2004

Petitioner's Brief

Richard B. Collins
University of Colorado Law School

2003 TRIBAL LAW & GOVERNANCE CONFERENCE
CASE RECONSIDERATION

BEFORE THE SUPREME COURT OF
THE AMERICAN INDIAN NATIONS

Julia Martinez,
Petitioner
v.
Santa Clara Pueblo,
Respondents.

2003 Term

First Decided by the
Supreme Court of the United States of America
on May 15, 1979
436 U.S. 49 (1979)

To be reargued and re-decided by the
Supreme Court of the American Indian Nations

PETITIONER'S BRIEF

RICHARD B. COLLINS*
Professor of Law
University of Colorado School of Law
504 Flemming Law Building
401 UCB
Boulder, CO 80309-0401

ATTORNEY FOR THE PETITIONER

I. Opinions Below

The opinion of the District Court is reported at, 402 F. Supp. 5 (D.N.M. 1975). The opinion of the Court of Appeals is reported at 540 F.2d. 1039 (10th Cir. 1976). The opinion of the United States Supreme Court is reported at 436 U.S. 46 (1978).

II. Statutes Involved

A. Statute Of Santa Clara Pueblo[1]

December 15, 1939

Be it ordained by the Council of the Pueblo of Santa Clara, New Mexico, in regular meeting duly assembled, that hereafter, the following rules shall govern the admission to membership to the Santa Clara Pueblo.

1. All children born of marriages between members of the Santa Clara Pueblo shall be members of the Santa Clara Pueblo.
2. That children born of marriages between male members of the Santa Clara Pueblo and nonmembers shall be members of the Santa Clara Pueblo.
3. Children born of marriages between female members of the Santa Clara Pueblo and nonmembers shall not be members of the Santa Clara Pueblo.
4. Persons shall not be naturalized as members of the Santa Clara Pueblo under any circumstances.

B. 25 U. S. Code § 1302. Constitutional Rights[2]

No Indian tribe in exercising powers of self-government shall --

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law; . . .

III. Question Presented

Can federal courts grant equitable relief to enforce the Indian Civil Rights Act of 1968 (ICRA), 25 U.S.C. 1301, *et seq.*?

IV. Statement Of The Case

Santa Clara Pueblo is an Indian nation that owns and occupies ancestral land in New Mexico of about 48,000 acres. At the time of trial, there were about 1200 members of the Pueblo, most of whom resided on Pueblo land. The Pueblo's

traditional language is Tewa. Its officials are Governor Lucario Padilla and the Pueblo Council.

Petitioner Julia Martinez is a member and lifelong resident of Santa Clara Pueblo and of full Santa Clara ancestry. Her husband, Myles Martinez, is of full Navajo Indian ancestry and has resided at the Santa Clara Pueblo since his 1941 marriage to Julia, except for his military service in World War II. Their children, petitioner Audrey Martinez and her brothers and sisters, are thus of full Indian ancestry and half Santa Clara ancestry. Until the decision below, they were lifelong Pueblo residents, except for their time away at school. All the Martinez children speak and understand Tewa, the traditional and official language of the Pueblo; observe traditional customs; and are accepted into the religion of the Pueblo. These facts led the district court to find that the Martinez children "are culturally, for all practical purposes, Santa Clara Indians."[3] The Court of Appeals concluded that they "are, culturally, members of the Pueblo."[4]

In 1935, the Pueblo adopted a constitution pursuant to the Indian Reorganization Act, 25 U.S.C. § 476.[5] The constitution grants power to determine membership questions to the Pueblo Council. Membership determinations by the Council affect a wide range of rights, both tribal and federal. Only Pueblo members have tribal political rights, enjoy material benefits such as land use rights, and have the right to remain living at the Pueblo. Many federal benefits are also expressly contingent upon membership in an Indian tribe.

Denial of membership has caused hardship to the Martinez family, especially in obtaining federal medical care available to Indians. In 1968, Julia Martinez's now-deceased daughter Natalie, suffering from strokes associated with her terminal illness, was refused emergency medical treatment by the Indian Health Service. This was solely because her mother had previously been unable to obtain tribal recognition for her. Only after meeting with Interior Department solicitors did Mrs. Martinez obtain Bureau of Indian Affairs census numbers for her children. At the time of trial, the Martinez children were encountering no difficulties in receiving medical care, as Respondents have noted. Since then, however, Martinez grandchildren have had problems in obtaining medical care from the Indian Health Service.

In addition, those of the Martinez children who are grown are unable to obtain Pueblo land assignments upon which to make homes of their own. To stay on the Pueblo, they must reside with their mother or another member relative.

Suit was filed on September 22, 1972, in the District Court for the District of New Mexico, against the Pueblo, its governor, and the members of the Pueblo Council.[6] Respondents pled lack of jurisdiction, sovereign immunity, failure to exhaust tribal remedies, and general denial on the merits.[7] Motions to dismiss were denied, and trial to the Court was held November 25-27, 1974.[8] Judgment for

Respondents was entered on June 25, 1975.[9]

Respondents claimed at trial that the 1939 Pueblo Ordinance was essential to the religious heritage of the Pueblo, but the district court found that it is unrelated to the Pueblo religion.[10] Traditional Santa Clara society frowned on mixed marriages by either sex, and prior to the 1930's, mixed marriages at the Pueblo were rare. The few cases of children of such marriages were handled case-by-case based on cultural and religious affinity to the Pueblo.[11] This traditional rule is codified in the Pueblo Constitution of 1935, which mentions no discrimination. The principal purpose of the 1939 Ordinance was to reduce claims to Pueblo land and money.[12] As late as 1942, the Pueblo contemplated exceptions to the Ordinance upon payment of a fee. Based on these facts, the district court stated that the Ordinance represented a "break with tradition."[13] The Ordinance, which mandates the membership of male-line children without regard to cultural or religious affinity, is thus not a traditional rule as Respondents claim.

The Court of Appeals reversed and remanded on August 18, 1976.[14] The United States Supreme Court reversed the Court of Appeals and ordered the action dismissed for lack of a federal cause of action on May 15, 1978.[15] The Supreme Court held that the District Court had subject matter jurisdiction.[16] It ruled that the Pueblo enjoyed sovereign immunity from suit, which was not abrogated by the ICRA.[17] The Court stated that the suit could be maintained against Governor Padilla and other Pueblo officials for prospective relief by analogy to *Ex parte Young*.[18] The Court held that there is no federal cause of action to enforce the Act except for *habeas corpus* to challenge tribal custody.[19] Therefore, the Court ordered the action to be dismissed.[20]

V. SUMMARY OF ARGUMENT

The ICRA's legislative history demonstrates that the purpose of the Act is to guarantee to persons under tribal jurisdiction the same constitutional rights enjoyed by other Americans. Federal remedies under the ICRA cannot be limited to *habeas corpus*. If they were, rights conferred on persons under tribal authority would be greatly inferior to the rights enjoyed by others, contrary to Congress' intent. The legislative history demonstrates specific congressional concern with the denial of an equitable remedy by the federal courts in cases involving tribal membership, free exercise of religion, and tribal taxing power. By contrast there is no support in the history for an intent to confine remedies to *habeas corpus*. Relevant decisions of the Supreme Court sustain the jurisdiction of the district courts over analogous cases denying basic rights. For many years the remedy of *habeas corpus* has been broadly governed by statute, while the equitable powers of the federal courts have not except for specific limitations. Congress followed this tradition in the ICRA.

Underlying the question of remedies to enforce the ICRA is a policy issue of profound importance to all Indian nations, that of jurisdiction over nonmembers. The ICRA was Congress's attempt to provide a just basis for Indian nations to govern all residents of their territories. The decision below, in light of other recent Supreme Court decisions, portends restriction of tribal jurisdiction to members.

The Supreme Court's rulings on sovereign immunity, which Petitioners accept, protect tribes against retroactive relief. This is the same protection enjoyed by the state and federal governments. Jurisdiction to grant only prospective, equitable relief has long been a basic rule of constitutional law that balances the sovereign interest of governments against the need to enforce the civil rights of individuals. In light of this, and the intent of Congress in enacting the ICRA, Congress cannot have intended to exclude traditional equitable relief.

VI. ARGUMENT

A. Congress Intended a Federal Cause of Action for Equitable Enforcement of the ICRA.

Petitioners contend that the Supreme Court erred in denying a federal cause of action for equitable enforcement of the ICRA. This conclusion is supported by the purpose, language, and legislative history of the Act, by ICRA precedents in the lower courts, and by analogous precedents in the Supreme Court.

