SANDRA DAY O'CONNOR COLLEGE of LAW
ARIZONA STATE UNIVERSITY

The Honorable William C. Canby, Jr.
Indian Law Opinions

Case	Opinion
U.S. v. State of Wash., 641 F.2d 1368 (9th Cir. 1981)	Court held that: federal recognition is not required for Indian group to establish treaty rights and a group of Indians must have maintained organized tribal structure to exercise treaty rights. Judge Canby dissented that: he would remand for a determination as to whether "some defining characteristic of the original tribes persist in appellants as evolving tribal communities" that do not rely on attributes of federal recognition.
Washoe Tribe of Nevada and California v. Greenley, 674 F.2d 816 (9th Cir. 1982)	Wrote Opinion holding that: the State of Nevada had no standing to appeal from a declaratory judgment and injunction prohibiting two of its officials from enforcing state hunting laws and regulations against Indians.
U.S. v. Yazzie, 693 F.2d 102 (9th Cir. 1982)	Wrote Opinion holding that: despite living on a reservation covering multiple states, an Indian defendant can be charged with incest under the Major Crimes Act because it is rational for Congress to define the act using local state law.
U.S. v. State of Wash., 694 F.2d 188 (9th Cir. 1982)	Court held that: Indians who are party to a treaty owned the lake bed under a part of a lake which was specifically included in and formed a boundary of the reservation, when the Indians were dependent upon fishing when the treaty was signed. Judge Canby concurred: in judgment but expressed doubt that the controlling decisions stood for the same proposition.
Southern Pacific Transp. Co. v. Watt, 700 F.2d 550 (9th Cir. 1983)	Wrote Opinion holding that: the Secretary of the Interior acted within his power in requiring by regulation that tribal consent be obtained for acquisition of a right-of-way.
U.S. v. Dann, 706 F.2d 919 (9th Cir. 1983)	Wrote Opinion holding that: Indians are not barred by doctrines of res judicata or collateral estoppel, or by bar of the Indian Claims Act from asserting aboriginal title as a defense to the claim of trespass, and aboriginal title had not been extinguished by application of public land laws.
U.S. v. Hester, 719 F.2d 1041 (9th Cir. 1983)	Wrote Opinion holding that: the Government is not required to allege non-Indian status of defendant in indictment under the Federal Enclaves Act.
State of Washington, Dept. of Ecology v. U.S.E.P.A., 752 F.2d 1465 (9th Cir. 1985)	Wrote Opinion holding that: the EPA regional administrator properly refused to approve proposed state program since the applicable federal law did not authorize states to regulate Indians on Indian lands.
Northwest Indian Cemetery Protective Ass'n v. Peterson, 764 F.2d 581 (9th Cir. 1985)	Wrote Opinion holding that: enjoining a road construction and timbering project in an area in a national forest used by Northwest Indians for religious purposes on the ground that such activity would impermissibly burden Indian plaintiffs' First Amendment right to free exercise of their religion.
Papago Tribal Utility Authority v. F.E.R.C., 776 F.2d 828 (9th Cir. 1985)	Wrote Opinion holding that: the Federal Energy Regulation Commission was within its authority in permitting public utility to "normalize" effect of investment tax credits on its wholesale rates.
U.S. v. White Mountain Apache Tribe, 784 F.2d 917 (9th Cir. 1986)	Wrote Opinion holding that: Indian tribe's action to enjoin United States from filing claim on tribe's behalf in water dispute in state court was barred by sovereign immunity.
White Mountain Apache Tribe v. Hodel, 784 F.2d 921 (9th Cir. 1986)	Wrote Opinion holding that: the Federal Government's dual role as trustee for Indians as well as representative of federal water interests did not disable it from making water claims for Indians.
Northwest Indian Cemetery Protective Ass'n v. Peterson, 795 F.2d 688 (9th Cir. 1986)	Wrote Opinion holding that: the Forest Service's plans impermissibly burdened Indian tribes' First Amendment right to free exercise of religion.
Seyler v. U.S., 832 F.2d 120 (9th Cir. 1987)	Wrote Opinion holding that: a state recreational use statute did not protect federal government from liability for one-vehicle motorcycle accident on Indian reservation roadway and an Indian plaintiff and discretionary function exception to FTCA did not encompass alleged negligence of federal government agency in failing to erect speed limit signs on reservation roadway.
Joint Bd. of Control of Flathead, Mission and Jocko Irr. Districts v. U.S., 832 F.2d 1127 (9th Cir. 1987)	Wrote Opinion ultimately holding that: since any aboriginal fishing rights secured by treaty was prior to all irrigation rights, neither the Bureau of Indian Affairs nor tribes were subject to duty of fair and equal distribution of reserved fishery waters.
Tyonek Native Corp. v. Cook Inlet Region, Inc., 853 F.2d 727 (9th Cir. 1988)	Wrote Opinion holding that: rock, sand, and gravel are part of the subsurface estate in dually owned lands conveyed to native regional corporations under the ANCSA, and that village corporations that own the surface have no right to these materials for the purpose of commercial extraction and sale.

U.S. v. Dann, 865 F.2d 1528 (9th Cir. 1989)	Wrote Opinion holding that: Indian ranchers could not claim tribal aboriginal rights as a claim but did enjoy limited individual aboriginal rights.
U.S. v. Dann, 873 F.2d 1189 (9th Cir. 1989)	Wrote Opinion holding that: Indian ranchers had individual aboriginal use rights but were restricted to the number and type of animals grazed by them or their lineal ancestors at the time lands in question were incorporated into grazing district.
Chilkat Indian Village v. Johnson, 870 F.2d 1469 (9th Cir. 1989)	Wrote Opinion holding that: the 18 U.S.C. § 1163 prohibiting embezzlement and theft from Indian tribal organizations does not give rise to private cause of action by Indian tribe and that village's claims for enforcement of its ordinance prohibiting removal of artifacts without permission of village council against non-Indian defendants arose under federal law.
Morongo Band of Mission Indians v. Rose, 893 F.2d 1074 (9th Cir. 1990)	Wrote Opinion holding that: the district court had federal question jurisdiction over a band's action that invokes its sovereign power and relies on its disputed ability, under principles of federal common law, to apply that power against one outside of its community.
U.S. v. Kent, 912 F.2d 277 (9th Cir. 1990)	Court held that: the defendant did not knowingly use national forest system lands for residential purposes without authorization in violation of statute regulating occupancy and use of national forest. Judge Canby dissented that: the case should be affirmed on the ground that the defendant's defense of individual aboriginal title was insufficient.
U.S. v. Skinna, 931 F.2d 530 (9th Cir. 1990)	Wrote Opinion holding that: defendant failed to show that Alaska fishing regulations underlying his Lacey Act conviction were preempted by the Alaska National Interest Lands Conservation Act.
Price v. Akaka, 915 F.2d 469 (9th Cir. 1990)	Wrote Opinion holding that: the OHA trustees' obligations with respect to spending OHA funds were not to state law alone and the Eleventh Amendment did not bar suit.
Price v. Akaka, 928 F.2d 824 (9th Cir. 1990)	Wrote Opinion holding that: standing exists if trustees could consistently spend income for purposes other than to benefit Native Hawaiians and federal courts have jurisdiction over plaintiff's suit even if it was not brought against trustees in official capacity.
Imperial Granite Co. v. Pala Band of Mission Indians, 940 F.2d 1269 (9th Cir. 1991)	Wrote Opinion holding that: the granite company seeking an easement could not sue the Pala Band of Mission Indians because sovereign immunity barred the suit.
U.S. v. Kent, 945 F.2d 1441 (9th Cir. 1991)	Wrote Opinion holding that: the defendant Indian had no individual aboriginal right to occupy land in a national forest
U.S. v. Luscier, 983 F.2d 1507 (9th Cir. 1993)	Wrote Opinion holding that: evidence failed to support upward departure from criminal history category in sentencing of a convicted Indian felon and district court could properly add two points to increase base offense level for defendant's murder conviction on basis that victim was vulnerable.
Greene v. U.S., 996 F.2d 973 (9th Cir. 1993)	Joined Majority Opinion holding that: the Tulalip Tribe was not entitled to intervene in the Samish Tribe's recognition process.
Crow Tribe of Indians v. Campbell Farming Corp., 31 F.3d 768 (9th Cir. 1994)	Wrote Opinion holding that: the Crow Tribe lacked standing to sue under the Crow Allotment Act.
