

The Legality of Tribal Disenrollments: Greed or Growing Pains?

By Erick J. Rhoan¹

¹ Erick Rhoan is currently a juris doctor candidate at San Joaquin College of Law.

Table of Contents

Introduction to Articles	3
Part One (Original Publication: July 24, 2008)	5
Introduction	5
A Brief History of Tribal Sovereign Immunity	7
Part Two (Original Publication Date: August 9, 2008)	10
Previously...	10
Santa Clara Pueblo v. Martinez	10
Part Three (Original Publication Date: January 6, 2009)	14
Previously	14
The Indian Civil Rights Act & California State Courts	15
ICRA Habeas Corpus Remedy & Federal Courts	17
Part Four (Original Publication Date: April 5, 2009)	20
Previously...	20
Brief History Behind Public Law 280	20
PL-280 and California State Courts	21
Beating a Dead Horse	22
Conclusion (Original Publication Date: June 2, 2009)	24
Bias & Background	24
Greed or Growing Pains?	26
TABLE OF AUTHORITIES	31

Introduction to Articles

What you are about to read is a series of [blog articles](#) that I published between July 24, 2008 and June 2, 2009 on the subject of tribal disenrollments. As you will read, tribal disenrollments are the intentional removal of Indians from the membership lists of their tribal nation. The disenrolled are still Indians ethnically speaking, but no longer Indians in a legal sense because disenrollment usually means they are no longer federally recognized. This topic is highly controversial and fraught with debate over its merits and burdens.

My purpose for writing these articles was to satisfy a curiosity. Just how could Indians treat other Indians like this? Over the course of a year I realized what the answer was, and many others – usually the disenrolled – have left comments on my blog articles helping me understand the human cost of tribal disenrollments.

I am now putting these articles together into one coherent document like I said I would months ago. My apologies for the delay, it seems like I'm always apologizing for delays in publications, but law school, work and law review have me under lock and key. I happened to get some reading done early and remembered that I needed to do this, so I better hurry up! What you are now reading is the product of roughly a year's worth of research and writing on this subject. It is by no means complete or as thorough as I would like but then again, these are blog articles, not law review articles. Even then I thought I was pushing the envelope on just how long these things should have been, but I think everything went okay. Judging from the comments and site visits I was getting, the topic was selling itself quite well.

One thing I would like to point out is that these articles were not, nor shall they ever be a condemnation of Indian gaming. Without straying too far into another topic I want to point out that Indian gaming is one of the most beneficial ideas that Indians have conceived, and judging by the profits that once-impooverished tribes have gained for themselves, the idea was an excellent one. However, Indian gaming goes hand in hand with disenrollments because it is simply easier to collect more gaming revenue if there are less people in the tribe to split the profits with. But do not let this mislead you from the real source of the disenrolled's troubles – human greed is the source of tribal disenrollments, not Indian gaming. If Indians adhered to the kindness they showed one another while suffering persecution from white settlers, hunters and

politicians throughout the 19th and 20th centuries, then tribal disenrollments should not be an issue.

So, here are the articles, sorted according to publication date. If you have any questions then drop me a line.

ERICK RHOAN

Part One (Original Publication: July 24, 2008)

Introduction

What is disenrollment? Disenrollment is the end result of a tribal proceeding whereby a particular federally recognized Indian tribe strips an individual tribal member of their status as a Native American with eradication of all rights and privileges that he or she may have previously enjoyed as a member. In effect, the disenrolled is no longer a Native American. That in itself is shocking to say the least because most people, even I, have always been led to believe that one's lineage is unalterable. When you fill out forms or applications you will sometimes see an optional section of the form dealing with race or ethnicity; one bubble or checkbox will usually say "Native American," or "American Indian." If you are a disenrolled tribal member you can technically no longer check this box. No person living inside the United States has to worry about such a thing happening to them except Native Americans.

There's more to being a disenrolled Indian than just loss of ethnic identity. Disenrolled Indians no longer have access to specially arranged healthcare that, under normal circumstances, they could not have afforded in the first place. Access to education is substantially impaired as there are many funding sources that are only available to federally recognized Indian students. In certain cases, the disenrolled are ejected from the tribal grounds and can never return.

The question I've asked myself numerous times in writing this article is to whether or not I should actually write it at all because of an unavoidable bias on my part. I am a federally recognized Native American from a non-gaming tribal nation. I have not been disenrolled and hopefully that day never comes, however I have heard through personal contacts the drama and disillusion that some disenrolled tribal members have faced when they received news that they were no longer Native Americans. Thus far it has been one of the most personal subjects that I have researched because of my heritage and because I have seen firsthand the nature of tribal politics. I have been in rooms where tribal council meetings were held; I have heard the name-calling, the belittling; I have been witness to the decision making process when it comes to important choices regarding Indian artifacts and land. And I've seen the shouting matches. The news stories and California court cases that I have discovered in researching this article have

given me a glimpse of the dark side of tribal sovereignty. And while I am aware of my bias I must also try to find the other side to what I'm about to say.

To see both sides of an argument is something that law school instills in a student, no matter how difficult it may be to procure one. Some call the disenrollments and the politics leading up to their execution a policy of greed. According to an April 20th, 2008 San Francisco Chronicle article, California Indian gaming tribes “are cashing in on the annual \$7.7 billion California Indian gambling boom, and some are throwing out many of their own members – all, critics say, so those remaining can pocket more cash. In many cases, that amounts to monthly allowances of up to \$30,000 per person.” A July 1st, 2004 Native American Law Report article describes an “epidemic” of disenrollment cases flooding California courtrooms due to the “explosion of the Indian casino industry, which has given rise to greater gaming dividends, and thus, they say, greater controversy over tribal membership rolls.”

On the other hand, according to the Chronicle article, tribal leaders of California Indian tribes “contend that the anger over cash and disenrollments is just a growing pain of an industry that has exploded eightfold from \$1 billion in 2000” to the powerhouse it is now. Also in the article, law professor Carole Goldberg, chair of the [UCLA Native Nations Law & Policy Center](#), said “some of the human drama is being amplified...the tribes concede their sovereign authority if they talk to the non-Indian world, so they don't say much, which just leaves opponents to do much of the talking.”

This article will cover the specter of tribal disenrollments in the State of California beginning with the tribal sovereignty immunity that protects tribes from lawsuits regarding not only disenrollments but any other suit. The focus will then shift to the definitive United States Supreme Court case regarding tribal membership, *Santa Clara Pueblo v. Martinez*, and how that has filtered down into court decisions in California with regards to the failed attack methods used by the disenrolled to combat their ouster. The article will then close with what the foreseeable future holds for tribal sovereign immunity and the disenrolled.

