v. Jones, 210 F. Supp. at 146-57.

68. The court acknowledged the legislative intent behind the 1934 Act to preserve the status quo of the existing arrangement of the two tribes. 619 F.2d at 808. By enforcing the status quo of 1934 upon the Hopi, the court in effect precluded any expansion and tribal growth and in fact withdrew land that the tribe was currently using.

69. *See* note 67 *supra*.

ment.[70] In analyzing current legal issues which arise from earlier federal-tribal transactions, it is appropriate and necessary to apply federal-Indian law principles to the consideration of the earlier acts which resulted in the present controversy. To view a title dispute between two tribes as strictly an intertribal affair, and thereby encourage intertribal conflict would appear to violate the guardianship role assumed by the federal government.[71]

E. Conclusion

The reluctance of the Ninth Circuit to more fully apply federal-Indian law principles retards the development of the body of federal-Indian law and results in a distortion of the problem. Unfortunately, it may also serve to postpone any actual resolution of the dispute, and increase the possibility of a confrontation between the tribes outside the legal system.

*Thomas M. Anderson**

II. DISTRIBUTION OF INDIAN HEALTH CARE BENEFITS

A. Introduction

In *Rincon Band of Mission Indians v. Harris,*[1] the Ninth Circuit considered a class action challenge to the Indian Health Service's (IHS) distribution of funds and services. Plaintiff alleged that the IHS had violated its statutory and trust duties and its obligation of equal protection by its disproportionately low distribution of health service funds to Indians in California.[2] In resolving the issue, the appellate court relied upon established federal Indian law principles and prior case law. The court did not reach the trust or constitutional questions, how-

70. For an historical perspective of the evolution of this dispute, see Healing v. Jones, 210 F. Supp. at 125-58.

71. *See* Carter, *supra* note 68.

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1. 618 F.2d 569 (9th Cir. 1980) (per Ferguson, J.; the other panel members were Tang, J., and Curtis, D.J., sitting by designation).

2. *Id.* at 570.

ever, but decided the case strictly through statutory interpretation.[3]

The IHS is a sub-agency in the Department of Health and Human Services, formerly the Department of Health, Education and Welfare.[4] Funding for the IHS is authorized by the Snyder Act.[5] Enacted in 1921, the Snyder Act provides generally for funding programs which benefit "Indians throughout the United States . . . ."[6] Further authorization for the IHS was provided by the Indian Health Care Improvement Act (IHCIA).[7] The IHCIA was passed in 1976 by Congress "in fulfillment of its special responsibility and legal obligation to the American Indian people . . . ."[8] It provides funding for health care services, including professional personnel and facilities. Urban Indians are specifically provided for.[9] The IHS is responsible for distributing Snyder Act and IHCIA funds to establish and maintain health care services and programs throughout the country.[10]

The Rincon Band of Mission Indians initiated this action in federal district court against the Secretary of Health, Education and Welfare and the IHS, as a class action on behalf of Indians residing in California.[11] Rincon Band alleged that the IHS's allocation of services was inadequate to meet the needs of their tribe and other California Indians.[12] In *Rincon Band of Mission Indians v. Califano*,[13] the tribe sought a declaratory judgment that the IHS services allocation violated the constitutional right of equal protection of Indians residing in California.

In a motion for summary judgment, the Rincon Band ar-

3. *Id.*

4. 42 U.S.C. § 2001 (1976); 20 U.S.C. § 3508 (Supp. III 1979).

5. 25 U.S.C. § 13 (1976) states in relevant part: "The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States . . . ."

6. 25 U.S.C. § 13 (1976). The district court noted that the benefits at issue qualified as a constitutionally based entitlement. Rincon Band of Mission Indians v. Califano, 464 F. Supp. 934, 939 n.6 (N.D. Cal. 1979) (per Renfrew, D.J.).

7. 25 U.S.C. § 1601 (1976).

8. *Id.* § 1602.

9. *Id.* § 1601.

10. 618 F.2d at 570; 25 U.S.C. § 1602 (1976).

11. 464 F. Supp. 934, 935 n.1.

12. *Id.* at 935.

