

1-6-2014

Forrest Gerard's Legacy is Self-Determination for Tribes

Kevin Washburn

University of New Mexico - School of Law

Follow this and additional works at: https://digitalrepository.unm.edu/law_facultyscholarship



Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

Kevin Washburn, *Forrest Gerard's Legacy is Self-Determination for Tribes*, *Albuquerque Journal* (2014).
Available at: https://digitalrepository.unm.edu/law_facultyscholarship/585

This Article is brought to you for free and open access by the UNM School of Law at UNM Digital Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of UNM Digital Repository. For more information, please contact amywinter@unm.edu, lsloane@salud.unm.edu, sarahrk@unm.edu.



SMALL SCHOOL.
BIG VALUE.

<https://www.abqjournal.com/331527/forrest-gerards-legacy-is-selfdetermination-for-tribes.html>

Forrest Gerard's legacy is self-determination for tribes

By Kevin Washburn

**Albuquerque Journal
January 6, 2014**

The passing of Albuquerque resident and former Assistant Secretary of Indian Affairs, Forrest J. Gerard, on Dec. 28 provides an opportunity to take stock of the important federal Indian policies he championed and his contributions to Native Americans across the country deserve to be celebrated.

Gerard was born on the Blackfeet Reservation in Browning, Montana, flew on bombing missions in Europe in World War II, and served in the Bureau of Indian Affairs and the Indian Health Service. His military and public service was important, but his most important legacy is the Indian self-determination policies he drafted as a Congressional staffer and, later, implemented as Interior's first Assistant Secretary for Indian Affairs.

The federal government has a special government-to-government relationship, called the "trust responsibility," with Indian tribes. This relationship stems from federal laws and treaties, as well as history. Willingly, and too often unwillingly, tribal nations gave up all or parts of their lands and resources, relocated to less desirable lands and made other concessions in exchange for promises from the federal government to provide for Indian people.

As every child learns in school, these treaty promises frequently went unfulfilled and the federal government's performance sometimes fell short. In the mid-twentieth century, Congress considered terminating the special relationship to tribes and, for a few tribes, actually succeeded. The goal was to force assimilation into mainstream American culture and put an end to the federal government's continuing obligations.

The termination policy had a catastrophic effect on tribes, leading to the loss of countless acres of land from tribal hands, crises for tribal economies, and negative health and education outcomes for Indian people who had relied on federally provided health care and education.

Forrest Gerard joined the staff of the Senate Interior and Insular Affairs Committee in 1971 at a time when the failures of the termination policy were becoming obvious. Although his boss, Senator Henry 'Scoop' Jackson, had been an advocate for termination, Jackson allowed Gerard to spearhead the transition to a new policy.

With Gerard's behind-the-scenes leadership, Jackson helped to restore Blue Lake to Taos Pueblo. He also introduced a resolution disavowing termination policy and later succeeded in passing the Indian Self-Determination and Education Assistance Act of 1975.

The genius behind the Indian self-determination law was that it allowed tribes who are unhappy with the provision of promised federal services to obtain federal funding to provide those services themselves.

In other words, instead of obtaining BIA or IHS employees, tribes obtained federal contracts, producing a fundamental transformation of federal services to Indian people.

This new approach has succeeded for two reasons.

First, it emphasizes accountability. Rather than federal officials, who are protected by civil services laws and are accountable only to officials in Washington, it is now tribal leaders who have the power - and responsibility - to provide governmental services to Indian people. If the tribal leader fails, tribal citizens can vote him or her out of office in the next election.

Second, it has increased tribal governmental capacities. Tribes are now run by professionals who can make tribal government work in a culturally appropriate way. Tribal governments can often provide federal services more efficiently and more cheaply than the federal government can, bringing more services to Indian people out of the same level of appropriations.

Gerard provided much of the genius needed to make all of this happen, both on Capitol Hill and at the BIA. As a staffer, Gerard shepherded the law through Congress. When Congress elevated the position of Commissioner of the BIA to Assistant Secretary at the Department of the Interior, President Jimmy Carter chose Gerard as the first person to hold this office.

At Interior, we continue to work through implementation of the self-determination program. Indeed, it has required a fundamental change in the role and identity of the BIA.

But it is hands down the most successful federal Indian policy in American history. The late Forrest Gerard deserves much of the credit.

Copyright © 2018, Albuquerque Journal