A Brief History of Tribal Sovereign Immunity

Tribal sovereign immunity (hereafter TSI) is an article in itself; however I will do my best with the subject. TSI was an accidental creation of the United States Supreme Court. In *Turner v. United States*, the Court ruled that Indian tribes were immune from lawsuits. In that case, members of the Creek Nation destroyed a fence that belonged to a company from which lost profits ensued; the company brought its bills to the tribal council for reimbursement to which they were denied, saying that the tribe was liable. The Court held:

No such liability existed by the general law. The Creek Nation was recognized by the United States as a distinct political community, with which it made treaties and which within its own territory administered its internal affairs. Like other governments, municipal as well as state, the Creek Nation was free from liability for injuries to persons or property due to mob violence or failure to keep the peace. (Turner v. United States (1919) 248 U.S. 354, 357 [39 S. Ct. 109; 63 L. Ed. 291].)

Turner was extended by the Supreme Court in *U.S. v. U.S. Fidelity & Guaranty Co.* to make tribes immune from suit as well as to allow tribes to be liable in suit only when granted by Congress:

...Indian Nations are exempt from suit without Congressional authorization. It is as though the immunity which was theirs as sovereigns passed to the United States for their benefit, as their tribal properties did. Possessing this immunity from direct suit, we are of the opinion it possesses a similar immunity from cross-suits... The desirability for complete settlement of all issues between parties must, we think, yield to the principle of immunity. The sovereignty possessing immunity should not be compelled to defend against cross-actions away from its own territory or in courts not of its own choice, merely because its debtor was unavailable except outside the jurisdiction of the sovereign's consent. This reasoning is particularly applicable to Indian Nations with their unusual governmental organization and peculiar problems. (U.S. v. U.S. Fidelity & Guaranty Co. (1940) 309 U.S. 506, 512 [60 S. Ct. 653; 84 L. Ed. 894].)

Lastly, in *Kiowa Tribe v. Manufacturing Tech., Inc.*, the Supreme Court held:

As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity. To date, our cases have sustained tribal immunity from suit without drawing a distinction based on where the tribal activities occurred. In one case, a state court had asserted jurisdiction over tribal fishing "both on and off its reservation." We held the Tribe's claim of immunity was "well founded," though we did not discuss the relevance of where the fishing had taken place. Nor have we yet drawn a distinction between governmental and commercial activities of a tribe. Though respondent asks us to confine immunity from suit to

transactions on reservations and to governmental activities, our precedents have not drawn these distinctions. (Kiowa Tribe v. Manufacturing Tech., Inc. (1998) 523 U.S. 751, 754 [118 S. Ct. 1700; 140 L. Ed. 2d 981].)

Thus, Indian tribes are immune from suit unless Congress says they are allowed to be sued. Another way for tribes to be eligible for suit is for Congress to pass a law of general applicability that applies to all citizens of the United States as well as Indian tribes unless certain exceptions are touched upon such as tribal intramural matters such as membership, or whether the law would abrogate tribal treaty rights with the United States, or if the legislative history of the federal law would specifically indicate that Indian tribes were not meant to be covered. Examples of such laws that apply to Indian tribes are the Occupational Safety and Health Act (OSHA), the Americans with Disabilities Act (ADA), and the National Labor Relations Act (NLRA). The third way TSI is waived is if tribes themselves waive it via gaming compacts negotiated with their state (though this waiver is very narrow and specific), arbitration clauses, or choice of law provisions within tribal contracts. Recently, the California Supreme Court ruled in *Agua Caliente Band of Cahuilla Indians v. Superior Court*, that states' rights trump TSI when off-reservation activities, in that case being un-regulated political contributions for California politicians' election campaigns, interfere with the US Constitution's Article IV, Section 4 guarantee that every state shall have a republican form of government and its relation to the 10th Amendment stating that "powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people." (*Agua Caliente v. Superior Court* (2006) 40 Cal.4th 239, 255 [52 Cal.Rptr.3d 659; 148 P.3d 1126].)

As far as disenrolled Indians are concerned, their suits brought into California courts fall on deaf ears because the disenrolling tribes are immune from suit. Consequently, courts lack the jurisdiction to hear the cases. Specifically, in *Alvarado v. Table Mountain Rancheria*, the Ninth Circuit held:

Sovereign immunity limits a federal court's subject matter jurisdiction over actions brought against a sovereign. Similarly, tribal immunity precludes subject matter jurisdiction in an action against an Indian tribe. Yet the absence of immunity does not establish the presence of subject matter jurisdiction. Rather, the cornerstone of federal subject matter jurisdiction is statutory authorization. (Alvarado v. Table Mountain Rancheria (9th Cir. 2007) 509 F.3d 1008, 1015.)

Federal courts are courts of limited jurisdiction and as such, subject matter jurisdiction is the power of the court to adjudicate a particular type of claim based only on federal questions or diversity. Because Indian Tribes are not citizens of any state but domestic, dependent sovereign nations they cannot be brought into federal court under diversity jurisdiction. This leaves federal question jurisdiction, whether a federal statute gives a private right of action for the grieved party, and as we shall see later, statutes dealing directly with Native Americans are completely useless. In the case law I will also describe, attempts to convince the courts that they have jurisdiction have met with failure despite legal maneuverings of the disenrolled plaintiffs.

As far as California state courts are concerned, efforts to grant courts jurisdiction over Indian tribes have met with failure as well due to the limitations of Public Law 280, as will be discussed later on.

On top of this, the Supreme Court has carved out a special niche decision regarding tribal membership that has been used by courts, alongside TSI case law, to decline review of disenrollment procedures enacted against disenrolled Indians by their tribal governments. This case, *Santa Clara Pueblo v. Martinez*, is the definitive statement of law concerning tribal membership issues. It is to this case that we will turn to in the next article.

Part Two (Original Publication Date: August 9, 2008)

Previously...

In the last article, we began by introducing the concept of tribal disenrollment within California Indian Country. Being disenrolled means being ousted from the membership of the Indian tribe with no legal recourse to reverse such a decision. With that membership status taken away disenrolled Indians are bereft of their share of any gaming revenue or any other benefits given to them via treaty or arrangement often including access to healthcare and education. With the exploding growth of Indian gaming throughout the United States, as well as California, the pattern of behavior that many have seen is that when there are fewer members in the Indian tribe that owns the casino the more profit there is to go around. However, the counter point from the last article is this:

On the other hand, according to [an April 20th, 2008 San Francisco Chronicle] article, tribal leaders of California Indian tribes “contend that the anger over cash and disenrollments is just a growing pain of an industry that has exploded eightfold from \$1 billion in 2000” to the powerhouse it is now. Also in the article, law professor Carole Goldberg, chair of the [UCLA Native Nations Law & Policy Center](#), said “some of the human drama is being amplified...the tribes concede their sovereign authority if they talk to the non-Indian world, so they don’t say much, which just leaves opponents to do much of the talking.”