13. 464 F. Supp. 934 (N.D. Cal. 1979) (per Renfrew, D.J.).

gued that the evidence showed that HEW (through the IHS), had not only failed in its responsibility to provide health care services to Indians in California, but had distributed funds in a manner that deprived the California Indians of services comparable to those services provided Indians in other parts of the country.[14] These actions were argued to be an IHS violation of equal protection of law as guaranteed by the fifth amendment.[15]

In its cross-motion for summary judgment, HEW asserted that Congress' failure to approve IHS's request for additional funding beyond the IHS budget appropriation, constituted ratification of the established IHS allocation procedure.[16] HEW also argued that the allocation system used by IHS was rationally based and not in violation of the equal protection clause.[17]

The district court rejected defendant's claim of congressional ratification.[18] Relying on the Rules of the House of Representatives and case law, the court held that ratification of an agency's policies does not occur through appropriations unless express language to that effect is included in the appropriating legislation.[19] Since IHS's argument was based on implied rather than express ratification, the district court found its obligation to rationally and equitably distribute Snyder Act funds undiminished by congressional refusal to provide additional funding.[20]

In considering the rationality of the allocation system used by the IHS, the district court reviewed IHS fund allocation and expenditure records. The court noted that approximately ten percent of the IHS national services population resided on or near reservations in California. However, the IHS had allocated no more than 1.93% of its total funds to California in any year since 1956. The records further indicated that only 0.35% of the total IHS funding for health facilities over a seven year period beginning in 1979 were allocated to California Indians.[21]

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14. *Id.* at 936.
15. *Id.*
16. *Id.*
17. *Id.* at 937-38.
18. *Id.* at 936-37.
19. *Id.*
20. *Id.* at 937.
21. *Id.* at 936.

The allocation criteria used by the IHS for distribution of resources were determined by the district court to be "no more than a bureaucratic charade . . . ."[22] The IHS employed the seemingly sophisticated Resource Allocation Criteria (RAC) to index the actual needs of Indians throughout the nation. In fact, RAC was only applied in the distribution of approximately three percent of the allocated funds. The insufficiency of data called the reliability of these distributions into question.[23] Moreover, the use of the RAC was not initiated until 1978, and the court was provided with no explanation for the prior disproportionate allocations.[24]

The district court granted Rincon Band's motion for summary judgment, finding that IHS's allocation system violated the California Indians' right to equal protection of the law.[25] In a subsequent clarification, the court declared that "[i]n accordance with this conclusion, defendants are obligated to adopt a program for providing health services to Indians in California which is comparable to those offered Indians elsewhere in the United States."[26]

B. Ninth Circuit Opinion

The Secretary of HEW appealed to the Court of Appeals for the Ninth Circuit, reasserting that IHS allocations were immune from attack because of congressional ratification through action on its funding request.[27] Rincon Band reasserted that IHS allocation criteria was not only a denial of equal protection but also a violation of the statutory and trust duties of the federal government to the Indians.[28]

The Ninth Circuit rejected defendant's claim of immunity based upon congressional ratification because the argument was unsupported by law or fact. There was no showing that Congress expressly intended that the failure to appropriate additional funds to the IHS was meant to ratify their allocation procedures,

22. *Id.* at 937.
23. *Id.* at 937-38.
24. *Id.* at 938-39.
25. *Id.* at 939.
26. 618 F.2d 569, 570.
27. *Id.* at 573-74.
28. *Id.* at 570 & 575 n.8.

and case law and congressional rules prohibit ratification of an agency's procedures by implication.[29]

The appellate court reviewed the district court's findings of fact, using the figures most favorable to the government. In part, its findings were that California Indians had received a disproportionately low share of IHS allocations.[30] By the most generous estimate, only seven percent of the IHS's allocation of IHCIA funds since 1978 was appropriated to California Indians, although ten percent of the national service population of 518,000 resided in California. Other findings revealed that less than 0.6% of professional health care personnel were assigned to California and, that of the fifty-one hospitals, ninety-nine health care centers, and several hundred health stations nationally, California Indians were served by only one hospital and two health care centers.[31]

In considering the rationality of IHS's allocation criteria, the court viewed the agency's obligation in the light of *Morton v. Ruiz*.[32] At issue in *Ruiz*, as in *Rincon Band*, was the reasonableness of procedures employed by government agencies for distribution of funds and services to Indians.[33] The Snyder Act, the primary authority for Indian benefit programs, contains no provisions for eligibility or distribution of allocated funds.[34] The Supreme Court in *Ruiz* held that the Secretary of the Interior was responsible for establishing reasonable and proper eligibility standards.[35] Relying on *Ruiz*, the Ninth Circuit inferred that an agency's distribution criteria must be rationally aimed at an equitable distribution of its funds.[36] This conclusion was consistent both with established federal Indian law principles and a prior Ninth Circuit case requiring due process in termination of a benefit program for Indians.[37]

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29. *Id.* at 573-74.
30. *Id.* at 571.
31. *Id.*
32. *Id.* at 572 (citing Morton v. Ruiz, 415 U.S. 199 (1974)).
33. 415 U.S. 199 (1974).
34. *See* 25 U.S.C. § 13 (1976), *supra* note 5.
35. 415 U.S. at 230-31.
36. 618 F.2d at 572.
37. *Id.* at 572; Fox v. Morton, 505 F.2d 254, 255 (9th Cir. 1974). The evolution of federal Indian law has developed basic rules for the resolution of disputes involving Native Americans. These principles are founded on the theory that the power of Indian tribes is not granted by Congress, but derives from original possession of the land by the

