

Excerpts from Report of Special Committee  
On Contracts of Lawyers with Indian Tribes,  
Administrative Law Section, American Bar Association

The Special Committee on Contracts of Lawyers with Indian Tribes has studied the proposed regulations of the Secretary of the Interior on this matter . . .

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. . . The Committee is of the view that insofar as organized tribes are concerned, the Secretary of the Interior has no authority to require that contracts between such tribes and their attorneys be approved by him. . .

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. . . Likewise, in the Committee's opinion no authority exists for issuing regulations imposing detailed control by the Secretary over any phase of the negotiation and execution of contracts between organized Indian tribes and their attorneys.

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. . . The Committee believes that it is in the best interests of the Indians, and consistent with the long standing Congressional policy of their gradual emancipation, for the Secretary of the Interior to permit the unorganized tribes to negotiate freely with counsel and to approve the contracts arrived at through such negotiation if they comply with statutory requirements, the attorney is competent and reputable and the fees fixed are fair and reasonable. . .

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. . . It appears to the Committee that action of this nature not only is without statutory authority, but also constitutes a complete reversal of American policy toward the Indians. It is a reversion to the doctrine that the "Indian has no rights except those extended as privileges through rules and regulations and through mere sufferance." It again places the organized Indians "at the mercy of the wisdom or lack of it of the Commissioner of Indian Affairs." It frustrates the intention of the Congress that the broad discretionary authority of the Commissioner of Indian Affairs should be curbed. It nullifies the action of the Congress in creating, through the Indian Reorganization Act of 1934, a framework for Indian self-help.

Moreover, the Committee has been unable to find evidence of any necessity to turn the clock backward so as to subject the Indian tribes to the minute and detailed controls which are prescribed in the proposed regulations. No instances have been brought to the attention of this Committee indicating that the Indian tribes are unable to regulate their own dealings with attorneys in accordance with the existing regulations which were issued in 1938.

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. . . If it was a sound policy to grant additional economic freedom to the organized tribes, it would appear equally sound to extend such freedom to the unorganized tribes, except as it may be necessary to supervise such tribes more closely because of their unorganized status.

To be consistent with the policy of furthering the economic freedom of Indian tribes, such tribes should be allowed to negotiate their own contracts for legal services rather than be required to enter into contracts the terms of which have been dictated in detail by the Secretary. . .

In our view Secretary of the Interior Krug expressed the appropriate policy in 1948 when he was testifying before a Congressional Committee in the company of then Under Secretary Oscar L. Chapman: