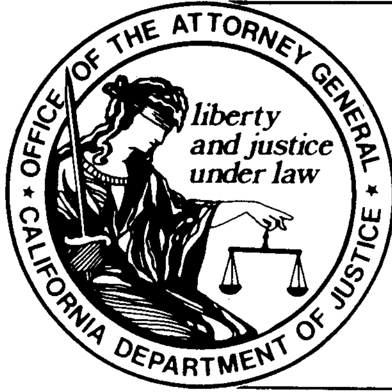


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**AUGUST 1986**

# PEACE OFFICER LAW REPORT

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## California Department of Justice

## John K. Van de Kamp, Attorney General

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We begin the August POLR with the second part of an article by Deputy Attorney General Thomas Greene containing a detailed discussion of the special legal and law enforcement problems associated with enforcement of the law on Indian tribal lands. Part one of the article appeared in last month's issue.

Our Recent Cases section begins with a summary of a United States Supreme Court decision dealing with the admissibility of incriminating statements made to a jailhouse informant who listened to the defendant but followed instructions and did not question the defendant about the crime. Next, we summarize two appellate decisions dealing with the scope of a search for vehicle identification numbers in an automobile suspected by the police to be stolen, and the destruction of marijuana plants pursuant to section 11479 of the Health and Safety Code.

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# LAW ENFORCEMENT IN INDIAN COUNTRY

By Thomas Greene*

Part II

## IV. WHAT IS "INDIAN COUNTRY"?

"Indian country" is a term of art used in Public Law 280 to define the areas in which this statute applies.[53] This term is itself defined in Title 18, United States Code, section 1151. An area does not become "Indian country" simply because Indians live there or own the land. "Indian country" encompasses recognized reservations and rancherias.[54] It also includes fee simple land within the bounds of an established reservation or rancheria.[55] The most accessible method of determining the bounds of Indian country within your jurisdiction is to contact the Bureau of Indian Affairs.[56]

## V. CRIMINAL LAW IS ENFORCEABLE

All criminal laws are enforceable in Indian country to the same extent they are enforceable elsewhere. The preceding discussion concerning non-criminal law should not confuse you. P.L. 280 provides you with the authority and creates the obligation to enforce the criminal law in Indian country.[57]

## VI. ACCESS TO INDIAN COUNTRY

Access rights follow jurisdiction.[58] You are on the same footing in Indian country as you are elsewhere in your jurisdiction. This means that the same limitations apply as well. Access to private areas is subject to the same constitutional limitations as everywhere else in your service territory.

## VII. ARE LOCAL ORDINANCES ENFORCEABLE?

This is a very troublesome area. An Index Letter of this office in 1975 suggested that local ordinances could be broadly enforceable in Indian country.[59] This was based on then current case law.[60] Subsequent cases specifically ousted local land-use ordinances. The leading case in this federal appellate circuit involved county land-use controls on the placement of mobile homes financed by the Bureau of Indian Affairs on the rancheria of the Santa Rosa Band of Indians.[61] In this case, the court based its decision on several alternative grounds. These were (i) Public Law 280 did not extend civil jurisdiction to localities; [62] (ii) the challenged land-use controls constituted an "encumbrance" on trust land impermissible under P.L. 280; and (iii) the ordinances conflicted with specific federal statutes, other than P.L. 280, providing for improvement of housing and sanitation systems on Indian reservations.[63] Lawyers for the tribes typically focus on only the first argument of the court, that is, that the local source of regulations rather than their content preclude enforcement of all local ordinances in Indian country. They also cite a Supreme Court case involving a tax burden or encumbrance on Indian land which questions whether local regulations in general are consistent with current federal Indian policies.[64] In this case, the Court seemed to embrace the concept of the tribes as jurisdictionally analogous to small cities.[65]