The last article explored the concept of tribal sovereignty immunity, the legal doctrine that allows tribes to be immune from suit unless Congress has authorized it or whether the tribes themselves have waived it through various means; or, lastly, whether Congress has abrogated that immunity via a law of general applicability. Because of this immunity courts often lack the subject matter jurisdiction to hear the cases of the disenrolled. Aside from the broad powers given by tribal sovereign immunity one United States Supreme Court case above all essentially left the matters of tribal membership up to the tribes themselves – to the exclusion of all others. That case will be examined now.

Santa Clara Pueblo v. Martinez

On May 15th, 1978 the United States Supreme Court filed its decision in *Santa Clara Pueblo et. al. v. Martinez et. al.* It all began over a tribal ordinance that a child born to a female member of the tribe and a non-member male will not be considered a member of the tribe.

Conversely, a child born to a male member of a tribe and a non-member female will be considered a member of the tribe. A female member of the tribe married outside of the tribe and had a daughter; consequently, the daughter was not considered a member of the tribe. Though raised on the reservation and at the time of the decision still continued to live there, “as a result of their exclusion from membership they may not vote in tribal elections or hold secular office in the tribe; moreover, they have no right to remain on the reservation in the event of their mother’s death, or to inherit their mother’s home or her possessory interests in the communal lands.” (*Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 53 [98 S. Ct. 1670; 56 L. Ed. 2d 106].)

After unsuccessful attempts to combat the tribal ordinance in question, the plaintiffs took their case to federal court, pleading a cause of action under the [Indian Civil Rights Act \(28 U.S.C. §1301 – §1303\)](#). The case wound its way up the federal court system until finally landing in the Supreme Court’s lap. This case is extremely important in matters concerning tribal membership and has many things to say. In my California case law research concerning membership and enrollment, the following portion of the opinion is the most heavily cited:

Indian tribes are distinct, independent, political communities, retaining their original natural rights in matters of local self-government. Although no longer possessed of the full attributes of sovereignty they remain a separate people, with the power of regulating their internal and social relations (i.e. membership, inheritance rules, and domestic relations.) They have the power to make their own substantive law in internal matters and to enforce that law in their own forums. As separate sovereigns pre-existing the Constitution, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority. (Id. at p. 55.)

Further into the opinion, the Court also re-affirmed its commitment to recognize tribes’ sovereign immunity from suit and re-affirmed *U.S. Fidelity & Guaranty Co.* by stating “without congressional authorization, the Indian Nations are exempt from suit.” (*Id.* at p. 58.) In the end, the Court found that no private right of action existed for the plaintiffs under the Indian Civil Rights Act, and further held in a footnote:

A tribe’s right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community. Given the vast gulf between tribal traditions and those with which federal courts are more intimately familiar, the judiciary should not rush to create causes of action that would intrude on these delicate matters. (Id. at p. 72.)

And with that, the Supreme Court left issues concerning membership solely within the hands of the tribal governments and not the jurisdiction of the courts. It also gave me the clearest indication that the Indian Civil Rights Act was largely useless in many ways, the least of which to the plight of disenrolled Indians (as will be discussed below). In adopting a hands-off, “none of our business” attitude, the Supreme Court has left disenrolled Indians to seek relief for their disenrollment at the very same tribal government that got rid of them in the first place – a fact that Justice White noted in his dissent:

Given Congress’ concern [in reviewing the legislative history of the ICRA] about the deprivations of Indian rights by tribal authorities, I cannot believe, as does the majority, that it desired the enforcement of these rights to be left up to the very tribal authorities alleged to have violated them. To suggest that this tribal body is the appropriate forum for the adjudication of alleged violations of the ICRA is to ignore both reality and Congress’ desire to provide a means of redress to Indians aggrieved by their tribal leaders. (Id. at p. 82.)

Disenrolling Indians from their tribal roll lists is a function of tribal government and those that are disenrolled are barred from bringing suit not only on the basis of TSI in general, but because each tribe has its sovereign power to determine membership in whatever manner they see fit. If, for example, Picayune Rancheria, who are the owners and operators of the [Chukchansi Gold Casino](#) in Coarsegold, California, decide to disenroll half of its membership then they can do so according to their tribal constitution regardless if there was procedural “due process” given to the disenrolled beforehand. Picayune did, in fact, disenroll half its membership in 2007. According to the Chronicle article, in the year 2000 that membership was composed of 1,500 individuals and is viewed by some as the biggest disenrollment in California history.

To be fair, however, the *Santa Clara Pueblo* decision does protect tribes’ rights to handle their members’ affairs. When the Supreme Court backed away from dealing with tribal membership it essentially kept states and federal courts out as well. In California, however, where Indian gaming related disenrollments are the most prevalent (over 4,000 approximately disenrolled thus far, according to the Chronicle article), *Santa Clara* is very much a double-edged sword.

Santa Clara Pueblo also highlights an attempt by Indians to find a remedy for membership related issues. In *Santa Clara*, that attempt was to find a private right of action through the Indian Civil Rights Act; in California, concerning disenrollment cases where *Santa Clara Pueblo* was extended, Public Law 280 was also used to attempt to give courts jurisdiction to hear the cases. As we will see in the next article, the Indian Civil Rights Act was not the only means used by Indians to fight their disenrollments. The next article will highlight their failures.

Part Three (Original Publication Date: January 6, 2009)

Previously

In the last article, and the one before it, we discussed the origins of tribal sovereign immunity and how it has acted as a buffer against lawsuits filed by private citizens and state governments. We also discussed tribal disenrollments, the process by which federally recognized Indian tribes may expel individuals from their membership and revoke their legal status as Native Americans. As always, there are two sides to any issue. One side argues that Indian tribes are disenrolling their members because it would mean more money spread out among fewer people from tribal gaming, that Indian gaming itself is perpetuating greed and deceit amongst the Indian people. The other side argues that regulating tribal membership is an offshoot of maintaining and growing a multi-million dollar business; that any one particular tribe should only have to worry about its own members and provide for *them*, and not for anyone whose lineage to that particular tribe is questionable.

The last article dealt with *Santa Clara Pueblo v. Martinez*, a U.S. Supreme Court case dealing directly with tribal membership regulation. The Court held:

Indian tribes are distinct, independent, political communities, retaining their original natural rights in matters of local self-government. Although no longer possessed of the full attributes of sovereignty they remain a separate people, with the power of regulating their internal and social relations (i.e. membership, inheritance rules, and domestic relations.) They have the power to make their own substantive law in internal matters and to enforce that law in their own forums. As separate sovereigns pre-existing the Constitution, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority. (Santa Clara Pueblo v. Martinez (1978) 436 U.S. 49, 55 [98 S. Ct. 1670, 56 L. Ed. 2d 106].)

Santa Clara also marked an occasion whereby Indians sought relief under statutory law; in that case, it was the [Indian Civil Rights Act](#) (25 U.S.C. 1301-1303). In California, many disenrolled have attempted to find relief under Public Law 280, a federal law which hands down certain civil and criminal jurisdiction to certain state governments. This article deals with the Indian Civil Rights Act of 1968.

The Indian Civil Rights Act & California State Courts

Santa Clara Pueblo highlighted a cause of action concerning tribal membership with regards to ICRA; unfortunately, the Supreme Court struck down the plaintiff's suit: "In the absence here of any unequivocal expression of contrary legislative intent [behind ICRA], we conclude that suits against the tribe under the ICRA are barred by its sovereign immunity from suit." (*Santa Clara Pueblo v. Martinez, supra*, 436 U.S. 49, 59.)

The Indian Civil Rights Act was passed in 1968 and was meant to extend to tribes certain constitutional protections that weren't supplied to them under the United States Bill of Rights. (*Talton v. Mayes* (1896) 163 U.S. 376, 382 [16 S. Ct. 986, 41 L.Ed. 196]; see also *Getches et. al., Cases and Materials on Federal Indian Law* (2005) p. 388.) Section 1302 is simply a near verbatim parroting of the United States Bill of Rights however several features are missing from ICRA, namely, "limitations similar to the establishment of religion clause, the guarantee of a republican form of government, the privileges and immunities clauses, the provisions involving the right to vote, the requirement of free counsel for an indigent accused, and the right to a jury trial in civil cases." (*Getches*, at p. 388.) The only remedy available under the Indian Civil Rights Act is that of habeas corpus:

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe. (25 U.S.C. §1303.)

Furthermore, California courts have re-affirmed *Santa Clara Pueblo's* holding where Indians have attempted to bring causes of action against the tribes and tribal officers that have disenrolled them:

The [Supreme Court of the United States] found that imposition of a federal cause of action for enforcement of the rights created in title 1 of the ICRA, however useful in securing compliance with 25 United States Code section 1302, would undermine the authority of tribal forums and impose serious financial burdens on financially disadvantaged tribes... Therefore, the Supreme Court found section 1302 does not impliedly authorize actions for declaratory or injunctive relief against either a tribe or its officers. (Ackerman v. Edwards (2004) 121 Cal.App.4th 946, 952-953 [17 Cal.Rptr.3d 517].)

The *Ackerman* case also carried *Santa Clara Pueblo*'s refusal to grant causes of action under the ICRA in setting aside a tribe's sovereign immunity into California state courts via Public Law 280, which shall be discussed shortly. The *Ackerman* case centered on "the 76-member Foreman family that says it was unjustly cut from the [Redding Rancheria](#)'s membership rolls. Members of the Redding Rancheria voted in January [2004] that the family could not prove its links to the tribe... The family alleges the vote was driven by greed for increased gaming dividends that are paid out to tribal members." ([Lawsuits over cuts to tribal membership rise as Indian gaming industry grows](#) (July 2004), volume 2, No. 7, Nat. Amer. L.Rep. 63.)

The trouble for the Foreman family began when a tribal elder wrote two letters to Redding's enrollment committee "casting doubts" on their lineage and, upon further investigation, found that an application file for the family's grandfather claiming ancestral ties through an already established member of the tribe lacked a birth certificate and baptismal record. (*Ackerman v. Edwards, supra*, 121 Cal.App.4th 946, 949.) The family was then disenrolled according to procedures adopted by the tribe wherein an impartial mediator (who must also be an attorney) would preside over a formal hearing on the reconsideration of tribal enrollment. (*Id.* at p. 950.) When the disenrolled sought action in court, the Tribe filed a motion to quash service of summons based on the trial court's lack of jurisdiction to which the court held in favor. The disenrolled then sought appeal on the grounds that Public Law 280 granted California courts jurisdiction to hear membership disputes despite *Santa Clara Pueblo*'s holding, however the appeals court held against them and affirmed the trial court's decision.

In a similar situation, a family made up of 132 individuals, constituting one-fifth of the [Pechanga Band of Luiseno Indians](#), were disenrolled when "tribal leaders...questioned whether the family's ancestor...was a true Pechanga Indian." ([Pechanga family files second lawsuit alleging wrongful tribal disenrollment](#) (April 2005), volume 3, No. 4, Nat. Amer. L.Rep. 40.) The lawsuit was filed, charging "Pechanga leaders with seeking to expand their share of power and gaming profits." (*Ibid.*) The lawsuit specifically charged the tribe with violating its own laws as well as the ICRA to which the trial court, after much litigation, dismissed the lawsuit for lack of jurisdiction based on tribal sovereign immunity. The disenrolled appealed, claiming the court did have jurisdiction via Public Law 280. The appellate court stated:

[The disenrolled plaintiffs] argue that as the [Pechanga Band] does not have a “tribal court,” the state courts [of California] therefore operate as de facto “tribal courts” to decide disputes between tribal members. As we will explain, California courts act as “tribal courts,” if at all, in only a limited sense, and that sense does not extend as far as plaintiffs argue... With some reluctance we conclude that Congress did not intend [Public Law 280] to authorize state courts to intervene in a case such as this. (Lamere v. Superior Court (2005) 131 Cal.App.4th 1059, 1062 [31 Cal.Rptr. 3d 880].)

Aside from denying plaintiff’s Public Law 280 argument, the court dealt with their cause of action under ICRA:

The cause of action under the Indian Civil Rights Act of 1968 is also unsustainable in California courts. As [Santa Clara Pueblo v. Martinez] explains, Congress chose not to create a federal remedy for tribal violations of the act in order to protect tribal autonomy; a fortiori Congress cannot have intended that the various courts of Public Law 280 states would have jurisdiction over such claims. (Id. at p. 1067.)

ICRA Habeas Corpus Remedy & Federal Courts

Poodry v. Tonawanda Band of Seneca Indians

The only remedy available under the ICRA is that of Habeas Corpus. Banishment, unlike disenrollment, pertains to geographic movement such as physically removing an Indian person from the borders of the Rancheria or Reservation however it is implied that one is also disenrolled, i.e. losing a certain legal and financial status, when banished. A case in the 2nd Circuit of Appeals, *Poodry v. Tonawanda Band of Seneca Indians*, took on the issue of whether “banishing” members of an Indian constituted an unlawful detention sufficient to activate the ICRA’s sole remedy. The court ruled positively on the issue, however, the court also took pains to distinguish between whether banishment was a criminal or civil act and ultimately deciding that it was a criminal one. In looking at the legislative history of ICRA, the Court concluded:

Since these proposed remedial sections referred specifically to criminal convictions, it would be possible to conclude that the remedial section ultimately enacted-providing for habeas review-was intended by Congress to apply only in criminal cases. (Poodry v. Tonawanda Band of Seneca Indians (2d Cir. 1996) 85 F.3d 874, 889.)

Furthermore, in a purely criminal context, banishment constituted a deprivation of liberty. (*Id.* at p. 894.) However, a defeat has handed to the plaintiff on the basis of jurisdiction,

the constant enemy of tribal litigants. On what could have been a doorway for other federal circuits to allow banished and disenrolled a federal habeas corpus remedy, the 2nd Circuit ruled:

[ICRA] does not signal congressional abrogation of tribal sovereign immunity even in habeas cases. In claiming otherwise, the petitioners misapprehend the reasoning of the cited passage from Santa Clara Pueblo: not only does § 1303 not serve as a general waiver of immunity in civil suits, there is no immunity issue here at all. Because a petition for a writ of habeas corpus is not properly a suit against the sovereign, the Tonawanda Band is simply not a proper respondent. (Id. at p. 899.)

Despite banishment being a criminal act that served as an unlawful detention the fact still remained: ICRA is useless against tribal governments who disenroll or banish their members.

Quair v. Sisco

To drive the point further, the 9th Circuit took up banishment under the habeas corpus remedy of ICRA in *Quair v. Sisco*. The dispute arose from the [Santa Rosa Rancheria Tachi Indian Tribe](#) who voted to disenroll and banish the two plaintiffs who then filed a cause action against the tribe citing violations of Santa Rosa's constitution, and that such violations could be sustained via the habeas corpus remedy of ICRA. The Court ruled, citing *Poodry*, held that banishments were punitive in nature but didn't conclude that they were criminal but civil. (*Quair v. Sisco* (9th Cir. 2004) 359 F.Supp.2d 948, 966.) Despite, not being a criminal act, the banishments and disenrollments may have possibly been a violation of ICRA thus denying each side the summary judgment they sought.

A summary judgment is simply a finding by a judge that there is such a dispute in each side's presentation of the facts that the dispute must be resolved by a jury and not a judge. However, a jury could not determine the outcome of the dispute based on the same jurisdictional problem *Poodry* had:

...federal courts will not review an alleged violation of a tribal constitution on the ground that it is an internal tribal matter subject to sovereign immunity. Nonetheless, petitioners assert, "when the violation of its own Tribal Constitution allows a tribe to exceed its jurisdiction under the Indian Civil Rights Act, the Court does have jurisdiction to review the matter." However...petitioners' claim is barred by the doctrine of sovereign immunity. "Jurisdiction to resolve internal tribal disputes, interpret tribal constitutions and laws, and issue tribal membership determinations lies with Indian tribes and not in

the district courts.” Because respondents have been sued in their official capacities, these claims are barred by the doctrine of sovereign immunity. (Id. at p. 979.)

The judge in the *Quair* case ordered Santa Rosa General Council to hold a rehearing to reconsider its disenrollment and banishment of the plaintiffs. At this rehearing the plaintiffs would have the opportunity to have legal counsel present and to present witnesses. The plaintiffs didn't show to the rehearing claiming that the rehearing itself was a violation of ICRA as it was being conducted by the very same governing body that unfairly disenrolled them anyway. The General Council then voted once again to disenroll and banish the plaintiffs. The plaintiffs once again took up legal action under ICRA, this time arguing that disenrollments were subjected to the same habeas corpus review as banishments. In an unpublished/non-citable opinion, the court held:

Here, the disenrollment of petitioners does not qualify as detention under § 1303...disenrollment strips a member of tribal membership and the tangible benefits that attend upon membership... In this case, all the benefits are financial, such as monthly per capita payments that come from the Tribe's gaming revenue... Section 1303 grants federal courts jurisdiction to review [detentions] and not penalties that, while harsh, do not constitute detention. Therefore, the court finds that § 1303 is simply inapplicable to the disenrollment of petitioners. (Quair v. Sisco (May 21, 2007, 1:02-CV-5891 DFL) [nonpub. opn.]..)

Quair and *Poodry* point out the uselessness of pleading a disenrollment case under ICRA. The last statute the disenrolled have used to combat their former tribal nations is Public Law 280, a federal statute that cedes criminal and civil authority to certain states, among them being California. As we will see in Part 4, this too has proven ineffective.

Part Four (Original Publication Date: April 5, 2009)

Previously...

In the last article, I examined the federal and California state cases that highlighted the failure of the Indian Civil Rights Act to find an adequate remedy to the disenrolled Indians. This article will highlight the next federal statute, Title 28 of the United States Code, section 1360(a), better known to its adherents, followers, and enemies as Public Law 280.

Brief History Behind Public Law 280

The relationship between Native Americans and the United States government is tense, to say the least. Beginning in 1949, the American government moved away from a prior era that favored Indian self-government:

In 1949 the Hoover Commission issued its Report on Indian Affairs, recommending an about-face in federal policy: “complete integration” of Indians should be the goal so that Indians would move “into the mass of the population as full, taxpaying citizens.” ...Though now formally repudiated by the federal government, the memory of congressional committees and bureaucrats in Washington “terminating” the existence of hundreds of tribes across Indian country stands as a chilling reminder to Indian peoples that Congress can unilaterally decide to extinguish the special status and rights of tribes without Indian consent. (Getches et. al., Cases and Materials on Federal Indian Law (2005) p. 201.)

