COMMENT
*RUIZ V. MORTON**: BIA WELFARE EXTENDED TO ALL AMERICAN INDIANS

I. INTRODUCTION

The relationship between the American Indian and the "white man" represents a unique chapter in the history of the treatment of minority groups by the dominant society. The young federal government of the United States considered the various Indian tribes as hostile nations of barbarians who stood in the way of civilization and pioneer expansion. Consequently, Indian-white relations amounted to a succession of attempts by the government to handle Indian hostility by waging war, by writing treaties and, finally, by creating trust lands administered by a separate federal agency, the Bureau of Indian Affairs.[1] Today, the continued existence of the BIA as a gaurdian for Indians supports the conclusion that the federal government still considers the Indian people a minority group to whom it owes distinct obligations and treatment.

This Comment will examine one aspect of the special relationship between the Bureau of Indian Affairs and Indians, that of general assistance benefits. The role of the BIA in this area has been significantly changed by the recent Ninth Circuit decision in Ruiz v. Morton,[2] which extends BIA welfare to all Indians irrespective of place of residence. Before the *Ruiz* decision, BIA welfare benefits were restricted to Indians who lived on reservations.

II. THE FACTS IN *RUIZ*

Ramon and Anita Ruiz, members of the Papago Tribe of American Indians, lived in the "Indian Village" of Ajo, Arizona, a small town about fifteen miles from the Papago Reservation. They had moved to Ajo from the reservation about 1942 so that Mr. Ruiz could work in the copper mines operated by the Phelps-Dodge Company. The mines were closed by a strike on July 19, 1967. Since he could not find substitute employment, Mr. Ruiz applied for welfare from the state of Arizona. However, Arizona does not grant welfare benefits, either in the form of general assistance or emergency relief, to striking union members. Consequently, Mr. Ruiz sought welfare from the Bureau of Indian Affairs' general assistance program. Bureau officials informed him that general assistance benefits were not available to Papago Indians who did not live within the boundaries of the reservation.[3]

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* 462 F.2d 818 (9th Cir. 1972).

[1] Hereinafter BIA.

[2] 462 F.2d 818 (9th Cir. 1972).

[3] Their decision was made pursuant to 66 Bureau of Indian Affairs Manual 3.1.4(A) (1965) [hereinafter 66 BIA Man.] which reads: "Eligibility for general assistance is limited to Indians living on reservation and in jurisdictions under the BIA in Alaska and Oklahoma." The Manual contains all BIA regulations, some of which, however, including the residency requirements, do not also appear in Title 25, C.F.R. for reasons not explained.

Ruiz, with the legal guidance of Papago Legal Services, then sued in federal district court to compel the BIA to pay him general assistance benefits. The district court granted summary judgment in favor of the Secretary of the Interior.[4] On appeal, the Ninth Circuit Court of Appeals reversed.

III. THE DECISION

The Snyder Act of 1921, the general Indian appropriations act, includes the following directive:

> 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. . . .[5]

The court interpreted the word "throughout" according to its ordinary meaning, concluding that it was not the type of restrictive word which Congress would have used had it intended to limit welfare or anything else to Indians living on reservations.[6] Furthermore, the court noted that, since the reservations antedated the establishment of the authority and jurisdiction of the BIA over all Indian affairs,[7] tradition argues in favor of a broad interpretation of BIA jurisdiction.

The court also accepted the plaintiff's argument that the sparse legislative and administrative history of the Snyder Act indicates concern for *all* Indians and that there are no indications that Congress meant to limit the traditionally broad scope of authority. Statements of purpose in the Act, which include "general support and civilization, including education" and "relief of distress and conservation of health" are general in the extreme.[8] In addition, Senate and House Reports on the Snyder Act contain a letter and a report to the Committee on Indian Affairs. The letter to the Senate from the Acting Secretary of the Interior in 1921 states in part:

> In view of the fact that there is no basic law at the present time authorizing many of the items appearing in the annual Indian appropriation act, and the further fact that the bill in question would give Congress authority to appropriate for the expenses of the Indian Service for all necesssary activities, it is recommended that H.R. 7848 be enacted into law.[9]

The report to the House is substantially the same.[10] The court found no limited language in either of these letters or upon the face of the statute.

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[4] The district court decision is unreported.

[5] 25 U.S.C. § 13 (1970).

[6] 462 F.2d at 820.

[7] 4 Stat. 564, 22d Cong., 1st Sess., Ch. 174 (1832), establishing the BIA.

[8] 25 U.S.C. § 13 (1970).

