



1 for Certiorari to the Court of Claims currently on file with  
2 respect to opinions in the case of Jessie Short v. United States  
3 found at 486 F.2d 561 (1973) and at 661 F.2d 150 (1981). Addi-  
4 tional briefing, to be submitted according to the schedule set  
5 at the close of this Order and Opinion, will be required follow-  
6 ing disposition of the Petitions for Certiorari.

7 One additional matter, not raised at the February 22  
8 hearing but long under submission to the Court, is the motion by  
9 the defendants to strike plaintiffs' status conference statement  
10 of October, 1980. Though the plaintiffs' statement is inappro-  
11 priate in that it addresses the merits of plaintiffs' claims, the  
12 Court can and will ignore those aspects of the status conference  
13 statement that are improper. There is no need to strike the state-  
14 ment from the record, though the filing of similarly inappropriate  
15 status conference statements in the future will result in the im-  
16 position of appropriate sanctions. Accordingly,

17 IT IS HEREBY FURTHER ORDERED that defendants' motion to  
18 strike plaintiffs' status conference statement is denied.

19 DISCUSSION

20 The complaint filed by the plaintiffs in this action  
21 raises questions concerning the structure of government on the  
22 Hoopa Valley Reservation of Northern California. The plaintiffs  
23 allege that the Reservation is one for Indians, not for tribes  
24 of Indians. Plaintiffs therefore seek an injunction prohibiting  
25 the administration of the Reservation on a tribal basis.

26 Defendants' motions to dismiss or for summary judgment.

27 The major premise underlying these motions is that the  
28 recognition of tribes for purposes of federal relations is a non-  
29 justiciable political question. Defendants contend that, in order  
30 to prevail, the plaintiffs must prove that the Hoopa Valley Tribe  
31 is not a sovereign Indian tribe and that such determinations of  
32 tribal status are outside the judicial realm.

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At least as reflected in their complaint, the claim raised by the plaintiffs does not require revocation of the sovereignty of the Hoopa Valley Tribe. Rather, the claim requires a determination of whether, under the Statute of 1864 and the 1891 Executive Order establishing the Reservation at its current boundaries, the federal government had any authority to recognize the Hoopa Valley Tribe for purposes of administering the Hoopa Valley Reservation. Properly viewed, the complaint thus presents questions of statutory interpretation that the courts are uniquely qualified to answer.

This does not mean that the plaintiffs' claim could never give rise to a non-justiciable political question. The question for decision posed by the complaint is whether the Congress intended to create a Reservation for individual Indians or for tribes of Indians. If, based on the evidence and applicable legal principles, a tribal reservation is found to have been intended, the case would end because, as the defendants point out, questions of the status of particular tribes are political questions that the courts ought not undertake to resolve. Baker v. Carr, 369 U.S. 186, 215-217 (1962). On the other hand, if the evidence establishes that the Hoopa Valley Reservation was intended to be administered by and for individual Indians, the recognition of tribes for purposes of Reservation administration would appear to be an ultra vires act on the part of the federal government and one subject to judicial correction.

The argument that the plaintiffs here lack standing because Indian resources are tribally, not individually, owned suffers from the same analytical weakness as the defendants' politi-

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1 cal question argument. <sup>\*/</sup> Whether the Statute of 1864 protects  
2 tribal rights and interests rather than those of individual  
3 Indians is precisely the issue that will be resolved by this liti-  
4 gation. Similarly, contentions concerning the tribal nature of  
5 Reservation government raised in connection with defendants'  
6 motions to dismiss for failure to state a claim, Fed. R. Civ. P.  
7 12(b)(6), are questions of proof not resolvable on a motion to  
8 dismiss.