Sycuan Band of Mission Indians v. Roache, 54 F.3d 535 (9th Cir. 1994)	Wrote Opinion holding that: California had no Public Law 280 jurisdiction to enforce its gambling laws against gaming operations of Indian tribes, Anti-Injunction did not bar relief, and video pull-tab machine is properly categorized as Class III gaming, under IGRA thus, tribes could not employ these machines in the absence of a tribal-state compact.
Sycuan Band of Mission Indians v. Roache, 38 F.3d 402 (9th Cir. 1994)	Wrote Opinion and held that: district court had equitable power to enjoin state's prosecutions; California lacked jurisdiction over tribes' gaming activities; Anti-Injunction Act did not bar federal court from enjoining California's prosecution; Younger abstention was not warranted; and operation of tribes' electronic pull-tab machines constituted Class III gaming under Indian Gaming Regulatory Act (IGRA).
Koniag, Inc. v. Koncor Forest Resource, 39 F.3d 991 (9th Cir. 1994)	Wrote Opinion holding that: despite an Alaskan Native Village Corporation only having surfaces rights, if there was no other source of rock for the partnership, it had the right to reasonable use of subsurface rock but it was required to pay a reasonable price for the use.
Shee Atika v. Sealaska Corp., 39 F.3d 247 (9th Cir. 1994)	Wrote Opinion holding that: the surface estate owner, had right not to be unreasonably denied access to surface estate owner's rock, sand and gravel to extent necessary to harvest its timber.
Rumsey Indian Rancheria of Wintun Indians v. Wilson, 64 F.3d 1250 (9th Cir. 1994)	Court held that: if a state did not permit a type of gaming it does not need to negotiate with a tribe in respect to those proposed gaming activities. Judge Canby dissented to rehearing order.
Minchumina Natives, Inc. v. U.S. Dept. of Interior, 60 F.3d 1363 (9th Cir. 1995)	Wrote Opinion holding that: in a recognition case, the Board of Indian Appeals erred in considering expanded boundaries for a group of petitioning Alaskan Natives.
U.S. v. Houser, 130 F.3d 867 (9th Cir. 1997)	Wrote Opinion holding that: federal jurisdiction over murder in Indian Country, via 18 U.S.C. § 1152, is constitutional because the Indian Commerce Clause governed all interactions between Indians and non-Indians in Indian Country.

Leisnoi, Inc. v. U.S., 170 F.3d 1188 (9th Cir. 1999)	Wrote Opinion holding that: a third party's claim against the U.S. for an Alaskan Native Corporation's claim against the U.S. under the Quiet Title Act does not suffice.
Confederated Tribes & Bands of Yakama Indian Nation v. Locke, 176 F.3d 467 (9th Cir. 1999)	Wrote Opinion holding that: the tribe's claim against Washington was barred by the Eleventh Amendment, the claim for damages against the Governor was barred by the Eleventh Amendment; and that the Yakima Tribe could not seek injunctive relief against the Governor pursuant to the Ex Parte Young exception to Eleventh Amendment immunity.
Alaska v. U.S., 213 F.3d 1092 (9th Cir. 2000)	Wrote Opinion holding that: title to riverbed did not pass to state at the time it obtained statehood, and revocation of public land order that had withdrawn land, after Alaska obtained statehood, did not pass title to state, thereby title stayed with Alaskan Native Corporation.
Akiak Native Community v. U.S. Postal Service, 213 F.3d 1140 (9th Cir. 2000)	Wrote Opinion holding that: USPS's delivery of mail via hovercraft rather than aircraft is permitted.
Old Person v. Cooney, 230 F.3d 1113 (9th Cir. 2000)	Wrote Opinion holding that: Indian plaintiffs failed to show discriminatory impact under the Voting Rights Act.
Leisnoi, Inc. v. U.S., 267 F.3d 1019 (9th Cir. 2001)	Wrote Opinion holding that: combined claims by two parties against the U.S. in a Quiet Title claim sufficed.
Moore v. Nelson, 270 F.3d 789 (9th Cir. 2001)	Wrote Opinion holding that: the punishment of a fine for a Yurok tribal member by order of the tribe is not detention under ICRA and thus was not entitled to writ of habeas corpus.