[9] Letter from Acting Secretary of the Interior E.C. Finney, to Sen. Charles Curtis, Chairman of the Committee on Indian Affairs, August 19, 1921; S. Rep. No. 294, 67th Congress, 1st Sess. 52 (1921).

[10] Report of the Comm. on Indian Affairs to the Comm. of the Whole House, July 20, 1921, H.R. Rep. No. 275, 67th Congress, 1st Sess. (1921), states:

> This is a bill to make in order appropriations for bureaus that have been added to the Indian Service since the bureau was inaugurated in 1838, which have become integral parts of the service, nearly all of which will continue, in all probability, as long as the bureau exists.

Subsequent acts which were intended to benefit Indians are nonrestrictive in that they extend jurisdiction to all Indians.[11] The court insisted that BIA policy with regard to general assistance be consistent with the Bureau's jurisdictional policies in administering these subsequent statutes.

> At times, both prior to and following the rule's publication [restricting welfare to Indians living on the reservation], the Bureau seems to have accepted responsibility for those non-reservation Indians living close to the reservation, excluding only those Indians in large metroplitan centers. At other times, Bureau officials seem to refer only to reservation Indians when discussing the services they offer. By 1966, the Bureau was providing full welfare benefits for certain off-reservation groups, denying benefits entirely to other groups, and considering the provision of limited general assistance to still other groups.[12]

Therefore, since many services are admittedly provided off-reservation Indians who live "near" the reservation, the court was unwilling to entertain government arguments based on the fact that BIA benefits are limited to reservation Indians.

The court rejected the government's argument that congressional appropriation of funds corresponding to the residency restrictions imposed by the BIA on general assistance amounted to congressional approbation of such restrictions.[13] The court argued that whatever regulations the BIA promulgates must coincide with congressional intent. Beyond the face of the Snyder Act, Congress is silent on general assistance jurisdiction. Silence does not connote the intent to acquiesce to whatever regulations the BIA chooses to establish. Therefore, the court considered the statute on its face and resolved all doubt in favor of the plaintiffs. The court decided that the words of the Snyder Act clearly intended to secure benefits to all Indians and concluded that an agency is acting outside its legislated authority if it proceeds to promulgate regulations which contradict the expressed intent and words of its congressional mandate.[14] Therefore, 3.1.4A of the BIA Manual, which restricts welfare to on-reservation Indians, is invalid.[15]

IV. ANALYSIS OF THE DECISION

In large part, the court rested its decision on the finding that there is no congressional intent manifest in the legislative history of the Snyder Act to restrict BIA welfare payments to reservation Indians. But it is equally true that the same legislative history reveals no congressional intent that any BIA programs be extended to *every* Indian. The letter and report to the Committees on Indian Affairs[16] merely indicate a desire to provide legal authorization for appropriations for programs already in existence. In 1921, almost all Indians lived on reservations and there was no BIA or state welfare. Therefore, it may be questioned whether at the time of the passage of

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11 The Johnson-O'Malley Act of 1934, 25 U.S.C. § 452-4 (1970), provides funds to public schools with Indian students. 25 U.S.C. § 470 (1970) provides funds for loans for economic development, 42 U.S.C. §§ 2002-04, (1970) permits the Secretary of Health, Education, and Welfare to contract with state and local governments to provide for Indian hospitals or health facilities.

12 462 F.2d at 823 [citations omitted].

13 Id. at 882.

14 Id.

15 Since it finds statutory grounds for its decision, the court does not reach the equal protection and due process arguments.

16 S.Rep. No. 294, supra note 9; H.R. Rep. No. 275, supra note 10.

the Snyder Act Congress gave any thought at all to a program of subsidizing Indians wherever they lived. Since the Snyder Act is broad in the extreme, Congress may have intended merely to give blanket authorization for BIA programs. If so, reasonable policies and regulations promulgated by the BIA would be within its power as an agency operating under an implicit statutory mandate.[17]

In addition, the Secretary of the Interior's brief noted that the Snyder Act states "such moneys as Congress may from time to time appropriate."[18] If no funds are appropriated, he argued, then the Snyder Act is irrelevant. The Secretary showed that for at least the last five years, money had been appropriated according to the Department of the Interior's budget requests for funds so that "General Assistance will be provided to needy Indians on the reservation."[19] Consciousness on the part of Congress of the restrictive policies on general assistance is tantamount to condoning such restrictions.[20]

It seems irrelevant to point to the fact that Congress has specifically provided for the extension of other BIA programs, for example, the Johnson-O'Malley Act and Indian Health Services, to off-reservation Indians.[21] Such extensions were accomplished through *explicit* language in individual statutes; in the case of welfare, there is no specific statute. In the absence of a statute, perhaps reasonable BIA regulations should be accepted. In the dissent's view, it is reasonable for the BIA to give special financial assistance to Indians who dwell in isolated areas and, therefore, have less employment opportunity, since they will find it especially difficult to meet Arizona's requirement of unemployability if they refuse to move.[22]

