



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MEMORANDUM

JUN 12 1980

To: Commissioner of Indian Affairs

From: ~~Assistant Secretary - Indian Affairs~~
Acting

Subject: Interior Department/Bureau of Indian Affairs Policy Regarding Relationship with Tribal Governments

The purpose of this memorandum is to establish Departmental policy guidance for dealing with tribal governments in the wake of the Martinez decision.

I. BACKGROUND

The need for establishing such policy arises from the May 15, 1978, Supreme Court decision in Santa Clara Pueblo v. Martinez. While the Martinez decision does not form the entire basis for this policy, it has given impetus to the need for a policy regarding the relationship between Indian tribes and the United States.

In the Martinez decision, the Supreme Court held that, except for habeas corpus, the Indian Civil Rights Act of 1968 (ICRA) does not provide access to the Federal courts for individuals who feel their civil rights have been violated by actions of their tribal government. Rather, the Court determined that such matters are to be resolved through the use of tribal forums.

In the Martinez decision, the Court also reviewed the legislative history of the Indian Civil Rights Act to show that the Congress rejected proposals to give the Department of the Interior administrative review of alleged violations by tribal governments of the civil rights of individuals. Consequently, neither this Department nor the Federal courts constitute a forum wherein individuals who allege violations of the Indian Civil Rights Act by tribal governments may be heard.

Rather, the Martinez decision has clearly placed the responsibility and the authority for enforcement of the Indian Civil Rights Act on tribal governments. In its discussion of the decision the Court said, "In addition to its objectives of strengthening the position of individual tribal members vis-a-vis the tribe, Congress also intended to promote the well established Federal policy of furthering Indian self-government."

Therefore, the Martinez decision has had the practical effect of reinforcing the authority of Indian tribes to truly self-govern. By doing so, it has provided them with both the opportunity and the responsibility to strengthen their tribal governments and create an atmosphere of respect for those tribal forums charged with protecting individual rights.

II. INDIAN CIVIL RIGHTS ACT

With that background in mind, it is essential that actions of personnel of the Bureau of Indian Affairs reflect and adhere to the following in respect to the Indian Civil Rights Act:

1. The Bureau is genuinely concerned that tribes adhere to the requirements of the Indian Civil Rights Act which places serious responsibilities on tribal governments to protect the civil rights of individuals under their jurisdiction.
2. The Bureau of Indian Affairs, however, can not and will not constitute a forum wherein individual tribal members might seek redress for alleged violation of the Indian Civil Rights Act by a tribal government.
3. Rather, recognizing the additional support for the concept of self-government that the Indian Civil Rights Act provides for tribes, the Bureau will actively work to help tribal governments develop forums which will enable them to deal fairly on issues relating to this Act. In so doing, the Bureau must respect the sovereignty and uniqueness of each tribal entity, while being prepared to encourage and assist within available resources in the following:
 - (a) The development, amendment or revision of tribal constitutions, law and order codes, judicial procedures, and other governing documents as appropriate.
 - (b) The provision of technical assistance for civil rights studies when requested by tribes.
 - (c) Assurance of appropriate training programs for judges, law enforcement personnel, and other tribal staff.
 - (d) Through the Solicitor's Office, provision of legal interpretations on civil rights matters when requested.
 - (e) Establishment and strengthening of fair and objective tribal judicial systems.
4. The Bureau expects each tribe to abide by the terms of the political relationship it has with the United States. A breach of the terms of the political relationship may result in an alleged violation of the civil rights of an individual; however, it is important to distinguish that the actions to be taken as set out in the following are not directed at the alleged violation, which will be handled in a tribal forum, but rather at the breach of the terms of the political relationship.

Martinez, Julia v. Santa Clara Pueblo, et al. (Tribal Membership), 1976-1980. 1976-1980. MS The Association on American Indian Archives: Publications, Programs, and Legal and Organizational Files, 1851-1983: Legal Cases, Programs and Publications 332: 2. Mudd Library, Princeton University. Indigenous Peoples: North America, <http://tinyurl.galegroup.com/tinyurl/8Qtvf7>. Accessed 23 Nov. 2018.