1. ICRA Precedents.

Prior to the Supreme Court's decision in this case, lower federal courts had unanimously found a federal cause of action for prospective equitable enforcement of the ICRA.[21]

2. Background and Purpose of the ICRA.

The manifest purpose of the ICRA is to impose enumerated standards of the Constitution on self-governing Indian tribes.[22] The standards are taken, mostly *verbatim*, from the Constitution[23] and the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments.[24]

The legislative history of the ICRA involved extensive hearings beginning in 1961, yielding four hearing reports between 1961 and 1965,[25] and summary reports on the hearings by the Subcommittee Staff in 1964 and 1966.[26] Senator Ervin and other Subcommittee members introduced bills in the 88th Congress (S.3047) and 89th

Congress (S.961), each of which would have imposed on Indian tribes the same limitations that the Constitution imposes on the federal government.[27] Neither bill ever got as far as a full committee report.[28] In 1965, the Interior Department suggested substituting an enumerated list of rights for the direct application of the Constitution. The Subcommittee accepted Interior Department's concept.[29] A bill was introduced into the 90th Congress as S.1843 and sent to Committee.[30] The Senate Judiciary Committee voted out the bill and issued the only committee report on any of these bills. The full Senate unanimously passed S.1843 on December 7, 1967.[31]

Impatient with slow action in the House, Senator Ervin also persuaded the Senate to add the full text of S.1843 as a floor amendment to H.R. 2516, which dealt with other civil rights matters and had already passed the House.[32] The Senate passed H.R. 2516 with the Indian rights addition on March 11, 1968.[33]

The House began committee hearings on the separate Indian rights bill (S.1843) and a House version (H.R. 15419) on March 29, 1968.[34] But on April 10, 1968, the full House passed H.R. 2516 with the Indian rights amendment.[35]

As this summary shows, the only committee report on any of the bills leading to the ICRA is the Senate Judiciary Committee Report. Throughout this report, and the Staff Reports mentioned above, the reference is uniform to the constitutional rights being imposed, and there are frequent statements that the limitations are the same as those imposed on the federal and state governments.[36]

Petitioners submit that the right to judicial review is a necessary part of constitutional limitations. Without meaningful judicial review, the ICRA rights would be so much inferior to the rights protected by the Constitution as to contradict the statement of purpose.

3. Equitable Remedies.

The Indian Bill of Rights expressly guarantees the federal remedy of *habeas corpus* from tribal custody.[37] The Supreme Court held that this remedy is exclusive of all others.[38] This holding should be rejected, because the *habeas* remedy will not fulfill many of the manifest purposes of the ICRA. It would not fulfill specific purposes indicated by the legislative history, and there is no indication that Congress intended *habeas* to be the sole remedy. The Supreme Court has generally sustained remedies in analogous civil rights cases, and *habeas* has long been a statutory remedy while equitable relief has not.

Many of the rights enumerated in the Indian Bill of Rights would rarely, if ever, arise in the context of tribal custody. Taking of property, taxation without due process, warrantless searches, bills of attainder, denial of equal rights to vote, freedom of the press, the right of peaceable assembly, the right to petition for redress of grievances, or

free speech -- all frequently or exclusively occur absent custody. Even criminal procedural rights can be denied in proceedings ending in non-custody punishments such as a fine, restitution, loss of land use rights, or banishment from the reservation. The ICRA will be an empty undertaking indeed if these rights lacked federal remedy.

As noted above, the general purpose of the Indian Bill of Rights was to give persons under tribal jurisdiction the same constitutional rights that other Americans enjoy under the state and federal governments.[39] Since everyone has access to equitable remedies for non-custody violations of rights by federal and state governments, denial of equitable remedies against tribes will not be the same; it will be greatly inferior.