The majority placed great emphasis on the testimony before the Senate and House concerning the BIA's jurisdiction over Indians. Perhaps too much was made of the uncertainty which some BIA officials exhibit. Though the testimony of Louis R. Bruce, Commissioner of Indian Affairs, and other officials before various committees showed some confusion as to BIA jursidiction,[23] general unity of opinion was apparent.[24] The BIA serves Indians on reservations, a designated group of Indians who live near the reservations, and residents of former reservations.

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17 Wolf, Needed: A System of Income Maintenance for Indians, 10 Ariz. L.Rev. 597, 607-08 (1968).

18 Brief for the Secretary of the Interior at 5, Ruiz v. Morton, 462 F.2d 818 (9th Cir. 1972).

19 Id.

20 Id. at 6-7.

21 25 U.S.C. §§ 452-4, 25 U.S.C. § 470, 42 U.S.C. §§ 2002-04 (1970); see note 11 supra.

22 462 F.2d at 824-25,

23 When pressed to define BIA jurisdiction, Mr. Bruce, then Commissioner of Indian Affairs, testified to the Senate Appropriations Committee that BIA responsibility extends only to reservation Indians of which there were 477,000 and that the total BIA budget is expended there. Commissioner Bruce then baffled Senator Bible, who was questioning him, by including 32,600 Indians who live near reservations, 81,200 former reservation dwellers and 56,800 Alaskan natives who live on or off reservations in his summary of Indians within the BIA service area. Hearings on H.R. 9417, Before a Subcomm. of the Senate Comm. on Appropriations, Department of the Interior and Related Agencies Appropriations, 92d Cong., 1st Sess., 752-54 (1971) [hereinafter Senate Hearings on H.R. 9417].

24 The essence of Mr. Bruce's explanation was as follows: The 1970 statistics include 32,600 Indians who live near reservations

> who may receive services because of their proximity and mobility. For example, Indians working in nearby towns frequently maintain close contact with reservation people and affairs; they may visit the reservation or return temporarily or permanently. Other Indians live on public domain allotments outside the reservation boundaries. The distance of such places is not spelled out, but it depends on the extent of contact. Distant members of the tribe are not counted, although they may be carried on the tribal roll or the tribal census.

Id. at 752. Accord, Hearings on H.R. 10433, Before a Subcomm. of the Senate Comm. on Appropriations, Interior Department and Related Agencies Appropriations, 88th Cong., 2d Sess. 227-228 (1964).

Because the Bureau admitted to servicing "near" Indians in some of its programs and yet was unable to define exactly who is "near" and who is not, the majority demanded that the BIA service all Indians in its general assistance program. However, the Bureau's inability to define the jurisdictional borders of some of its programs which admittedly service nonreservation Indians may be irrelevant to the power of the BIA to adopt a specific policy with respect to welfare. It is clear from the underlying policies of BIA programs that it is policy which determines jurisdiction. By requiring that the jurisdiction of BIA programs be consistent regardless of policy, the court ignored this casual relationship. Three examples of programs with different service areas highlight the relationship between policy and jurisdiction.

First, the policy behind the Johnson-O'Malley Act, which funds state schools that educate Indian children, and the Indian Health Service, which funds health facilities for all Indians, is inconsistent with the general BIA policy to serve only those on or near reservations. However, these programs have reasonable bases for their divergence from the general policy. The Johnson-O'Malley Act and the Indian Health Service recognize the fundamental need for education and health care and the infeasibility of maintaining separate facilities for a scattered few.[25] The need for medical care and education is the same for all Indians wherever they live. On the other hand, the policy behind the employment assistance programs, which provide money to Indians who have migrated to the city, is to encourage Indians to leave the reservation. Therefore, it follows that such programs would be extended to the cities. Last, the policy behind restricting BIA welfare to only on-reservation Indians is similarly inconsistent with the "on or near" policy. The BIA could recognize the special needs of reservation Indians with respect to employment without seeming unreasonable. Notably, the dissent branded as irrelevant the issue of jurisdictional uncertainty, stressing rather the narrower issue of limited assistance.[26]

In sum, the central question is one of program policy development from which jurisdictional determination naturally flows.