Given that local ordinances which encumber trust assets are not enforceable under current case law,[66] the question is whether other types of local ordinances are enforceable. The leading text on Indian law, the most recent edition of which is generally hostile to assertions of state or local authority, concludes that the enforceability of local *criminal* ordinances is an open question.[67] It could be argued, for example, that local criminal ordinances and indeed civil ordinances not encumbering trust assets, subject to the sensitive *Rice* v. *Rehner* test, are valid. However, a recent California Court of Appeal decision, again dealing with a land-use question, asserts that *all* local ordinances are unenforceable under P.L. 280 simply because they are local.[68] While this conclusion was not necessary to the decision, as the regulation in question could have been overturned as an

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[53] 18 USC § 1162; 28 USC § 1360. See generally Cohen, *supra*, fn. 6 at pp. 27–46.

[54] *Ibid.*

[55] *Ibid.*

[56] A list of the offices of the U.S. Bureau of Indian Affairs in California is contained in Appendix b.

[57] See Cal. Attorney General, Index Letter 75-43 (1975) p. 2.

[58] See, e.g., *Quechan Tribe* v. *Rowe* (S.D. Cal. 1972) 350 F.Supp. 106, 109.

[59] Cal. Attorney General, Index Letter No. 75-43 (1975).

[60] See e.g., *Rincon Band of Mission Indians* v. *County of San Diego* (S.D. Cal. 1971) 324 F.Supp. 371 card room ordinance; *Ricci* v. *County of Riverside* (C.D. Cal. 1971) Civ. 71-1893 E.C., county building code; *Madrigal* v. *County of Riverside* (C.D. Cal. 1971) Civ. 70-1893-E.C., county rock festival ordinance. Appeals of these decisions were dismissed on jurisdictional grounds at 494 F.2d 1 (9th Cir. 1974).

[61] *Santa Rosa Band of Indians* v. *Kings County* (9th Cir. 1976) 532 F.2d 655.

[62] *Id.* at pp. 659–664.

[63] *Id.* at pp. 668–669.

[64] *Bryan* v. *Itasca County, supra,* 426 U.S. 373, 388–389, fn. 14.

[65] *Ibid.*

[66] See, e.g., *United States* v. *County of Humboldt* (9th Cir. 1980) 615 F.2d 1260; *Santa Rosa Band of Indians* v. *Kings County* (9th Cir. 1975) 532 F.2d 655.

[67] Cohen, *supra,* fn. 6 at pp. 366–367. This is based on significant language differences between the civil and criminal portions of Public Law 280.

[68] *Zachary* v. *Wilk* (1985) 173 Cal.App.3d 754.

"encumbrance" on trust land, it will still have to be distinguished in California litigation concerning local ordinances. And assuming this hurdle is overcome, courts will still have to determine that the ordinance is criminal in nature or otherwise passes muster under the particularized interest test of *Rice* v. *Rehner.*

Pragmatically, many, if not most, local enforcement agencies regard enforcement of local ordinances as a lightning rod for litigation, and therefore do not enforce any local codes in Indian country. In one Northern California county, for example, unenforced local ordinances include those concerning "animal control, discharge of firearms, curfew, and fireworks" as well as the kinds of building codes which have figured in appellate court decisions.[69] For the many small rancherias in California which cannot fll the void created by non-enforcement of local codes, this lack of enforcement creates real problems.[70] These areas simply do not "fit" the Supreme Court's model of the tribes as small municipalities.