The legislative history also indicates the intent to alter the legal effect of prior federal court decisions denying a remedy to persons denied basic rights in non-custody circumstances.[40] As previously stated, there is only one committee report on the bill that became the ICRA or any of its predecessors.[41] This report discusses the "denial of rights by tribal governments" principally by discussing seven reported federal court opinions that had denied a remedy to persons under tribal jurisdiction.[42] Five of these seven were civil cases, where a *habeas* remedy would not apply. One of these was *Barta v. Oglala Sioux Tribe*, which was a challenge by non-Indians to a tribal tax. 259 F.2d 553 (8th Cir. 1958), *cert. denied*, 358 U.S. 932 (1959). The others were: *Martinez v. Southern Ute Tribe*, 249 F.2d 915 (10th Cir. 1957), *cert. denied*, 356 U.S. 960 (1958), involving a dispute over tribal membership; *Native American Church v. Navajo Tribal Council*, 272 F.2d 131 (10th Cir. 1959) and *Toledo v. Pueblo de Jemez*, 119 F.Supp. 429 (D.N.M. 1954), considering claimed denials of free exercise of religion; and *Iron Crow v. Oglala Sioux Tribe*, 231 F.2d 89 (8th Cir. 1956), which was a challenge by Indians to a tribal tax. The *Iron Crow* case also involved challenges to criminal convictions by two Indians; only one conviction involved a jail sentence.[43] Furthermore, in referring to both *Barta* and *Iron Crow*, the Senate Committee Report expressed concern over due process requirements in taxation.[44]

The focus on these cases was not confined to the Committee. When the bill (S.1843 from the 90th Congress) was introduced into the Senate, Senator Ervin inserted an analysis of the same seven cases into the Congressional Record.[45] The same cases were also pointed out to the House Subcommittee in its hearings just prior to enactment of the ICRA.[46] By contrast, there is no support in the legislative history for an intent to confine all remedies for rights violations to *habeas corpus*.

The general rule regarding equitable remedies for constitutional violations was stated in *Bell v. Hood*:

> [I]t is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the

> Constitution and to restrain individual state officers from doing what the 14th Amendment forbids the state to do. Moreover, where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief.[47]

The equitable power of the federal courts described by the Supreme Court in the cases just cited has traditionally been characterized as an inherent power of the courts exercised in accordance with principles of equity evolved from the chancery courts. Congress has recognized this by occasionally acting to limit the power. [48] By contrast, *habeas corpus* has for many years been governed by statute. [49] The Constitution (art. I, § 9, cl. 2) limits Congress' ability to control the writ, but the practice of defining the remedy by statute is well-established. Congress followed this practice by including in the ICRA a statutory right of *habeas corpus*.[50] This section also substitutes for the constitutional limitation itself, to which the tribes are not subject. In light of these traditions, congressional intent to deny normal equitable remedies should not be implied from a *habeas* statute absent the clearest indications.

B. Tribal Sovereignty is Better Served by Equitable Enforcement of the ICRA.

1. Petitioners Seek Only the Same Prospective Relief Available Against State and Federal Officers.

The Court below held that the ICRA did not abrogate the traditional immunity from suit of the Indian nations.[51] But the Court also held that Governor Padilla and other Pueblo officers are "not protected by the tribe's immunity from suit," by analogy to *Ex parte Young*.[52] The Court also relied on its prior decision in *Puyallup Tribe v. Washington Dept. of Game*.[53]

Petitioners have not asked this Court to review the Supreme Court ruling holding the Santa Clara Pueblo immune from suit without its consent. Throughout this litigation, Petitioners have sought only prospective, equitable relief of the sort available under *Ex parte Young* and its counterparts involving federal officials. As Santa Clara Indians, Petitioners have an interest in tribal sovereignty and seek to limit their remedy to the same remedy that litigants have against the state and federal governments. For like reasons, Petitioners accept the rule developed in lower federal courts requiring exhaustion of internal tribal remedies as a condition to federal court jurisdiction.[54] Petitioners complied with this rule by exhausting all tribal remedies within the Santa Clara Pueblo.[55]

Jurisdiction to grant prospective, equitable relief against tribal officers is supported by the legislative history of the ICRA. For example, the 1966 Subcommittee Staff Report of Hearings begins with a two and one-half page discussion titled, "Tribal Sovereignty and Its Limitation by Federal Authority."[56] It is clear that the senators knew that the very enactment of an Indian Bill of Rights would be a federal limitation on tribal sovereignty.

In considering sovereign immunity, it is important to distinguish between actions such as this one, seeking equitable relief against future conduct of a government violating basic constitutional rights, from actions seeking damages from the governmental treasury for past wrongs. The judicial power of the United States has long been held to extend to actions for equitable relief from the future unconstitutional acts of governmental officers.[57] By contrast, actions for money judgments (or even equitable restitution) for past wrongs have required explicit waivers of immunity. Actions involving title to property and certain kinds of contract rights are also protected. No circuit court of appeals has sustained a money judgment against an Indian tribe under the ICRA; the decisions cited above involved equitable relief.