Grey Poplars Inc. v. One Million Three Hundred Seventy One Thousand One Hundred (1,371,100) Assorted Brands of Cigarettes, 282 F.3d 1175 (9th Cir. 2002)	Wrote Opinion holding that: despite a reference to a Washington law definition, cigarettes could lawfully be seized pursuant to a federal law, CCTA, and despite a shipment of cigarettes' destination, the cigarettes, if required by state law, are required to be stamped.
American Greyhound Racing, Inc. v. Hull, 305 F.3d 1015 (9th Cir. 2002)	Wrote Opinion holding that: the Arizona tribes with gaming compacts were indispensable parties to the litigation where non-Indian casinos were attempting to enjoin the Governor from renegotiating gaming compacts.
Leisnoi, Inc. v. U.S., 313 F.3d 1181 (9th Cir. 2002)	Wrote Opinion holding that: the Court of Appeals had jurisdiction over district court's denial of rancher's motion to intervene as of right in a Quiet Title Claim and rancher's intervention motion was moot once United States filed its disclaimer of land claimed by village corporation.
U.S. v. Doe, 324 F.3d 1057 (9th Cir. 2003)	Wrote Opinion holding that: defendant's speedy trial rights were violated by failure to bring defendant to trial within thirty days of certification of his case.
Chickaloon-Moose Creek Native Ass'n., Inc. v. Norton, 360 F.3d 972 (9th Cir. 2004)	Wrote Opinion holding that: the Department's legal opinion of its Formal Agreement with regional corp., which governed the land conveyance, was not entitled to deference because ANCSA did not permit Department to make such an opinion and ANCSA did not allow Department to convey lands differently than agreed upon by Agreement.
U.S. v. Doe, 366 F.3d 1069 (9th Cir. 2004)	Wrote Opinion holding that: speedy trial clock of the Juvenile Delinquency Act began to run from the date upon which federal detention was begun on the charges of delinquency for which the alleged delinquent was in custody; pending trial juvenile record certification requirements were not jurisdictional but rather went to the conduct of the proceeding; and district court's error, if any, in failing to obtain formal certification from tribal juvenile court record did not amount to plain error requiring reversal.
Allen v. Gold Country Casino, 464 F.3d 1044 (9th Cir. 2006)	Wrote Opinion holding that: the casino acted as arm of tribe, and thus was entitled to tribal sovereign immunity, and casino did not waive tribal sovereign immunity.
Idaho v. Shoshone-Bannock Tribes, 465 F.3d 1095 (9th Cir. 2006)	Wrote Opinion holding that: despite an already negotiated compact with Idaho, and subsequent other tribes operating a new form of gaming within the state, the compact required an amendment to permit new forms of gaming; the amendment is mandatory, and did not reopen compact to renegotiation; and a state statute imposing limitations on numbers of tribal video gaming machines did not apply to the tribe.
Lawrence v. Department of Interior, 525 F.3d 916 (9th Cir. 2008)	Wrote Opinion holding that: constructive notice for an employment lawsuit did not violate federal trust responsibility vis-à-vis tribes and federal government and lack of actual notice did not disparately affect Indians, under Title VII.
Cachil Dehe Band of Wintun Indians of the Colusa Indian Community v. California, 547 F.3d 962 (9th Cir. 2008)	Wrote Opinion holding reversing the district court's dismissal of a gaming tribes challenge to the state's interpretation of a gaming compact; absent tribes with identical compacts were not indispensable to the litigation because of their sovereign immunity.
Bressi v. Ford, 575 F.3d 891 (9th Cir. 2009)	Wrote Opinion holding that: tribal officers acting under color of Arizona law preclude civil rights claims against officers thereby entitling officers to tribal qualified immunity concerning the arrests.
U.S. v. Washington, 593 F.3d 790 (9th Cir. 2009)	Wrote Opinion holding that: federal recognition obtained by Indian tribe was not extraordinary circumstance that warranted reopening of previous denial of treaty rights.
Evans v. U.S. Dept. of Interior, 604 F.3d 1120 (9th Cir. 2010)	Wrote Opinion holding that: the Tulalip Tribes were not entitled to intervene in Snohomish Tribe's effort to achieve federal recognition.