There is, arguably, no indication of a developing policy to *include* nonreservation Indians within the jurisdiction of the BIA regardless of the court's determination that some programs have specifically provided for nonreservation Indians in the interest of economy and convenience or to encourage Indians to leave the reservation. Congress and the BIA should be able to extend jurisdiction with regard to health, education and relocation for specific policy reasons without being forced to do so for other programs.

Once the court determined that there is "no indication of any developing policy to exclude non-reservation Indians,"[27] that some programs specifically intend to serve Indians everywhere and that the BIA quite often serves Indians in areas contiguous to the reservation, it concluded that BIA welfare must extend to all Indians. Though it may be desirable that the BIA grant welfare to all Indians ineligible for state aid, the court's analysis does not compel such an extension.

It may be argued further, however, that BIA welfare benefits should be extended at least to the usual boundaries of BIA services on the basis of equal protection and the fundamental right to travel, but the court refused to reach these issues. Instead it chose to extend BIA welfare to all parts of the country including large cities, basing its decision on the meaning of "throughout" and the absence of congressional language limiting jurisdiction to the reservation. The court, in concluding, betrayed its willingness to sacrifice full analysis of the BIA service system in order to benefit Indians to the greatest extent possible.

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25 H.R. Rep. No. 864, 73d Cong., 2d Sess. (1934).

26 462 F.2d at 824 n.1.

27 Id. at 821.

V. BIA POLICY ON JURISDICTION

Over the years, the BIA has faced jurisdictional uncertainties caused by the movement of population and the shifts in legal categorization of land. Census figures reveal the difficulties involved in determining who is an Indian and where he lives.

In 1960, there were about 552,000 Indians in the United States.[28] Of these, 303,000 lived on reservations.[29] The percentage of reservation Indians to the total Indian population was 54.9 percent. In 1970, there were 827,982 Indians of which 320,500 (39 percent) lived on the reservation.[30] In terms of rural and urban nonreservation residence, 26 percent of all Indians in 1970 were off-reservation rural dwellers and at least 35 percent of all Indians lived in urban areas.[31]

Many jurisdictional problems become apparent from examining these statistics. The figures for Indians who live on reservations include some groups who live near reservations, some who formerly lived on reservations, and some who never lived either on or near reservations. For example, Alaska has only five large reservations and all of its Indian inhabitants are categorized as living on or near a reservation. On the other hand, California has 70 small reserves, but only 1,307 of California's 35,000 Indians are "near", despite the fact that the degree of proximity is much greater for some of California's off-reservation Indians than it is for some of Alaska's "near" Indians.[32] There are no longer any reservations in Oklahoma though fictional boundaries apparently still exist because the BIA has no trouble identifying 76,000 Indians who qualify as reservation residents and 5,000 who are "near".[33]

In addition, though urban Indians are theoretically not entitled to services, it is difficult to determine what an urban area is. Some BIA service areas include major cities like Phoenix, Albuquerque, Tucson, Seattle, Portland and a few cities in Oklahoma.[34] A town of 2,500 with a large Indian population is likely to be classified as "near" though technically it is an urban area.[35]

Regarding the categorization of race, which is necessary to determine eligibility for some programs, it appears that, for the purposes of the census reports, a person is an Indian who says that he is at least one-quarter Indian.[36] In light of the difficulties of population shifts and racial determination, it is inevitable that the BIA make some decisions as to the jurisdictional scope of BIA service programs on an arbitrary basis.

With regard to general assistance benefits, the BIA does not follow its general policy to include groups such as "near" reservation dwellers, Alaskan natives not living on reservations, and former Oklahoman reservation dwellers within its service area. The

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28 1960 Census, Vol. I, pt. 1, at 1-144 (1963), Indians not including Eskimos and Aleuts, 524,000. 1960 Census, Vol. II Series PC (2)-1G, at 252, Eskimos and Aleuts, 28,000.

29 Hearings on H.R. 10802 Before the Senate Comm. on Appropriations, 87th Cong., 2d Sess. 83 (1963) (1960 census figures). There were 360,000 reservation Indians. The total of reservation Indians included residents of Indian agencies of 2,500 or more, Eskimos and Aleuts in Alaska which was then a state, and those Indians of Oklahoma who lived on or near reservations before they were dissolved. Subtracting 57,000 Indians who lived on the former reservations from the 360,000 figure yields a total of 303,000 reservation Indians.

30 1970 Census, Final Reports PC (1) - B2-PC (1)-B52, Table 17 (1972); U.S. Department of the Interior, Bureau of Indian Affairs, Statistics Division, Preliminary 1970 Census Counts of American Indians and Alaska Natives (March 1971). The figure for reservation Indians is taken from the analysis by Sclar, Participation by Off-Reservation Indians in Programs of the Bureau of Indian Affairs and the Indian Health Service, 33 Mont. L. Rev. 191, 192 (1972).