But solutions are not easy. Further litigation may or may not more clearly establish the respective roles of local and tribal authorities in these areas.[71] A solution favored by tribal lawyers is to provide funds for development of viable tribal court systems for small reservations.[72] However, it is a telling comment on Federal Indian policy in California that regulations providing for grants to strengthen tribal governments define "small tribes" in the first instance as those with populations of 1500 to 4000 on or near the reservation.[73] A bare handful of California tribes meet even the low end of this test.[74] No program at the state level currently provides for financial support of tribal governments. Another possibility may be a petition by affected tribes to the Secretary of the Interior to cede trial jurisdiction over specified matters to local or state authorities.[75] No effort of this kind is currently on-going in California, and such an effort would be limited to land-use matters, however broadly defined these matters might be.[76]

At least into the near future, the grim reality facing the residents of many rancherias is that neither local nor tribal ordinances effectively operate to protect them. This problem was probably not contemplated by either Congress or the courts, and may require a re-examination of current P.L. 280 doctrine, the extent to which the federal government is meeting its trust responsibilities, and the extent to which the state should shore up institutions of tribal government. However these ultimate questions may be resolved, strategies for coping with this problem as it exists now are discussed in section XV.

## VIII. GAMBLING ON INDIAN LAND

The advent of high-stakes Indian bingo operations has been met with serious concerns on the part of California law enforcement officials. The primary concerns have been with the possibilities of money laundering, skimming, and other gambling-related law enforcement problems arising from essentially unregulated games.

So far, and despite these concerns, federal courts have sanctioned high-stakes Indian bingo operations under the criminal/prohibitory—civil/regulatory test,[77] and have sanctioned poker parlors as well as bingo games under the particularized interest test of *Rice* v. *Rehner.*[78] However, the United States Supreme Court has just decided to review California's challenge to the legality of Indian games based on *Rehner.*[79] Although concern has also been expressed about the possibility of casino-style gambling in Indian country, it is extremely unlikely that this type of gambling would pass muster under the public policy, civil/regulatory—criminal/prohibitory, or particularized interest tests.

While the appellate courts struggle with these issues, it is important to understand that while the games themselves are legal, theft, embezzlement and other crimes are still crimes, and enforceable in Indian country. Many of the games appear to be clean: they have provided income and employment to tribes which badly needed both. However, there have also been problems. On one reservation, three killings, one of a tribal security chief, have been claimed to be associated with an Indian bingo operation.[80] In San Diego County, the Special Prosecutions Unit of this office has successfully prosecuted a grand theft action arising from skimming in a local game.[81] The influx of new money into some reservations has also led to recurring disputes about possible misuse or embezzlement of bingo revenues. If such charges are brought to your attention, they should be investigated and pursued just as vigorously as any similar charge made about a commercial operation outside of Indian country.

The federal government has recently become involved in the Indian gaming issue. Bills are pending in the Congress to create a federal regulatory structure for Indian games. And very recently the Department of the Interior has begun reviewing the contracts between the tribes and the typically non-Indian management companies that run the games for lucrative fees. Under *federal*

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[69] Hearing, Law Enforcement on Indian Lands, *supra*, fn. 6, at p. 26. Note that discharge of a firearm may be actionable under *state* criminal law. (Pen. Code, § 602, subd. (k)(4).)

[70] "Statement of California Legal Services Regarding Aspects of Public Law 280 Jurisdiction" in *Justice in Indian Country* (Carrie Small, ed.) 151–52, "because there is no (tribal) judicial forum (on many small rancherias) to bring civil violators to justice. The primary remedy is self-help."

[71] Courts in a few cases have looked at whether a viable tribal governmental infrastructure is in place as a factor in jurisdictional analysis. See discussion *McClanahan* v. *Arizona State Tax Comm'n.* (1973) 411 U.S. 164, 167–68.

[72] *Justice in Indian Country, supra,* fn. 70, at p. 152.

[73] 25 C.F.R. 278.22(a)(1). Exceptions are provided for smaller tribes under defined circumstances. 25 C.F.R. 278.22(a)(3). Only the largest California tribes have in fact had the opportunity to participate in such programs. *Report of the California Indian Task Force, supra,* fn. 4.

[74] See Appendix B.

[75] 25 C.F.R. § 1.4.

[76] *Ibid.*

[77] *Barona Group of the Capitan Grande Band of Russian Indians* v. *Duffy* (9th Cir. 1982) 694 F.2d 1185 *cert. den.* (1983) 461 U.S. 929.