9 The defendants also seek dismissal under Fed. R. Civ. P.  
10 12(b)(6) of the plaintiffs' civil rights conspiracy claim made  
11 under 42 U.S.C. § 1985(3). Viewing this claim as an alternative  
12 theory of recovery for the plaintiffs, we have determined that  
13 defendants' contentions with respect to this claim must fail. So  
14 viewed, the § 1985(3) claim is made under the Statute of 1864 for  
15 the protection of the rights of all individual Indians of the Re-  
16 servation, rights allegedly protected by that Statute. If  
17 the plaintiffs establish that individual Indians are the people  
18 protected by the 1864 Statute, then the invidious classification  
19 requirement under 42 U.S.C. § 1985(3) would appear to be satis-  
20 fied. See DeSantis v. Pacific Telephone and Telegraph Co., Inc.,  
21 608 F.2d 327, 333 (9th Cir. 1979).

22 The members of the Hoopa Valley Business Council, govern-  
23 ing body of the Hoopa Valley Tribe, seek dismissal of the complaint  
24 on the additional ground that the Hoopa Valley Tribe, which has not  
25 been named as a defendant here, is an indispensable party that is  
26 immune from suit as a sovereign entity. These defendants contend  
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28 <sup>\*/</sup> Without deciding its implications for this case, we note  
29 that the Court of Claims appears to have rejected a similar con-  
30 tention made by the defendants with respect to timber revenues  
31 in Jessie Short v. United States, 661 F.2d 150, 154 (see first  
32 two paragraphs at part II., C. of the opinion rejecting a motion  
to substitute the Yurok Tribe as plaintiff.

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1 that the Tribe's sovereign immunity cannot be avoided by suing  
2 individual tribal members. The contention is without merit.

3 As a threshold matter, we reiterate that the very issue  
4 to be determined here is whether the Hoopa Valley Tribe can be  
5 legitimately deemed to be sovereign for purposes of administra-  
6 tion of the Hoopa Valley Reservation. The position taken by the  
7 members of the Hoopa Valley Business Council that the Tribe is an  
8 indispensable party not subject to jurisdiction and therefore the  
9 case must be dismissed is tantamount to the contention that the  
10 issue raised by the plaintiffs cannot be litigated under any cir-  
11 cumstances. In light of the foregoing discussion of the politi-  
12 cal question argument, this contention by the Business Council  
13 defendants necessarily fails.

14 In any event, it appears to be the law that even where  
15 the Tribe is immune from suit, its officials are not. Santa Clara  
16 Pueblo v. Martinez, 436 U.S. 32, 59 (1978).

17 Plaintiffs' motion to add new defendants.

18 Plaintiffs seek to add as defendants to the complaint  
19 members of the Hoopa Valley Business Council who have been elected  
20 to the Council since the complaint was filed. In light of the  
21 disposition of the indispensable party argument, it is clear that  
22 plaintiffs' motion to add new defendants should be granted.

23 Plaintiffs' motion for summary judgment and defendants'  
24 motion for stay.

25 The plaintiffs rely entirely on the Court of Claims  
26 decisions in Jessie Short in making their summary judgment motion,  
27 contending that the Jessie Short case establishes four "indis-  
28 putable facts." The federal defendants, unopposed by the Business  
29 Council defendants, ask that decision on the summary judgment  
30 motion be postponed until the Supreme Court has resolved Petitions  
31 for Certiorari now pending in connection with Jessie Short.

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1 We note that, in particular, the Petition for Certiorari  
2 filed by the Hoopa Valley Tribe in Jessie Short raises issues  
3 relevant to the administration of the Hoopa Valley Reservation and  
4 thus to the issues presented here. The importance of the issues  
5 raised by the plaintiffs' summary judgment motion is such that a  
6 decision that later might be undermined by resolution of the pend-  
7 ing Petitions for Certiorari in Jessie Short would at best be ill-  
8 advised, at least where, as here, some of the issues raised by the  
9 petitioning parties are directly relevant to the instant action.

10 A stay of decision on the plaintiffs' summary judgment  
11 motion appears particularly appropriate in light of problems we  
12 perceive with respect to the plaintiffs' reliance on Jessie Short.  
13 Without deciding the summary judgment motion, we make the follow-  
14 ing observations with the expectation that the concerns reflected  
15 will be addressed by the parties in the additional briefing to be  
16 submitted once the stay hereby imposed is lifted.