31 Sclar, supra note 30, at 194-5 nn. 7, 8, 9.

32 Id. at 197-8.

33 Id. at 197.

34 Sclar, supra note 30, at 191.

35 Senate Hearings on H.R. 9417 at 754.

36 Sclar supra note 30, at 191 n.1.

Bureau policy toward general assistance is clearly articulated in the BIA Manual which restricts such benefits to reservation Indians.[37] The Bureau's decision to restrict general assistance is nowhere officially explained, but it may be based on an attempt to adjust the BIA welfare system to the state system which ordinarily preempts it.

VI. THE RELATIONSHIP BETWEEN BIA AND STATE WELFARE BEFORE *RUIZ*

Pursuant to the Social Security Act, each state develops its own plan for welfare which entitles it to federal funds.[38] All Indians who live in a state and who are eligible according to state requirements must receive welfare from the state irrespective of where they reside within the state.[39] Over and above the generally negative attitude toward welfare which is found in most state governments,[40] some of the eligibility rules promulgated by Arizona's legislature have the effect of handicapping Indians particularly. For example, the recipient of welfare in Arizona must be "unemployable", which means mentally or physically incapacitated.[41]

A look at the real life situation of most of Arizona's Indians reveals how unreasonable such a requirement is when applied to the Indian. The vast desert expanse of Indian lands is virtually without employment opportunity except for the few jobs offered by some coal mines and power plants. Most Indian families who have been denied welfare because they are mentally and physically able to work but cannot find jobs are unwilling to leave the reservation to find employment because they believe their land is their cultural lifeblood.

If reservation Indians demonstrate need according to state standards but are found ineligible for some nonincome related requirement, they can usually receive BIA general assistance as a substitute. However, an Indian cannot choose BIA assistance over state assistance.[42] Though the BIA expects applicants to seek employment, it does not require it and BIA qualifications are typically less stringent than those of the state.[43] Thus, the general disinclination of states to provide welfare is offset with respect to reservation Indians by the substitution of BIA general assistance. The policy of the BIA to provide a general assistance program for reservation Indians may be a recognition of the special difficulties which reservation Indians experience in obtaining state aid as well as a concern for the limited work opportunities on a reservation.

The combination of the states' negative attitude toward welfare and their discriminatory practices with respect to Indians is more serious when it occurs off the reservation. Until *Ruiz*, the Indians who left the reservation relinquished their right to the added protection of BIA general assistance. They were still entitled to state

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37 66 BIA Man. 3.1.4 (A).

38 42 U.S.C. §§ 30-1394 (1964), as amended (Supp. I, 1965).

39 U.S. Department of the Interior, Federal Indian Law 523 (1958).

40 State plans, their implementation and the actual functioning of state welfare departments have led observers to conclude that state governments have a generally negative attitude toward welfare. Professor Graham, in his study of the welfare administration in two counties, Newark and Nassau, documented this attitude: "[I]n addition to policies adversely affecting the underlying 'self-support' objective of public assistance ... the study uncovered a significant number of reprehensible policies and practices ostensibly justified by social work considerations." These include negative, abusive attitudes of caseworkers, restrictive rules which promote welfare economy at the expense of humane considerations and disregard of procedural due process. Graham, Civil Liberties Problems in Welfare Administration, 43 N.Y.U.L. Rev. 836, 841, 843, 853 (1968).

41 Ariz. Rev. Stat. Ann. 46-233 (3) (Supp. 1972).

42 66 BIA Man. 3.1.4 (B) (1965).

43 Wolf, supra note 17, at 608.

welfare, if eligible; but since many state administrators apparently retain the belief that Indians are wards of the federal Indian bureau, irrespective of residence, they often deny welfare services to nonreservation Indians. Ernest L. Stevens, a BIA official, testifying before the House Appropriations Committee, presented the problem:

> Recently there was an organization that was doing a study in New York City and they found that an ordinary person, a new arrival to the city, had very little [sic] problems in applying for welfare, but the first time an Indian came in they thought that he ought to go to the BIA or to an Indian Center – one which wasn't able to fund him, the other which didn't have the funds with which to assist him.[44]

Thus, an Indian who leaves the reservation may find himself in an anomalous position. He is denied BIA welfare because he is no longer eligible, and he is denied state welfare because he is considered a ward of the BIA.