A quote from Senator Arthur Watkins provides the intent behind the Termination policies:

In view of the historic policy of Congress favoring freedom for the Indians, we may well expect future Congresses to continue to endorse the principle that “as rapidly as possible” we should end the status of Indians as wards of the Government and grant them all the rights and prerogatives pertaining to American citizenship... Following in the footsteps of the Emancipation Proclamation...I see the following words emblazoned in letters of fire above the heads of the Indians – “These people shall be free!”

In short, in the name of liberty, the trust relationship between Indians and the United States was over, the guardian ward position that the United States had assumed over Indian tribes was over, and tribal sovereignty was “effectively ended.” The government cut checks to individual Indians for the value of their land which often was not very little money and said nothing for the loss of federal benefits and protections.

In keeping with the tone of setting the Indians “free” from federal interference, Congress passed Public Law 280, a federal law that conferred civil and criminal jurisdictions from federal oversight to state oversight. The law only applied in certain states; California being one of them.

But what about *Santa Clara Pueblo v. Martinez* and its proclamation that inter-tribal matters are matters left to tribes? Was that decision abrogated upon the passage of PL-280?

PL-280 and California State Courts

In the last article, I briefly surveyed *Lamere v. Superior Court of Riverside*. In that case, members of the Pechanga Indian Reservation were disenrolled “on the general ground that the ancestor from whom [the disenrolled] claimed descent was not one of the ‘original Pechanga people’ and her descendants therefore did not qualify as Band members.” The disenrolled brought their action in state court because Pechanga lacked a tribal court of their own; their basis of finding that the court had jurisdiction to hear the case rested on PL-280’s grant of state civil jurisdiction over Indian tribes. The court had this to say:

...in light of [Santa Clara Pueblo v. Martinez], Public Law 280 cannot be viewed as a general grant of jurisdiction to state courts to determine intratribal disputes. ...this provision “seems to have been primarily intended to redress the lack of adequate Indian forums for resolving private legal disputes between reservation Indians, and between Indians and other private citizens... In our view, [the current case] is not a “private legal dispute between reservation Indians,” but rather goes to the heart of tribal sovereignty. (Lamere v. Superior Court of Riverside (2005) 131 Cal.App.4th 1059, 1064 [31 Cal.Rptr.3d 880]).

In the *Lamere* quote, the court cited *Bryan v. Itasca County*, a United States Supreme Court case that has been foundational in interpreting the grant of civil jurisdiction to state courts. In *Bryan*, the issue was whether PL-280 would allow “the States to tax reservation Indians except insofar as taxation is expressly excluded by the terms of [PL-280].” (*Bryan v. Itasca County* (1976) 426 U.S. 373, 375 [96 S.Ct. 2102, 48 L.Ed.2d 710]). Citing *Bryan*, the Court of Appeal of California held that:

...the Supreme Court explicitly denied that Public Law 280 confers jurisdiction in the states over the tribes themselves: “[PL-280] itself refutes such an inference: there is notably absent any conferral of state jurisdiction over the tribes themselves.” California courts are in accord. “No case been cited to us, and we have found none, which

concludes or even suggests that [PL-280] conferred on California jurisdiction over the Indians...” (Ackerman v. Edwards (2004) 121 Cal.App.4th 946, 954 [17 Cal.Rptr.3d 517]).

As you can see, *Santa Clara*'s holding is left intact because matters of tribal sovereignty can never be adjudged or scrutinized by a state government. That doesn't make the situation better for disenrolled Indians, however. All it means is that they are denied yet another means of contesting their disenrollment.

Beating a Dead Horse

The majority of my conclusion is in the last article, but for now, I would like to reflect on the past few months and the words that I have written thus far.

If these articles have taught you anything it's that tribal sovereign immunity bars courts the jurisdiction necessary to hear these cases and try them on their merits. Without jurisdiction, courts will never be able to use their equitable discretion in determining whether the disenrolled Indians were unfairly cast out or whether their disenrollments were proper exercises of sovereign matters.

There is slight comfort in knowing that tribes' sovereign immunity remains intact. Not all tribal council decisions concerning members are negative. Not all membership issues are disenrollment issues. Although I want to develop this theme in the conclusion, I do want to take the time to say that I fully support what little sovereignty that Indian tribes have left. Being Native American means being in peril: precious rights often hang by threads and similar threads are all that keep the swords dangling above the heads of Indians from breaking.

I wrote these articles because I had questions concerning the disenrollments. I wanted to know whether the disenrolled sought their day in court, what past precedent the judges were using in making their decisions and what those decisions said. My curiosity was rewarded though I am not that happy for it. I didn't always like what I found – matter of fact, I hardly ever “liked” what I found but my curiosity has been sated.

My biggest fear is that these articles are nothing more than an exercise in futility. Over the months I have written four articles all basically saying the same thing. The disenrolled have

nothing to protect them from their tribal councils. For months I feel that I have beaten a dead horse, constantly blogging, quoting court cases and statutes, and always coming back to the same spot: the courts have no jurisdiction. Always the lack of jurisdiction.

And what of the courts themselves? Eternally bound by past precedent, whether it's the United States Supreme Court or individual federal and state courts, the courts carry forward the legacy of racist and discriminatory policies that have already died out in many ways in our society but courts are forced to carry them forward. It has become very apparent to me that the Judicial Branch of the United States government is the worst place to fight for an Indian's rights. For far too long the disenrolled have essentially been barking up the wrong tree. I can't blame the courts for that, though; it's their job to follow the code of *stare decisis*. Courts need guidance from a different precedent.

It appears that only Congress can give those rights...or take them away.

This is the last substantive article on the issue of tribal disenrollments. If you wish to end your journey here then feel free to do so; there is no more law to quote, no more statutes to read and no more history that I feel is relevant to this issue. The next article is merely one large conclusion and it's purely optional – I feel like I've kept you here long enough.

I would like to take this time to thank every one of my readers who have patiently waited for each article to come out. Sorry about the delay between articles – law school has kept me extremely busy, so I hope you understand. In particular, I would like to thank the disenrolled Native Americans who have stopped by to read and offer their two cents on the whole affair. I would like to dedicate these articles to you and along with my thanks, wish you the best and hope that you one day get the justice that many of you, whether you are in California or any other state, deserve. You will always be an Indian, no matter what any person says and no one can take that away from you.

Conclusion (Original Publication Date: June 2, 2009)

Bias & Background

In writing these articles the first challenge I ran into was whether to write them at all; the methods by which tribes have used to expel members has been questionable and on the surface, downright despicable. I struggled hard to come up with a counter argument, one that would allow me to step into the shoes of those performing the disenrolling, to give disenrolling gaming tribes the benefit of the doubt and see both sides of the issue. I think the only real success that came of these efforts is that I just made the effort. Whether or not the counter arguments those efforts engendered are persuasive or not is another story. But looking back at these articles I knew I had the right idea in writing them because I was simply curious as to how this issue has been playing out in California courts. I didn't always like what I found but my curiosity has been satisfied.

