

APR 27 2001

U.S. Department of the Interior  
Washington, D.C. 20240

93  
T-1422  
30

FEDERAL  
INDIAN POLICY

IN THE KENNEDY AND  
JOHNSON ADMINISTRATIONS

1961-1969

THOMAS CLARKIN

2001

UNIVERSITY OF NEW MEXICO PRESS  
ALBUQUERQUE

I did establish a working relationship [with the Indians] and one that I'm very happy with and very proud of." Nash's sympathetic attitude and relaxed personal style—at one NCAI convention he stayed up all night drumming and singing—earned him the respect and appreciation of many Native Americans. One Indian leader said that "I always got along with him [Nash] very well because he was more of a human being than a commissioner."<sup>34</sup>

However, Nash's rapport with Native Americans could not serve as an effective sounding board for Indian concerns. Although Nash encouraged tribal officials and BIA employees to work together, he never established any bureaucratic mechanisms or procedures to increase Indian participation in the policy process. As long as Indian access to policy creation remained informal, it also remained tenuous, contingent upon the good will of the commissioner.

#### THE NASH APPROACH TO PROGRAM DEVELOPMENT: LEGISLATION

Recognizing the terminationist attitudes that prevailed in Congress and cognizant of his own weak relations with key members such as Clinton Anderson, Nash employed a two-pronged approach toward developing programs for Native Americans. First, he "concentrate[d] on obtaining support for several important, but relatively noncontroversial, legislative amendments which could increase Indian employment and stimulate economic resource development." This was necessary because, as AAIA attorney Richard Schifter noted, Anderson's "extremely strong personality and his equally strong views on Indian affairs" made "it extremely difficult to get good substantive legislation through Congress." Thus, the Interior Department's legislative record relating to Indian policy during the Kennedy years was unimpressive. Department proposals for 1962 included the Ponca termination act and amendments to legislation relating to the sales of Indian timber and

mining leases on tribal lands. The following year, proposed legislation included an increase in the revolving loan fund and amendments to a law concerning trading with Indians. An assessment of successes in Indian affairs printed in November 1963 made no specific reference to legislative achievements. During the Kennedy years, only one legislative measure was potentially controversial—an alternative to Frank Church's heirship bill. In this instance the department was responding to a congressional initiative, and the ensuing battle, which continued for over two years, indicated that Nash's avoidance of controversial measures was wise.<sup>35</sup>

#### HEIRSHIP LEGISLATION

Fractionated landholdings constituted a serious problem in Indian affairs, ironically a problem that the government itself had created during the allotment era. As heirs received increasingly smaller portions of the original allotments, bizarre mathematical calculations became necessary to determine degrees of ownership and profits from economic activities. The Comptroller General reported that one Indian "was determined to have the right to 4 trillion, 199 billion, 168 million, 842 thousand, 4 hundred/54 trillionths" of a 116-acre estate. Proceeds from the leasing of fractionated landholdings provided little income for heirs. The 1961 rental of the Frank Roy estate yielded forty dollars, which was distributed among eighty-five owners, many of whom received as little as five cents. Although they often appeared in reports and hearings, extreme cases such as these were in fact rare. However, approximately three million acres of the total fifty-three million acres of Indian land was in lots owned by six or more heirs, and the problem was growing worse as time went on. A Library of Congress analyst ably summed up the heirship problem in a 1969 report, noting that such holdings "denied the owners any opportunity for maximum utilization of the land or of its money value," and had "a direct effect on actual and

potential tribal land consolidation programs and on the Federal Government in terms of ever-increasing administrative overhead."<sup>36</sup>

Because multiple ownership discouraged the leasing and development of Indian lands and complicated the management of the trust properties, officials in both the Congress and the Interior department regarded heirship as a pressing issue. The 1961 task force had considered it to be a "serious deterrent to more adequate utilization of resources in some areas," and Senator Church maintained that his subcommittee viewed it as "one of the major obstacles to Indian economic and social progress." In a handwritten note in the Stewart Udall papers, heirship ranked first in a list of legislative issues. However, despite the general agreement within the government that heirship legislation was needed, the problem proved irresolvable. The failure to settle this problem led to Church's resignation from the Indian Affairs Subcommittee and further damaged Nash's already poor relations with the members of Senate Interior Committee.<sup>37</sup>

Church opened the first hearings on S. 1392, the proposed heirship legislation, on 9 August 1961. S. 1392 permitted the interior secretary to sell or partition an heirship tract held in trust upon the request of a single heir, unless such a sale "would not be in the best interests of the Indian owners." In an effort to promote continued Indian ownership of properties, other heirs were to be given an opportunity to purchase the land. In addition, the secretary was authorized to offer low-interest loans to tribes who wished to buy any tracts up for sale.<sup>38</sup>