VII. THE EFFECT OF RUIZ ON INDIAN WELFARE

In theory, *Ruiz* reverses present BIA policy to disclaim any responsibility for Indians not living on reservations, at least with respect to welfare. Now, any Indian who is denied state assistance but who is still eligible according to BIA regulations must receive welfare irrespective of residence. The decision provides all Indians with the security of a dual welfare structure, heretofore enjoyed only by reservation Indians.

Realistically, however, the effect of *Ruiz* may not be to eliminate problems inherent in the relationship between state and BIA general assistance programs, but rather to exacerbate them. In the past, states have often used the existence of a BIA welfare system as an excuse to avoid providing assistance to nonreservation Indians,[45] even though the BIA benefits were limited to reservation Indians. Extending BIA coverage to nonreservation Indians who are not otherwise eligible for state aid will probably decrease the states' feeling of responsibility for Indians still further. Not only are states reluctant to give aid to Indians, but now they are assured that the BIA is standing by in case they do not. Where the state would previously have been wrong to assume that all Indians were wards of the government, the *Ruiz* decision lends an aura of reality to the illusion of BIA protection.

VIII. ALTERNATIVES

The possibility exists that the extension of BIA welfare mandated by *Ruiz* will make the interaction of the BIA system and the state system even more muddled than it is now. Since the post-*Ruiz* extension will do nothing to alleviate discrimination against Indians by state welfare administrators, a better solution may be to dispense with the state system altogether as it applies to Indians and create an all-BIA welfare system.

There is no evidence of recalcitrance on the part of the BIA to aid eligible Indians.[46] On the contrary, unlike the states, an agency which is established

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[44] Hearings on H.R. 9417, Before the House Comm. on Appropriations, 92d Cong., 1st Sess. 1144 (1971) [hereinafter House Hearings on H.R. 9417].

[45] See text accompanying note 44, supra.

[46] Wolf, supra note 17, at 609.

specifically for the benefit of Indians has nothing to lose financially by dispensing welfare benefits to all eligible Indians provided that such a task is seen as part of its function. Certainly, the BIA could not discriminate against Indians, since it deals with no one else.

Because it services so few people relative to the states, and because it is a centralized agency, the BIA welfare program is more efficient with respect to Indians than state programs.[47] State systems are complicated by funding provisions and by number and type of programs, but the BIA can promulgate one plan for all Indians funded directly by the BIA appropriation bill. Moreover, BIA rules are simpler and better tailored to Indian needs and lifestyles. Bureau welfare workers are better qualified professionally and the caseloads are lighter. In addition, many are Indians themselves.[48] As for the states, they can certainly benefit from a decreased caseload.[49] Therefore, in terms of providing the greatest service to Indians, perhaps the *Ruiz* decision can best be implemented by placing welfare services exclusively in the hands of the agency most likely to provide them fairly and efficiently.

The opposite solution would be to turn over all welfare programs to the state with appropriate federal subsidy for Indians and to eliminate the separate BIA program completely.[50] This alternative circumvents the problems involved in establishing the nationwide BIA welfare system which would be necessary under both the first alternative and the post-*Ruiz* extension of BIA welfare. Like the all-BIA welfare system described above, the all-state system also eliminates the uneasy relationship which exists at present between BIA and state welfare. This relationship is characterized by the attempt of many state departments of welfare to shirk their responsibility to Indians by shifting the entire Indian welfare burden to the BIA. Under a Johnson-O'Malley type of program, the state would have no one to whom it could shift responsibility, and it would be less inclined to discriminate because money especially earmarked for Indians would come directly from the federal government. Therefore, whatever financial reluctance the states might harbor toward welfare grants generally and toward Indian grants specifically, would no longer be a significant factor.

Furthermore, such a program would include some federal supervision over state grants to Indians where there was none before. Federal money designated for Indians would be appropriated according to the number of Indians served and would have to be expended in grants to Indians. Attached to such federal funds would be regulations which recipient states must follow. It would be possible for the federal government to insist on a special section in each state's plan for welfare grants to Indians which could include, within the general rules, exceptions and additions designed to fit the needs of Indians. The system would be economical for both the state and the BIA. The state would receive special funds for Indians, thus alleviating its financial burden, and the BIA would be relieved of the need to maintain separate welfare offices and caseworkers.[51]

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47 Id. at 612.

48 Id. at 612-13. This is not to say that the BIA program should not be reorganized and improved. For example, there is no fair hearing requirement prior to termination of benefits and, in general, payments are less than those of the states'.

49 Id. at 613. Professor Graham found "excessive caseloads, . . . lack of social work training, . . . widespread ignorance of basic policies, and . . . 'hard' attitudes toward clients" in state welfare offices. Furthermore, "[h]eavy caseloads and poor supervision of untrained, underpaid caseworkers is the rule in state welfare departments, meaning a greater likelihood of mistakes." Graham, supra note 40, at 841.