Furthermore, one thing that I must point out is my own bias. I want you to know where my opinions come from so you know that I'm just another person with an opinion on tribal disenrollments; here's the research that I've done and these are my conclusions, but they do not have to be your own. I want you to think for yourself, whether what I've seen through my eyes is right or wrong when viewed through yours and if so, then why? Or why not? Above all, I want you to know my stance on this issue so it can provoke your own thoughts and research so that you might inform yourselves on what's going on. If there's an argument that I'm not making then what is it?

So, here are my biases:

I'm a capitalist. I love the idea of living in a country where you can go from rags to riches; all you need is determination and a strong work ethic. I think that the idea of having a free market capitalist system is one of the requisites of sustaining a democracy. I love the idea of having a group of people who've known poverty all their lives could suddenly get together with nothing but an idea, hope, hard work and make their world better. Indian gaming didn't just appear overnight. It started out as small bingo hall operations or card rooms in places off the beaten track, off the main roads where people would just go to play games. Look where it went. I love knowing that kind of thing can happen in America. I think it's what America is all about

and who better to cash in on the American Dream than the First Americans themselves? Isn't it about time? After all the stereotypes in a million cowboy and Indian movies, all the sports mascots that demeaned rather than honor, after living hard lives on a reservation with little to no basic necessities, and now Indian people can have their chance to earn a little bit for themselves. Only in America.

I am of Native American descent. My people were Ah-Wah-Nee-Chee, the First People that lived in Yosemite Valley back when it was called Ah-Wah-Nee. The Ah-Wah-Nee-Chee were a mix of Paiute and possibly Mono Indians who came over to Yosemite from the areas that straddle the California and Nevada border. In the late 19th Century, the last leader of the people, Ten-ie-ya (Tenaya), resisted white domination as best he could but was ultimately unsuccessful. He and his people were forced out by the Mariposa Battalion and made to live in reservations. One day he returned along with his people but by then the State of California had asserted its guardianship over the tourist attraction that Yosemite was quickly becoming, all the way up until the National Park Service assumed responsibility. Since this time Tenaya's descendents have struggled to gain federal recognition and those descendents are scattered about different groups, each with their own opinions, viewpoints, agendas, and strategies. Each group or faction has not been cordial with others; as you can imagine, numerous fights have broken out over the greater part of the 20th century and 21st century as to who really is a Yosemite Indian and who isn't. I've seen firsthand the meetings where different sides of my family have fought and bickered with each other. I've learned that Indian politics is *family politics*, and if you're familiar with just how dysfunctional a family can be you can guess just how mature a tribal government can act. Sometimes there's outright name calling, threatening, and belittling. I have seen these things within my own people and while I have not personally seen these things with other Indian nations I can take a pretty good guess and say that Indian politics is the same wherever you go. If you and your family are not liked by another family, and that family is in control of the tribal council then your life is going to get complicated real fast. It doesn't sound like conduct fit for the operation of a small government.

Now, add a multi-billion dollar enterprise into this mix. Add in a sudden influx of money into an area that for the last 100 years has seen nothing but poverty. No running water, no

electricity, no standardized housing, no jobs, substandard health care, little to no scholarship money for Indian students, no cars – no future. Indian gaming came along at the perfect time.

I understand history: to the victor go the spoils; the weak suffer the strong, etc. We were a conquered people and our lives were dictated by those that conquered us. We weren't treated fairly; we were targets for extinction and then moods shifted and they wanted to "re-organize" us into mini-republics to promote self-reliance, and then the mood shifted again when they wanted to set us "free" by terminating our ward status and making us go out into world that we were never prepared for, and now it's back to self-reliance even if only somewhat. I understand the history and I understand why it had to be that way; I never agreed with it, I think it was unfair and genocidal in some places but I understand. But I also understand that what goes around comes around. The people that were never thought to amount to anything, these former "savages" would get organized enough to come up with a way to make their people rich, to stop the poverty and Indian gaming did just that.

I support Indian gaming and I support tribal sovereignty, but there is a terrible irony that has attached itself to both concepts.

Greed or Growing Pains?

So, greed or growing pains? How about both? I present to you the clearest expression of my opinion on this matter with all the research I've conducted and the things that I've seen coming out of Indian Country. Indian tribes who use gaming as a means of self-reliance in a negative way towards their own people are suffering growing pains because their greed is making them grow into something that these Indians were not before. They are growing into tyrants.

Tyranny is not only a strong word but it's also overused, so my use of it here hopefully has some resonance because by now, if you've read the articles, then you know that I wouldn't use it carelessly. Also know that tyranny comes in degrees; you can have a lesser tyrant or perhaps even a benign one but you can also have great tyrants depending upon how much power is wielded and how that power is executed. I believe that gaming tribes that have disenrolled their own for the sake of higher gaming revenue allotments have acted tyrannically; the degree of

tyranny is yet to be adjudged but I think we can agree that disenrollment under those reasons requires some minimum standard of autocracy.

The case for greed is well developed by now. Almost every disenrolled Indian that has been interviewed has lobbied this opinion. The legal community is also aware of the attitude. Previously, in *Lamere v. Superior Court*, the presiding judge remarked: “Where large sums of money are involved, however, it has long been recognized that the potential for corruption always exists.” (*Lamere v. Superior Court* (2005) 131 Cal.App.4th 1059, 1068, fn. 10 [31 Cal.Rptr. 3d 880].) Reaching back to *Santa Clara Pueblo*, Justice White noted in his dissent:

[A witness before the Senate Subcommittee concerning the Indian Civil Rights Act] complained “[the] people get governors and sometimes they get power hungry and then the people have no rights at all,” to which Senator Ervin responded: “‘Power hungry’ is a pretty good shorthand statement to show why the people of the United States drew up a Constitution. They wanted to compel their rulers to stay within the bounds of that Constitution and not let that hunger for power carry them outside it.” (Santa Clara Pueblo v. Martinez (1978) 436 U.S. 49, 81 [98 S.Ct. 1670, 56 L.Ed.2d 106] (dis. Opn. of White, J.).)