Although the bill explicitly mentioned tribal termination only once, stating that plans devised under the act could not "prevent or delay a termination of Federal trust responsibilities," S. 1392 reflected a terminationist attitude. The 1961 Comptroller General's report that had so pleased Clinton Anderson maintained that "multiple ownership of Indian lands held in trust is an obstacle" to termination, and had argued that success in carrying out HCR 108 "depends largely on the termination of Federal trusteeship over Indian property, including lands." In order to "hasten and facilitate the orderly termination of Federal supervision over Indian affairs," the Comptroller General

recommended legislation that would "authorize the partition or sale of inherited Indian lands pursuant to the prescribed legal action taken by any one of the competent owners concerned," almost exactly the mechanism detailed in the Church bill. Section 10 of S. 1392 went even further, stating that in the event of a title transfer, "the title shall pass by operation of law in a nontrust and unrestricted status" unless the interior secretary found the owner to be incompetent. Moreover, "trusts or restrictions of an individual Indian that do not extend for a stated number of years" would cease as of 1 January 1964. These provisions ensured that federal trust responsibilities over almost all Indian land would end, a goal of the termination policy.<sup>39</sup>

In response to the subcommittee's request for a report on S. 1392, John Carver argued that the Section 10 provisions were "drastic," and would "involve a major change in Federal Indian policy." The Interior Department offered a substitute proposal in which tribes could purchase all heirship lands deemed idle or unproductive on a deferred payment plan. The interior secretary was authorized to sell productive lands upon the request of owners holding a majority interest. Addressing the problem of obtaining permission for use or development from multiple owners, the bill also permitted the secretary to "execute the lease, timber sale, or right-of-way without the consent of the Indian owners." In what he later remembered as a "very hot hearing on the subject," John Carver stated that "the substitute draft is not intended to provide a quick or a complete solution to the [heirship] problem," but he hoped that "it will permit us to take a tremendous first step."<sup>40</sup>

The hearings revealed that Indians did not support the Church bill. They recognized that heirship legislation, while perhaps necessary, constituted a risk to the trust status of Indian lands that might function as yet another arm of the termination policy. Helen Peterson, executive director of the NCAI, stated that "the bill meets the opposition of the NCAI through providing for termination of individual trusts," the provision found in Section 10. Paul Jones, chairman of the Navajo Tribal Council, argued that S. 1392 "would obliterate the fractionalization, but in so doing . . . makes it so difficult for the Indian to protect his interest

in the land in trust status as to render it worthless." Non-Indian organizations also refused to support S. 1392. The general secretary of the Indian Rights Association argued that the bill "seems to be aimed at the termination of all Federal responsibility."<sup>41</sup>

Indian support for the Interior alternative was cautious, in part because many tribes had just received copies of the bill. After detailing tribal opposition to the Church bill, Robert Burnette, president of the Rosebud Sioux Tribe, claimed that "we are in agreement in principle, that is," with the Interior department alternative, and Richard Schifter, testifying as attorney for the Oglala Sioux and the Nez Perce, asked the subcommittee to "support the principle of the administration substitute."<sup>42</sup>

Senator Church took the various suggestions offered during the hearings and revised the bill, which he introduced in early 1962 as S. 2899. Section 11 of the new legislation provided for the continuation of the trust status of land transferred to one devisee or heir; but if more than one person received a portion, the property was no longer held in trust. This provision was intended to "prevent the problem of multiple ownership" by encouraging Indians who wanted land to remain in trust to designate only one heir. The remainder of the bill was similar to Church's 1961 proposal.<sup>43</sup>

Rather than submit an alternative bill, Interior Department officials chose to offer eighteen amendments to S. 2899. They again proposed that land be sold or partitioned only upon request of those holding a majority ownership. They also called for the removal of Section 11. During his testimony, Philleo Nash argued that the BIA did not consider the heirship problem "as serious as the loss of Indian land that we fear through the application of Section 11." He deemed the heirship issue to be "fundamentally a real estate management problem." He dismissed the issue of rising administrative overhead, claiming that most expenditures for trust management "would have to be spent even if there were no fractional heirship problem." The commissioner saw continued Indian ownership of the land as the long-term issue of importance, and he proposed that the federal government "go the way of economic

development, which improves the capabilities of the individual and the tribes to resolve the problem by purchase."<sup>44</sup>

Nash's remarks reflected the attitudes of Native Americans far more than S. 2899 did. Eagle Seelatsee, Yakima, argued that "any law being proposed in Congress[,] it should fit in with the thinking of the Indian himself." During the seven months that had passed since the 1961 hearings, many Native Americans had changed their thinking, or at least become more sophisticated in their objections, in regard to heirship legislation. Land alienation, not heirship, was seen as the most important issue. Robert Burnette, now serving as executive director of the NCAI, charged that Section 11 made the bill "a non-Indian cattleman's bill." Instead of heirship legislation, Burnette demanded "imagination and aggressive management" in the area of Indian land development. Although Senator Church believed his bill recognized "the desirability of retaining the land base as an economic resource for our Indian citizens," Native Americans disagreed. Their determined opposition prompted Church to again revise the bill, which he introduced in the next session of Congress.<sup>45</sup>