The right to redress against overbearing and unconstitutional government action represented by *Ex parte Young* has long been a basic rule of constitutional law. In light of this well-established principle, and of Congress' clear intent to guarantee to persons under Indian tribal jurisdiction the "same" rights as other Americans and to remedy the injustice of prior cases denying relief in non-custody cases, it is inconceivable that Congress did not intend traditional equitable relief to be available.

2. The Relief Sought by Petitioners Will Promote and Accommodate Recognition of Tribal Jurisdiction over Non-Members.

The Supreme Court recently held that tribes lack jurisdiction to punish non-Indians for violations of tribal criminal law within tribal territory.[58] In the same term, the Court sustained tribal criminal jurisdiction over a member but in *dictum* implied that tribes lack jurisdiction over all nonmembers, Indian or not.[59] These decisions do not address the important question of Indian nations' civil jurisdiction over nonmembers.

However, in enacting the ICRA, Congress did consider tribal civil jurisdiction. One of the decisions that Congress disapproved for lack of a federal remedy was *Barta v. Oglala Sioux Tribe*.[60] This was an action by non-Indians seeking judicial review of validity of a tribal tax. Plainly, Congress thought it was pro-viding persons like the *Barta* plaintiffs with a federal remedy. The Supreme Court has now taken that remedy away. If this decision is allowed to stand, it leaves nonmembers with no federal rights against tribes. This not only contravenes Congress's plan, but when read with some of

the bill of rights language in the *Oliphant* opinion, it portends extension of that decision into the civil realm.[61]

Properly interpreted, Congress intended the ICRA as a limited intrusion into tribal authority to accommodate modern concepts of constitutional rights, limited to prospective, equitable remedies like those available against the state and federal governments. The accommodation looked to give nonmembers federal judicial review of tribal authority exercised over them. The Supreme Court has taken its own path, ostensibly out of respect for tribal sovereignty. Its decision should be seen in larger compass as pointing toward a greater restriction of tribes than that intended by Congress.

VII. CONCLUSION

For the reasons stated, this Court should sustain federal court jurisdiction to award equitable relief against tribal officers for violations of the Indian Bill of Rights.

Respectfully Submitted,

Richard B. Collins
Counsel for the Petitioner

Notes

* Professor of Law and Director of the Byron R. White Center for the Study of American Constitutional Law at the University of Colorado.

1. Cited as "The 1939 Ordinance" in briefs submitted to the United States Supreme Court; *see* Brief for the Petitioner at *4, Santa Clara Pueblo v. Martinez, 436 U.S. 39 (1978) (No. 76-682); Brief for the Respondent at *3, *Santa Clara Pueblo*, 436 U.S. 39.
2. 25 U.S.C.S. § 1302 (2004).
3. Martinez v. Romney, 402 F.Supp. 5, 18 (D.N.M. 1975).
4. Martinez v. Santa Clara Pueblo, 540 F.2d 1039, 1041 (10th Cir. 1976).
5. *See* 25 U.S.C.S. § 476 (2004).
6. *Romney*, 402 F.Supp. at 6-11.
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.* at 16.
11. *Id.*
12. *Martinez*, 540 F.2d at 1047; *Romney*, 402 F.Supp. at 15.