[78] *Cabazon Band of Mission Indians* v. *County of Riverside* (9th Cir. 1986) 783 F.2d 900 probable jurisdiction noted *State of California, et al.* v. *Cabazon Band,* Docket No. 85-1707 (June 10, 1986) 54 U.S.L.W. 3803.

[79] *Ibid.*

[80] De Dominicus, *Betting on Indian Rights* (1983) 3 Cal. Law. 29, 31.

[81] *People* v. *Siegel* (1986) San Diego Superior Court No. CR 79502.

law the Secretary of Interior can, and may be required to, review these contracts; if such approval is not forthcoming, the contracts are unenforceable.[82] A recent letter from the Secretary of the Interior to the Governor and Attorney General of New Mexico suggests that state law enforcement concerns will be carefully assessed in this review process.[83] While there is some question whether current California games will be substantially affected unless the *Barona* decision is reversed, the contracts themselves in many cases could be significantly improved to provide for independent auditing and other measures to forestall fraud. Your office should work closely with local tribes and Department of Interior officials to determine the status of local games and related management contracts under federal law.

## IX. PROTECTING TRIBAL PROPERTY

A recurring problem on many reservations and rancherias is the unauthorized cutting and taking by non-Indians of wood or Christmas trees. Such actions can be criminal matters [84] and therefore may be dealt with in accordance with Public Law 280. The unauthorized taking of other tribal assets can be similarly handled criminally as theft or petty theft.[85]

## X. CIVIL LAW ISSUES

An extensive discussion of civil law issues is largely beyond the scope of this article. In non-P.L. 280 states, civil jurisdictional arrangements are exceedingly complex with choice of tribal, federal, or state court turning on a number of factors.[86] In California, P.L. 280 has eliminated many of these problems.

Public Law 280 provides that individual Indians can sue and be sued in state court.[87] Under these circumstances, there is no jurisdictional question concerning service of civil process or subpoenas on Indians in Indian country.[88] However, the tribes themselves enjoy a form of sovereign immunity from civil suits. Under this doctrine, unless the tribe has properly waived its immunity, it cannot be sued for its alleged negligence or breach of contract.[89] However, as with civil actions against federal or state entities, the sovereign immunity defense, although in reality narrower than that of the tribes,[90] is raised in court. This means you should be able to properly serve a civil subpoena on an Indian or tribal entity, and leave the complexities of sovereign immunity to the courts.

A significant limitation on state court authority contained in P.L. 280 which may affect you is the limitation on state authority to encumber trust property.[91] Thus, neither you nor a state court may execute a judgment, through a sheriff's sale for example, on trust property.[92] You should approach potential trust assets with great care and, as difficult as this may be, question any court order which seeks to deal with trust assets.

## XI. PROBLEMS WITH TRASH

Anoher recurring problem, particularly on smaller reservations, is the unauthorized dumping of trash by non-tribal members on Indian land. This is a particularly frustrating challenge from a jurisdictional perspective. Most trash controls are local ordinances, and therefore subject to the many challenges discussed in section VII. Trash controls are also arguably land use regulations which "encumber" trust property in violation of Public Law 280.[93] However, when the tribe has not consented to the dumping of trash on its land, consider charging Penal Code sections concerning dumping and litter.[94] Other possibilities include various forms of criminal trespass.[95] This may seem like an overreaction to this problem, but the issue of unauthorized trash dumping is a significant one on a number of reservations.