Church's final attempt at heirship legislation represented a true attempt at compromise. His new bill, S. 1049, contained no provisions that ended the trust status on Indian land. Instead of allowing only one owner to request sale or partition, S. 1049 required owners holding a majority to make such a request if there were a total of ten owners or less. In the event that eleven or more persons shared title, the bill required an ownership of twenty-five percent to request sale. The Interior Department approved of the legislation and offered only one minor amendment.<sup>46</sup>

Church's sincere effort at compromise led some American Indians to support the bill, but the NCAI and many tribes still opposed heirship legislation. In the two-year battle over the various bills, many Indians had redefined the issue, and they now perceived heirship legislation as undesirable and unnecessary. Robert Burnette argued that "tribes should be allowed to work out their own land programs," and Edison Real Bird, vice chairman of the Crow Tribe, claimed that "each Indian tribe and its

leaders should inaugurate its own programs to attend to its heirship lands." Despite these arguments, the approval of the Interior Department and the decline in Indian opposition allowed Church to push the measure through the upper house, which passed S. 1049 on 11 October 1963.<sup>47</sup>

The bill was then referred to the House Interior Committee, from which it was never reported out. Robert Burnette credited James Haley, chairman of the House Subcommittee on Indian Affairs, with blocking hearings on the bill. Burnette claimed that Haley responded positively to Indian requests for additional time to draft an alternate proposal. Heirship legislation was dead.<sup>48</sup>

Although Philleo Nash later cited heirship as one of "many, many phony issues in the field of Indian affairs," and charged that "bureaucrats and the experts and to some extent the Indian people themselves . . . have built up a great bogey which really doesn't even exist," James Officer recalled that Nash "worked hard for its [heirship legislation] enactment," and was "disappointed with the failure of the bill to pass." Senator Church, who according to John Carver had always "hated the job" of subcommittee chairman, saw the collapse of heirship legislation as the last straw and he eventually resigned from the position. Nash remembered that "Frank Church learned his lesson and it made him very bitter, very bitter towards the Indians and not too friendly towards me." Although Indians benefited from the collapse of Church's heirship initiative, Nash's standing with the senators on the Interior Committee fell even further.<sup>49</sup>

Officer credited the defeat of the heirship bills to conflicts between the House and Senate Interior Committees and to the efforts of the Indians, thus making Church's failure a triumph for Native Americans. Within a decade of HCR 108 and the passage of the first termination acts, their determined opposition stalled and eventually contributed to the abandonment of legislation that had the support of influential senators on the Interior Committee. Officer later maintained the battle over the heirship bills "made clear to Congress and the Executive Department that the fight against termination had enabled the Indians to assemble a strong lobbying force," which meant that future legislation lacking Indian

support "would be doomed to failure." Stewart Udall's failure to heed this lesson would bring him great trouble in 1966 and 1967.<sup>50</sup>

#### THE NASH APPROACH TO PROGRAM DEVELOPMENT: PROGRAM SHARING

In a 1962 letter to Oliver La Farge, attorney Richard Schifter argued that the "Anderson-Allott combination on the Senate Interior Committee is so strongly opposed to the Indian development concept that it will try to block Administration efforts" in that area. Nash's second approach to program development, the inclusion of Indians in other federal aid programs, allowed the BIA to bypass potential opposition from Interior Committee members. Through the efforts of Nash, other administration officials, and sympathetic members of Congress, Native Americans received assistance from the Public Housing Administration, and, perhaps most important, the Commerce Department, which operated the Area Redevelopment Administration and the Public Works Acceleration Program.<sup>51</sup>

#### HOUSING

Program sharing met with laudable success in the improvement of Indian housing. Marie McGuire, who headed the Public Housing Administration (PHA), showed great enthusiasm in cooperating with the BIA. John Carver recalled that she "really got interested in Indian housing," and in 1964 Stewart Udall called her "somewhat a heroine of the Indian Bureau people and of Interior people." After the chief counsel of the PHA determined that the United States Housing Act of 1937, which enabled "any state, county, municipality or other governmental entity" to qualify for public housing assistance, applied to tribal governments, McGuire met

Department of the Interior, Bureau of Indian Affairs, *Developing Indian Employment Opportunities*, by Keith L. Fay (Bureau of Indian Affairs, n.d.), 48-49.