17 First, the jurisdiction of the Court of Claims is limit-  
18 ed to the granting of money judgments, with equitable powers con-  
19 fined to those incident to this limited general jurisdiction. 17  
20 Wright and Miller, Federal Practice and Procedure § 4101. To the  
21 extent that the "indisputable facts" contended for by the plain-  
22 tiffs concern political rights, the Court of Claims would thus ap-  
23 pear to be powerless to find them, except to the extent that those  
24 facts are necessary to grant money damages.

25 A second point follows from the observation made above.  
26 Even if the Court of Claims made the findings asserted by the  
27 plaintiffs to have been made, it would seem that such findings  
28 would be limited to their relationship to what is at issue in  
29 Jessie Short. Without irrevocably characterizing the decisions  
30 in Jessie Short, we note that it appears that the issue there  
31 presented for decision concerns the distribution of shares of in-  
32 come from unallotted timber resources of the Reservation. It

1 would thus appear that, for example, the second "indisputable  
2 fact" alleged by the plaintiffs, i.e., that there are no such  
3 things as tribes with vested rights on the Hoopa Valley Reserva-  
4 tion, would be limited to a determination that there are no tribes  
5 with vested rights to the income from unallotted trust-status  
6 timber resources. What this Court would then be required to deter-  
7 mine is the relevance of the limited Court of Claims findings to  
8 the case here.

9 Third, assuming that findings limited to the jurisdic-  
10 tion of the Court of Claims were in fact made and are relevant in  
11 this case, it is unclear which of those findings was necessary to  
12 the decision in Jessie Short so as to operate as collateral estop-  
13 pel here. Segal v. American Telephone & Telegraph Co., Inc., 606  
14 F.2d 842, 845 (9th Cir. 1979).<sup>\*\*/</sup>

15 The three concerns outlined above should be addressed  
16 by the parties in their additional briefing to be submitted fol-  
17 lowing resolution of the Petitions for Certiorari currently pend-  
18 ing in Jessie Short. Accordingly,

19 IT IS HEREBY FURTHER ORDERED that following resolution  
20 of the Petitions for Certiorari filed in January, 1982, further  
21 briefs directed to the implications of the Jessie Short case for  
22 the plaintiffs' summary judgment motion shall be filed by each  
23 party. The briefs shall be filed by all parties at the same time  
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25 <sup>\*\*/</sup>We note the Business Council defendants argument that col-  
26 lateral estoppel is inapplicable here in any event because there  
27 is no final decision in the Jessie Short case. The argument is  
28 without merit here. Not only has the Court of Claims treated the  
29 1973 decision as final, see Hoopa Valley Tribe v. United States,  
30 596 F.2d 435 (1979), but the defendants in Jessie Short had and  
31 exercised ample opportunities for review of the trial judge's  
32 decision on the liability issue in that case. The Court of Claims  
adopted the trial judge's decision, 486 F.2d 561 (1973). Certio-  
rari was sought and denied, 416 U.S. 961 (1974); and a rehearing  
on the denial of certiorari was sought and denied, 417 U.S. 959  
(1974). It would thus appear that the rationale behind the final-  
ity requirement has been satisfied. See 18 Wright and Miller,  
Federal Practice and Procedure § 4434.

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and without opportunity for opposition briefing, and shall address the following questions:

- (a) which of the issues actually decided in the Jessie Short case are relevant to or controlling in this case, and
- (b) of such issues, which were necessarily decided in Jessie Short.

Defendants shall, by written declaration attaching a copy of the Supreme Court's decision and served on the plaintiffs, promptly inform this Court of any and all developments with respect to the Supreme Court's consideration of the Petitions for Certiorari. The additional briefing hereby required shall be filed within three weeks of service of a copy of the Supreme Court's final decision on the Petitions for Certiorari. No further oral argument will be required, and the plaintiffs' motion for summary judgment shall thereafter be deemed submitted.

DATED: February 26, 1982   
THELTON E. HENDERSON  
UNITED STATES DISTRICT JUDGE