13. *Romney*, 402 F.Supp. at 16.
14. *Martinez*, 540 F.2d at 1048.
15. *Santa Clara Pueblo*, 436 U.S. 49, 72 (1978).
16. *See id.* at 59.
17. *Id.*
18. *Id.* (citing *Ex parte* Young, 209 U.S. 123 (1908).
19. *See id.* at 71-72.
20. *Id.* at 72.
21. *See* Means v. Wilson, 522 F.2d 833 (8th Cir. 1975); Crowe v. E. Band of Cherokee Indians, 506 F.2d 1231 (4th Cir. 1974); Laramie v. Nicholson, 487 F.2d 315 (9th Cir. 1973), *cert. denied*, 419 U.S. 871 (1974).; Johnson v. Lower Elwha Tribal Cmty., 484 F.2d 200 (9th Cir. 1973); Luxon v. Rosebud Sioux Tribe, 455 F.2d 698 (8th Cir. 1972); Seneca Constitutional Rights Org. v. George, 348 F.Supp. 48 (W.D.N.Y. 1972); Dodge v. Nakai, 298 F.Supp. 17 (D.Ariz. 1969); *see also* Note, *The Indian Bill of Rights and the Constitutional Status of Tribal Governments*, 82 HARV. L. REV. 1343 (1969).
22. S. REP. 90-721, at 1837 (1968).
23. U.S. CONST. art. I, § 9, cl. 2.
24. U.S. CONST. amend. I; U.S. CONST. amend. IV; U.S. CONST. amend. V; U.S. CONST. amend. VI; U.S. CONST. amend. IIX; U.S. CONST. amend. XIV.
25. *Hearings on Constitutional Rights of American Indians Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 87th Cong. (1961); *Hearings on Constitutional Rights of the American Indian Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 87th Cong.(1962); *Hearings on Constitutional Rights of the American Indian Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 88th Cong. (1963); *Hearings on S.961, etc., Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 89th Cong. (1965).
26. STAFF OF SUBCOMM. ON CONSTITUTIONAL RIGHTS OF THE SENATE COMM. ON THE JUDICIARY, 89TH CONG., SUMMARY REPORT OF HEARINGS AND INVESTIGATIONS ON CONSTITUTIONAL RIGHTS OF THE AMERICAN INDIAN (Comm. Print 1966); STAFF OF SUBCOMM. ON CONSTITUTIONAL RIGHTS OF THE SENATE COMM. ON THE JUDICIARY, 88th Cong., SUMMARY REPORT OF HEARINGS AND INVESTIGATIONS ON CONSTITUTIONAL RIGHTS OF THE AMERICAN INDIAN (Comm. Print 1964).
27. S. REP. 90-841 (1967).
28. *Id.*
29. *Id.*
30. Id.
31. 113 CONG. REC. 35473 (1967).
32. S. REP. 90-841 (1967).
33. *Id.*
34 Hearings on H.R. 15419, etc., Before the Subcomm. on Indian Affairs of the House Comm. on Interior and Insular Affairs, 90th Cong. (1968).
35. *Id.*
36. S. REP. 90-841 (1967).
37. 25 U.S.C. § 1303 (2004).
38. See Santa Clara Pueblo, 436 U.S. 49.

39. S. REP. 90-841 (1967).
40. *Id.*
41. See id.
42. *Id.* at 9-10.
43. *Iron Crow*, 231 F.2d 89.
44. S. REP. 90-841 (1967).
45. 113 Cong. Rec. 13474 (1967).
46. Hearings on H.R. 15419 at 17, etc., Before the Subcomm. on Indian Affairs of the House Comm. on Interior and Insular Affairs, 90th Cong. (1968).
47. 327 U.S. 678, 684 (1946). *See also* Bivens v. Six Unknown Named Agents, 403 U.S. at 400 (concurring opinion of Justice Harlan discussing equitable remedies); *Ex parte Young*, 209 U.S. at 163-65.
48. *See, e.g.*, 28 U.S.C. §§ 1341, 2283 (2004).
49. 28 U.S.C. §§ 2241-2255 (2004).
50. 25 U.S.C. § 1303 (2004).
51. *Santa Clara Pueblo*, 436 U.S. 49, 59 (1978)
52. *Ex parte Young*, 209 U.S. 123.
53. Puyallup Tribe v. Washington Dept. of Game, 433 U.S. 165, 171-172 (1977).
54. *See, e.g.*, O'Neal v. Cheyenne River Sioux Tribe, 482 F.2d 1140 (8th Cir. 1973).
55. *Romney*, 402 F.Supp. 5, 10-11 (D.N.M. 1975), *rev'd, Martinez*, 540 F.2d 1039 (10th Cir. 1976), *rev'd, Santa Clara Pueblo*, 436 U.S. 49 (1978).
56. Staff of Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary, 89th Cong., Summary Report of Hearings and Investigations on Constitutional Rights of the American Indian 1-3 (Comm. Print 1966); *See also* S. Rep. 90-841, at 7-8 (1967).
57. *E.g.*, *Ex parte Young*, 209 U.S. 123; Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).
58. Oliphant v. Suquamish Tribe, 435 U.S. 191 (1978).
59. United States v. Wheeler, 435 U.S. 313, 326 (1978).
60. 259 F.2d at 553, *cert. denied*, 358 U.S. 932 (1959).
61. *See Oliphant*, 435 U.S. at 210.