50 This alternative would be similar to the Johnson-O'Malley solution to education. H.R. Rep. No. 864, supra note 25.

51 This solution seems plausible for the same reason that the Johnson-O'Malley Act was implemented. Whenever the Indian population mixes with the white population so that services overlap, it conserves resources to consolidate Indian and state services into one system.

IX. ADJUSTMENTS AFTER *RUIZ*

At present, it is unlikely that either the BIA or the state will take over the entire Indian welfare program. If the present division of labor is maintained between the state and the BIA, there is need for clarification and adjustments. First, an effort must be made to define the responsibilities of the BIA and the states with respect to welfare. It must be made clear to the states that BIA welfare is only a back-up measure which in no way shifts responsibility for Indians away from the state. Despite such clarification, it seems likely that states will feel less obligated to Indians knowing that they will be protected in any event.

Second, a solution must be found for the more practical problem created by the extension of BIA services to off-reservation Indians – the lack of BIA welfare offices and caseworkers off the reservation. Recipients of BIA assistance may increase in number as the states try to shift some burden to the Bureau and as more people who are truly ineligible for state aid take advantage of welfare provided by the BIA. It will be extremely difficult to provide adequate service to small groups of Indians scattered around the country.[52] Maintaining offices in convenient locations to service all these small groups would be an expensive waste of resources. On the other hand, however, a policy to give welfare to those in need is not well served by asking poor people, sometimes unable to transport themselves, to travel long distances for their aid.

One question which remains unanswered is whether the monies designated for BIA welfare will be increased to meet the expansion of the program or whether the same amount must be spread thinner to provide care for more people. Accordingly, the potentially expensive task of providing grants to all Indians throughout the United States awaits resolution.[53]

X. THE EFFECT OF *RUIZ* ON OTHER BIA PROGRAMS

There are some BIA programs which are specifically restricted to lands held by Indians[54] and there are others which are specifically intended for Indians everywhere.[55] In addition, there are BIA programs, other than welfare, which do not specifically relate to the reservation as land but which have been treated as pertaining only to Indians who live on the reservation. An example of this last type is the relocation program designed to help reservation Indians move to urban centers.[56] Though these Indians live in cities, they are considered technically reservation Indians until the relocation period is complete.[57]

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[52] Judge Merrill observed in dissent that

> [U]nlike other types of Bureau Assistance, ongoing, general assistance if extended off-reservation would require extensive and continuous participation of Bureau field workers serving individual Indians everywhere.

462 F.2d at 825 n.2.

[53] The dearth of funds is chronically acute. In Fiscal Year 1969, the Papago Agency asked for $692,391 and received only $151,000. Of this amount, only $80,000 was earmarked for general assistance. Wolf, supra note 17, at 613.

[54] E.g., 25 U.S.C. § 381 (1970) (irrigation of allotted land).

[55] 25 U.S.C. §§ 452-54; 25 U.S.C. § 470; 25 U.S.C. §§ 2002-04 (1970); see note 11 supra.

[56] The program includes property management services, employment assistance, subsistence allowances, household money, legal services and location of housing, all for a period of 3-5 years. The relevant features of this program are, first, that it concerns Indians themselves, not their land, and second, that before *Ruiz*, only reservation Indians were eligible for the special services provided in urban centers. Sclar, supra note 30, at 200.

[57] Senate Hearings on H.R. 9417, at 758.

Understandably, there has been considerable outcry about the discrimination against urban Indians who move to cities voluntarily. A director of one urban Indian center has written:

> Indians who are not members of an Indian Bureau sponsored program cannot get any assistance at all in cities. It may be that Indians should be eligible only for state and federal aid off the reservation, but what of other special programs which some Indians get or which none in cities get, but need?[58]

In response, the government claims that BIA money is technically granted only to reservation Indians who agree to move, that there are an abundance of OEO, HEW, Labor, and state government programs and that "we do not have the authority to assist Indian people in urban areas who did not utilize the services of the Employment Assistance Program in relocating from the reservation."[59]

There are similarities between the urban relocation problem and the general assistance problem. The difficulties which face an Indian seeking welfare parallel those of an urban Indian seeking aid. In each case, the state and federal governments appear willing to rid themselves of responsibility for Indians. In the cities, OEO, HUD and HEW administrators have often been reluctant to help Indians who, they feel, can find help at the Bureau of Indian Affairs. In his testimony before the House, Leon F. Cook, a BIA official, was asked whether he felt that some of the programs available to all Americans were discriminating against Indians. He replied that he thought that such programs had been remiss and negligent in their responsibilities to Indians.[60] Ernest L. Stevens, another BIA official, offered comparable testimony:

> In my former position as director of the Intertribal Council in California ... one of the things which took place is the fact that a very serious misunderstanding about the eligibility of the Indians who lived in the urban areas have caused us a lot of discomfort. It is also the fact that many other agencies, city and state and even federal agencies, have by inference said that we [the BIA] are responsible for services to these people.... I have accused other Federal agencies of deliberately using the BIA as a smokescreen to get out of responsibility they have to our people who live in cities.[61]

If Indians have exercised their freedom to leave the reserves without participation in the BIA relocation program, the refusal of public agencies to help them as state citizens rather than as Indians leaves them in much the same position as that of Indians who leave the reservation and who are shuffled out of the state welfare office because of their race. If anything, the case for the urban Indians is stronger than for Ramon Ruiz because it inspires a greater objection on the basis of equal protection. The discrimination in *Ruiz* is between Indians who live *on* the reservation and those who live *off* it. In the case of urban relocation, both the Indian who is a participant in the urban relocation program and the Indian who moves on his own without BIA incentives actually live *off* the reservation. Only because the former is technically a reservation resident is he afforded special services. In actuality, their residences are identical.

Employing the rationale of *Ruiz*, the Employment Assistance Program as well as any other program which does not relate to trust land and is not restricted to reservations by statute cannot be limited on the basis of residence. The BIA is no

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58 Letter from Matthew Pilcher, Director, St. Augustine Center for American Indians, Chicago, Illinois, January 14, 1971 to Philip Acker, Chief of the Division of Employment Assistance, Bureau of Indian Affairs, House Hearings on H.R. 9417 at 1140.

59 Senate Hearings on H.R. 9417 at 752.

60 House Hearings on H.R. 9417 at 1294.

61 Senate Hearings on H.R. 9417 at 758.

longer required to spend its money on or near the reservation; rather, it is obliged to extend to all Indians those services not specifically restricted by Congress to reservations.

XI. CONCLUSION

The Ninth Circuit could have decided Ruiz v. Morton with a pure equal protection analysis. The absence of any reasonable distinction between Indians who live on the reservation and those who live near it is marked by the BIA's general policy to extend services to Indians who live near,[62] by the present overlapping of state and BIA welfare services on the reservation[63] and by the fact that fifteen miles and an arbitrary boundary subject to change are the only things which distinguish Mr. Ruiz from other Papagos.

The Ninth Circuit based its decision on the apparent inconsistency of the Bureau's policy to restrict general assistance to reservation Indians with the language of the Snyder Act which authorizes appropriation of money for Indians "throughout the United States." Arguing against the court's reasoning is the view that the Snyder Act was meant as a blanket appropriations bill to provide statutory authority for BIA programs already in existence. The breadth of the statute and congressional knowledge of BIA policies arguably gives the Bureau free rein to develop regulations so long as they are reasonable.

Whatever its merit as a logical and cohesive opinion, *Ruiz* has served at least one important function. It will force courts, legislators and administrators to examine the total welfare structure in the states and in the BIA as it relates to Indians. Perhaps the problems inherent in implementing the *Ruiz* decision[64] will spur a total reorganization of the present system into one completely controlled by the state or by the BIA. In any event, it is clear that *Ruiz* heralds the breakdown of a system which expressed a desire to give equal opportunities to Indians but which, in fact, keeps them bound to reservations because they fear loss of welfare benefits. Further, the former system penalized them for failing in their search for jobs elsewhere. Mr. Ruiz's only alternative was to return to the reservation. Why should an Indian who has chosen to leave the protection of trust lands be treated differently from other residents of Arizona and be allowed to invoke BIA benefits which he has chosen to forego? The Ninth Circuit's answer to this question is that federal concern for the welfare of the Indian people extends to all Indians. The American people and government have a duty to those who, by virtue of race and lack of education and skills, are disadvantaged economically. That responsibility has no arbitrary boundaries.

ROXANNE BAILIN

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> We are a modern service bureau, serving as many as 400,000 Indians and Alaska Natives who live on *or near* reservations—people who find themselves isolated from the mainstream of American life—existing in poverty.

Hearings on H.R. 17254, U.S. Cond Cong. & Admin. News, 90th Cong., 2d Sess., pt. 1, at 368 (1968) (emphasis added).

63 If state jurisdiction for welfare extended up to the borders of the reservation and if the BIA were responsible for everyone inside those borders, it would be reasonable for the BIA to argue that its regulations prevent overlapping of jurisdictions.

64 E.g., money and division of responsibility.