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Blatchford v. Sullivan, 904 F.2d 542
Author: Judge Anderson

Plaintiff, Blatchford, filed a writ of *habeas corpus*, alleging that the state of New Mexico lacked jurisdiction to try him for his offenses. The Federal Major Crimes Act, 18 U.S.C. § 1153, gives exclusive jurisdiction to the federal government for crimes committed within either an Indian reservation or a dependent Indian community. In a companion case, it was determined that the area in question did not have reservation status. Therefore, the only issue remaining to be decided was whether the area where Blatchford committed his offenses was a dependent Indian community within the meaning of the statute.

The Tenth Circuit found that the area was not a dependent Indian community. In making this determination, the court considered land title, community composition and purpose, and the relationship of the community to the federal government, the Indian nation, and the state and county government. The court found that most of the land was privately owned, that the inhabitants included many non-Indians, and that the primary purpose of the community was commercial activity. Accordingly, the court ruled that Congress did not intend to include an Indian allotment clustered around a non-Indian commercial junction on private land as a dependent Indian community.

Pittsburgh & Midway Coal Mining Co. v. Yazzie, 909 F.2d 1387
Author: Judge Anderson

Plaintiff, Pittsburgh and Midway Coal Mining Company ("P&M"), sought an injunction and a declaratory judgment. P&M claimed that defendant, Navajo Tribe Tax Commission (the "Tribe"), lacked jurisdiction under federal law to tax a P&M mine on land located in northwestern New Mexico. The land in question was an addition of approximately 1.9 million to the Navajo Reservation in 1907-08. P&M, however, stated that the addition was terminated by two Executive Orders in 1908 and 1911 thereby depriving the Tribe of jurisdiction to tax mines located on this land. The Tribe argued that the land in question was still part of the Navajo Reservation and, therefore, the taxation issue should first be addressed by Tribal forums. Accordingly, the federal court should abstain under the "Indian abstention doctrine." Alternatively, the Tribe claimed that the Indian abstention doctrine was still applicable because the land was located within "Indian country." The district court held that the land was within Reservation boundaries and, therefore, the Indian abstention doctrine applied. P&M subsequently appealed.

The Tenth Circuit reversed the district court's finding that the land was within Reservation boundaries. The court based its decision on the

language and legislative history of two Executive Orders and the Act of May 29, 1908. The court ruled that the phrase "restore to public domain" was widely interpreted as diminishing or terminating the boundaries of the New Mexico portion of unallotted land. While this land originally was withdrawn from the public domain in an effort to allot land to off-reservation Indians, these Executive Orders and legislation returned the land to the public domain. Therefore, the land was not within Reservation boundaries. The court then remanded the case for a finding of whether the land was nevertheless in Indian country and, if so, whether the Indian tribunal should first hear the taxation question.

Ross v. Neff, 905 F.2d 1349
Author: Judge Logan

Plaintiff, Ross, brought two fourth amendment claims against defendant, McLemore, deputy sheriff. Ross alleged that McLemore violated his rights when he arrested him on Indian Tribal Trust land. Ross claimed that state police officers have no jurisdiction in Indian country. Further, Ross asserted a constitutional claim based on McLemore's alleged use of excessive force in making the arrest.

The Tenth Circuit ruled that McLemore did not have authority to arrest Ross in Indian country. Pursuant to 18 U.S.C. § 1152, Indian country held in trust for Indian use is subject to exclusive federal or tribal criminal jurisdiction. Thus, the county, its sheriff, or his inferior officers could not exercise jurisdiction for the state. Notwithstanding the lack of jurisdiction to arrest Ross, McLemore, as an individual peace officer, still enjoyed qualified immunity because no reasonable police officer could have known such an action violated the law. The court upheld the directed verdict, but remanded for trial a separate claim for extra-jurisdictional arrest against the county. The court reasoned that the county enjoyed no such qualified immunity. The county can be held liable only if the constitutional deprivation resulted from county custom or policy.

Shoshone Indian Tribe v. Hodel, 903 F.2d 784
Author: Judge Babcock, sitting by designation

Plaintiff, Shoshone Indian Tribe ("Tribe") brought suit against defendant, Hodel, Secretary of the Interior ("Secretary"), Atlantic Richfield Company, and several other oil companies ("ARCO"). The Tribe asserted that ARCO improperly deducted manufacturing costs before computing the royalty owed to it for mineral leases on tribal lands. Under the United States Geological Survey, Conservation Division Manual Part 647.7.3(D), manufacturing costs are deductible only if the Secretary determines that such costs are an "integral part" of the manufacturing process. The Secretary determined that ARCO's manufacturing costs were not an integral part of the manufacturing process and, thus, were not deductible. The district court upheld the Secretary's determination. ARCO appealed, arguing that the Secretary developed a

long standing policy of allowing the costs because past deduction of similar manufacturing costs were never rejected as improper.

The Tenth Circuit held that a long standing policy can only be found where an administrative agency interprets a regulation consistently over a long period of time, publicly, and through careful and sound reasoning. The court reasoned that the Secretary's prior acquiescence did not meet the criteria in establishing a long standing policy since ARCO's deductions had never before been challenged. Therefore, the Secretary has wide discretion in determining the deductibility of such costs.