The case for growing pains is less developed. On March 2nd, 2009 I came across news that the Chukchansi Indians who ran the Chukchansi Gold Casino were disenrolling hundreds of members. When reading the article I came across the reasons behind the disenrollment:

[The issue of disenrollments] is already tearing our tribe apart. Should we take the path of summarily disenrolling members from our Tribe, our Tribe could become the example of greed that gaming has engendered from coast to coast. This kind of press directly affects our Casino business, and contributes to the already significant backlash against Indian gaming in California and across the U.S...

Instead let’s practice the traditions of our people: respect, restraint and generosity in unraveling years of poor enrollment practices so that all people of Chukchansi blood are dealt with fairly.

What “poor enrollment practices” has to do with ancient Indian customs that predate modern, BIA imposed enrollment regulations is beyond this author. A sharper quote comes from a Chukchansi council member: “We didn’t disenroll anybody. We just corrected our paperwork.” (Fagan, *Tribes Toss Out Members in High-Stakes Conflict*, S.F. Chronicle (Apr. 20, 2008), p. A1.) [This issue is dealt with in depth in the article that I wrote on the subject.](#)

And then there's Carol Goldberg's quote: "Some of the human drama is being amplified...the tribes concede their sovereign authority if they talk to the non-Indian world, so they don't say much, which just leaves opponents to do much of the talking." I can't completely disagree with this conclusion. As you've noted from these articles, tribal sovereign immunity is a precarious theory, resting upon thin ice, its very survival uninsured from judicial review or congressional abrogation. Creative attorneys look for anything and everything they can use to make the case that an Indian tribe has voluntarily conceded its immunity from suit. As legal advice, keeping quiet is the best practice. Furthermore, Indian tribes don't have to say anything at all, not because it's good for maintaining sovereign immunity, but because they simply don't have to. No one other than Congress has any authority to foist liability on an Indian tribe. Tribes can effectively scoff at any request by local and state governments for anything from consent to be sued, cooperation with state law, serve an arrest warrant, or tax their cigarettes. Aside from exceptions such as gaming compacts with the state, tribes are sovereign nations even if just "dependent domestic" ones and do not have to talk to anyone if they don't want to.

That said, silence isn't always golden. An explanation for actions concerning tribal disenrollments after major influxes of cash is more than necessary at this point, and we are in need for something beyond redressing prior enrollment problems or correcting the paperwork. There's a fundamental violation of due process that may be taking place in Indian Country and it is being perpetuated against Indians *by Indians*. The basis for disenrollment sometimes amount to no more than a rumors concerning the disenrolled's family ancestry. Sometimes it could just be simple mathematics: the less people in the tribe, the more money for everyone else – what we see in the news are excuses that cloak the underlying unfairness. Why should the United States tolerate such a gross violation of basic rights to American citizens? The answer seems so simple but as you can see from the underlying legal theories, Indian Country and Indians themselves are legal curiosities; sometimes the laws of our country apply and sometimes they don't. However, in the situation of the disenrolled, an explanation of tribal council behavior would be nice. If a tribe is worried about waiving its immunity by explaining its actions then it should be more concerned about leaving their "opponents to do much of the talking" than keeping quiet, because those opponents are seeking redress to the one authoritative body that can do something about the problem. That body is the United States Congress. Whether an explanation of this

magnitude would constitute a waiver is mildly ambiguous and fundamentally, (and ironically to some) an explanation for a tribe's actions may actually mitigate their loss of social currency.

In the end, I leave the reader to decide whether Indian nations have conducted themselves properly. The amount of materials that can be found on the issue of tribal disenrollment are far vaster than what was cited in this article. Indeed, many of the best sources on this issue are the comments that Indians themselves have left on my articles. Those are the real stories of substance and they can provide much more profound insight than I could with just citations to news articles and court cases. It also to them that I dedicate these series of articles along with my best wishes on one day being inducted back into their tribal nations of origin.

If there are any true solutions to be found to this issue then they will not come from an American courtroom. Courts are bound to follow the principle of [stare decisis](#), and will thus uphold court cases that have gone before them – court cases that have cast Indians in a subordinate role in American society. If there is a solution to be had it would have to come from Congress:

...tribes have been given broad power to order their own affairs without regard for Eurocentric mores. To the extent that Congress has not chosen to provide an effective external means of enforcement for the rights of tribal members, the omission is for Congress to reconsider if and when it chooses. (Lamere v. Superior Court, supra, 131 Cal.App.4th 1059, 1063, fn. 2.)

I support Indian gaming. It is probably one of the most genius ideas that the Native Americans ever conceived to lift themselves out of poverty. With casino revenue rolling in tribes are now in a position to provide for themselves in a way never thought possible. I just don't see how disenrollments serve that purpose.

These articles are at their conclusion. As stated previously, was I right in my conclusion? Wrong? Both? Why? Why not? Do you think this issue is worthy of further research on your part? Have you already done more research? What did that lead you to? Never stop asking questions about how you perceive an issue and how you conclude on an issue. If you live your life questioning the things around you, you will never stop learning and you will always grow. I hope this is a lifestyle you find worth copying.

Thank you for your time.

TABLE OF AUTHORITIES

Tribal Sovereign Immunity

Turner v. United States (1919) 248 U.S. 354

U.S. v. U.S. Fidelity & Guaranty Co. (1940) 309 U.S. 506

Kiowa Tribe v. Manufacturing Tech., Inc. (1998) 523 U.S. 751

Lack of Subject Matter Jurisdiction

Alvarado v. Table Mountain Rancheria (9th Cir. 2007) 509 F.3d 1008

TSI & Tribal Membership

Santa Clara Pueblo v. Martinez (1978) 436 U.S. 49

California State Judicial Interpretation of the Indian Civil Rights Act & PL 280

Bryan v. Itasca County (1976) 426 U.S. 373 – PL 280 generally but applied to disenrollments by *Ackerman*

Ackerman v. Edwards (2004) 121 Cal.App.4th 946

Lamere v. Superior Court (2005) 131 Cal.App.4th 1059

Federal Judicial Interpretation of the Indian Civil Rights Act

Poodry v. Tonawanda Band of Seneca Indians (2d Cir. 1996) 85 F.3d 874

Quair v. Sisco (9th Cir. 2004) 359 F.Supp.2d 948

Statutes

Indian Civil Rights Act (28 U.S.C. §1301 – §1303)

Public Law 280 (28 U.S.C. §1360) – Civil Jurisdiction

Public Law 280 (18 U.S.C. §1162) – Criminal Jurisdiction

Law Student Resources

Getches et. al., *Cases and Materials on Federal Indian Law* (2005)

Canby, *American Indian Law in a Nutshell* (2004)

“A mind once stretched by a new idea never regains its original dimensions.” — Anonymous