34. First and third quotations from Transcript, Nash Oral History, Interview no. 2, 43, JFKL; and second quotation from Congress, House, Committee on Interior and Insular Affairs, *Policies, Programs, and Activities of the Department of the Interior*, 88th Cong., 1st sess., 31 January through 11 February 1963, 167. The unattributed quotation regarding Nash is from Szász, "Philleo Nash," 316; and Officer, "Anthropologist," 13.
35. James E. Officer, "The Bureau of Indian Affairs Since 1945: An Assessment," *Annals of the American Academy of Political and Social Science* 436 (March 1978): 65; Letter, Richard Schifter to Oliver La Farge, 20 March 1962, Folder 1, Box 132, AAIAA; Memo, Indian Affairs, Part 1—President's Program Proposals, "Dept. of the Interior (Proposed Legislative Program, 87th Congress, 2d session, Oct. 1961)," Box 88, SUP; Memo, "Indian Affairs, Part 1—President's Program Proposals, Dept. of the Interior (Proposed Legislative Program, 88th Congress, 1st Session, Nov. 1962)," Box 100, SUP; and Memo, "Indians," 1 November 1963, "Notebook—Progress during JFK administration," Box 108, SUP.
36. Estate information is found in Congress, Senate, Committee on Interior and Insular Affairs, *Indian Heirship Land Problem: Hearings before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs*, 87th Cong., 1st sess., 9 and 10 August 1961, 47-48, 50. Numbers regarding total Indian lands with multiple owners are found in Congress, Senate, Committee on Interior and Insular Affairs, *Indian Heirship Land Problem: Hearings before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs*, 87th Cong., 2d sess., 2 and 3 April 1962, 207; and Stephen A. Langore, "The Heirship Land Problem and Its Effect on the Indian, the Tribe, and Effective Utilization," in *Toward Economic Development for Native Communities: A Compendium of Papers*, Congress, Subcommittee on Economy in Government of the Joint Economic Committee, 91st Cong., 1st sess., Joint Committee Print (Washington, D.C.: GPO, 1969): 519.
37. "1961 Task Force Report," 10; Congress, Senate, *Announcement of hearings on S. 1392, Relating to the Indian Heirship Land Problem*, 87th Cong., 1st sess., *Congressional Record* (18 July 1961), vol. 107, pt. 10, 12870; Handwritten note, Legislative: Indians, 29 September 1961, "Bureau of Indian Affairs (Task Force on Indian Affairs)," Box 89, SUP; and Officer, "Anthropologist," 14.
38. Committee on Interior and Insular Affairs, *Indian Heirship*, 1961, 1, 4-6, 21-24.
39. Comptroller General, "Review of Certain Aspects," 21-23; and Committee on Interior and Insular Affairs, *Indian Heirship*, 1961, 6.
40. Committee on Interior and Insular Affairs, *Indian Heirship*, 1961, 7-11, 25. The second Carver quotation is from p. 9, and the third, p. 25. First Carver quotation is from Transcript, Carver Oral History, Interview no. 8, 96, JFKL.
41. Committee on Interior and Insular Affairs, *Indian Heirship*, 1961, 100, 106, 123. Of the many communications received from Indians and Indian organizations, only one, from the obscure Black Hills Treaty and Claims Council, called for the passage of S. 1392 (see p. 153).
42. *Ibid.*, 107, 119.
43. Committee on Interior and Insular Affairs, *Indian Heirship*, 1962, 194, 197-99.
44. *Ibid.*, 199-203, 235.
45. *Ibid.*, 194, 253, 289.
46. Congress, Senate, Committee on Interior and Insular Affairs, *Indian Heirship Land Problem: Hearings before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs*, 88th Cong., 1st sess., 29 and 30 April 1963, 380-83, 386-87.
47. Burnette and Real Bird quotations from Committee on Interior and Insular Affairs, *Indian Heirship Land Problem*, 1963, 419, 455; and Congress, Senate, *Indian Heirship Land Problem*, 88th Cong., 1st sess., *Congressional Record* (11 October 1963), vol. 109, pt. 14, 19371, 19448.
48. Burnette, *Tortured Americans*, 79.
49. Nash quotations from Transcript, Nash Oral History, Interview no. 3, 67, JFKL. First Officer quotation from Officer, "Anthropologist," 14; and second Officer quotation from Officer, "Indian Service," 83. Carver quotation from Transcript, Carver Oral History, Interview no. 8, 97.
50. Officer, "Indian Service," 83. In 1983, Burnette asserted that in 1962 "President Kennedy had that legislation killed. Lee Metcalf . . . told us what had happened." In his 1971 autobiography, Burnette wrote that Kennedy intervened with Senate Interior Committee members twice in 1963 on the issue of heirship, again writing that Metcalf had provided the details about Kennedy's action. Thus, there is some confusion over the dates in the two