The appellate panel, relying principally upon the district court's factual determination, also concluded that the IHS's distribution criteria was not rationally based.[38] The insufficiency of data available to apply the agency's RAC method of establishing need was a major consideration in the court's conclusion.[39]

Holding that the IHS breached its statutory duty under the Snyder Act, the Ninth Circuit affirmed the district court's summary judgment in favor of the California Indians.[40] Having decided that the IHS violated its statutory duty, the court found it unnecessary to reach the trust or equal protection issues.[41]

C. Significance

The Ninth Circuit's opinion in *Rincon Band* expands the obligations of administrative agencies responsible for allocating Snyder Act funds. While the IHS, as a distributor of Snyder Act funds, had established administrative procedures for the disbursement of funds, the court nevertheless undertook to examine the substance of those procedures to determine if they were "rationally aimed at an equitable distribution of funds."[42] Basing their analysis on *Ruiz* and federal-Indian law principles, the court determined that "rational" distribution procedures were not enough. Distribution procedures must also be equitable.[43] The equitable requirement stems from federal Indian law principles which require an overriding duty of fairness when dealing with Indians,[44] and a liberal construction of legislation that benefits Indians.[45]

The Snyder Act, like the IHCIA, is phrased in general terms, and the administrative limitations imposed upon the IHS

Indians. United States v. Winans, 198 U.S. 371 (1905).

38. 618 F.2d at 573.

39. *Id.* at 572.

40. *Id.* at 575.

41. *Id.* at 570, 575 n.8.

42. *Id.* at 572.

43. *Id.*

44. 415 U.S. at 236; Board of County Comm'rs v. Sever, 318 U.S. 705 (1943); Seminole Nation v. United States, 316 U.S. 286, 296 (1942); Fox v. Morton, 505 F.2d 254, 255 (9th Cir. 1974).

45. Choctaw Nation v. United States, 318 U.S. 423, 431-32 (1943); Ruiz v. Morton, 462 F.2d 818, 821 (9th Cir. 1972), *aff'd sub nom.* Morton v. Ruiz, 415 U.S. 199 (1974); Fox v. Morton, 505 F.2d 254, 255 (9th Cir. 1974).

by these acts is minimal.[46] Yet, the court significantly chose to closely examine the IHS's internal procedure with regard to Indian law principles, after it had already determined the criteria used by the agency was not rational. The result was a clarification and expansion of administrative standards for agencies working with Indian benefit funds.

Also significant was the court's determination not to reach the constitutional issue. Although the district court held that the IHS violated equal protection rights of California Indians,[47] the Ninth Circuit's decision rested entirely on IHS's failure to meet statutory requirements, thus eliminating the necessity of discussing the equal protection issue.[48] This is notable in that an equal protection analysis of IHS's procedure could have raised questions of Snyder Act validity.[49]

The court's opinion assumed the validity of IHCIA and the Snyder Act. However, since the Supreme Court decision in *Regents of the University of California v. Bakke*,[50] programs which benefit a specific class on the sole basis of race are subject to strict constitutional analysis. Legislation benefitting Indians has been held not to involve a racial classification, but to be based upon the political status of Indian tribes as semi-sovereign political bodies.[51] However, the Snyder Act and the IHCIA were enacted to benefit Indian people generally.[52] Eligibility for benefits is not limited to criteria of tribal affiliation, reservation residence, or other political indentification.[53] The nature of elibility for these programs thus appears to be based primarily on a racial classification. Since entitlements to Snyder Act benefits have not been restricted to Indians identifiable through political status, the issue of impermissible racial classification remains in-

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46. 25 U.S.C. § 13 (1976); 25 U.S.C. §§ 1601-1675 (1976).

47. 464 F. Supp. at 939.

48. 618 F.2d at 575.

49. *See* Crystal & Johnson, *Indians and Equal Protection*, 54 WASH. L. REV. 587 (1979).

50. 438 U.S. 265 (1978).

51. Morton v. Mancari, 417 U.S. 535, 553-54 (1974).

52. *See* notes 5 & 7 *supra*.

53. The Snyder Act does not define the word "Indian." The IHCIA defines "Indian" with broad classification criteria ending with including as an Indian any person that "(3) is considered by the Secretary of the Interior to be an Indian for any purpose, or (4) is determined to be an Indian under regulation promulgated by the Secretary." 25 U.S.C. § 1603 (1976).

herent in any Snyder Act litigation.

By choosing not to discuss the constitutional issue, the Ninth Circuit may have intentionally avoided the question of racially based Indian benefit program validity in a post *Bakke* ruling. The Ninth Circuit's decision does, however, contribute to the resolution of some immediate problems in inequitable federal agency administration of Indian benefit programs.

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