## XII. DO THE TRIBES HAVE CONCURRENT JURISDICTION OVER CERTAIN CRIMINAL MATTERS?

A potentially explosive issue which has yet to be resolved by the courts is the extent to which, if at all, the tribes have concurrent jurisdiction over certain criminal matters in Public Law 280 states. This office has asserted that state and local jurisdiction is exclusive;[96] some legal representatives of the tribes assert that the tribes can exercise criminal jurisdiction over Indians subject to the Indian Civil Rights Act.[97] The Department of the Interior originally agreed with the State but in 1978 reversed course and issued an opinion in support of concurrent

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[82] See *Wisconsin Winnebago Business Committee* v. *Koberstein* (7th Cir. 1985) 762 F.2d 613; *County of Fresno* v. *Hodel* (E.B. Cal. July 26, 1985) No. CV-F-85-018 REC.

[83] Letter dated August 6, 1985, from Secretary of the Interior Hodel to the Hon. Eliseo Raton, Sr. and the Hon. Paul Bardacke, Governor and Attorney General, respectively, of New Mexico.

[84] Cal. Penal Code sections 484 et seq., relating to theft generally and sections 602(a) and (b), specifying that criminal trespass includes the cutting or taking of trees or wood.

[85] Cal. Penal Code sections 486–490.

[86] Canby, *Civil Jurisdiction and the Indian Reservation* (1973) Utah Law Rev. 206.

[87] See, e.g., 28 U.S.C. section 1360(a); *Long* v. *Chemehuevi Indian Reservation* (1981) 115 Cal.App.3d 853.

[88] Lawrence, *Service of Process and Execution of Judgment on Indian Reservations* (1982) Am. Ind. L.Rev. 257, 259–260.

[89] *Long* v. *Chemehuevi Indian Reservation, supra,* fn. 87, alleged negligence in operation of a boat dock resulting in the death of a tourist; *Hydrothermal Energy Corp.* v. *Ft. Bidwell Indian Community Council* (1985) 170 Cal.App.3d 488, contract claim. This doctrine could hobble tribal economic development. See Grimsrud, *Doing Business on an Indian Reservation: Can the Non-Indian Enforce His Contract with the Tribe?* 1981 Brigham Young Univ. L.Rev. 319 (1981).

[90] As a practical matter, state and federal governments long ago waived or were deemed to have lost sovereign immunity for claims similar to those in *Long* and *Hydrothermal.* See, e.g., Van Alstyne, *California Government Tort Liablity Practice* (1980) § 1.25.

[91] 28 U.S.C. § 1360, subd. (b).

[92] *Laurence, op. Cit., supra,* fn. 91, at pp. 268–269.

[93] See, e.g., *Snohomish County* v. *Seattle Disposal Co.* (Wash. 1967) 425 P.2d 22 *cert den.* (1967) 389 U.S. 1016.

[94] Penal Code §§ 374b and 374b.5.

[95] Penal Code § 602, subds. (j), (k), (n).

[96] Office of the Attorney General, Index Letter 75-43 (1975); see also *People* v. *Miranda* (1980) 106 Cal.App.3d 504, 506–507.

[97] *Justice in Indian Country, supra,* fn 70, at pp. 152–154.

jurisdiction.[98] This office has disputed that opinion.[99] The effect of concurrent authority in the tribes would be to allow them to try their own members subjecting them to penalties not to exceed $500 or six months in jail.[100] Tribal members subject to tribal sanctions could still be tried and punished under state law.[101] A determination that the tribes had such authority, while arguably strengthening tribal governments, would introduce a host of complex legal and practical problems into the criminal justice system.

No tribe has actually sought to exercise concurrent criminal jurisdiction over its members. However, if a tribe were to gain the right to exercise such jurisdiction, years of litigation and dislocation would likely follow.

## XIII. RETROCESSION

Given the complexity of the jurisdictional arrangements created by Public Law 280, one natural reaction is to consider returning Indian legal questions to federal authorities. Native American leaders also occasionally suggest this course for reasons ranging from an expectation of more ample law enforcement services to a wish to re-establish their traditionally unique relationship with the national government. Retrocession is the process by which a state may return to the United States "all or any measure of the criminal or civil jurisdiction" conferred by Public Law 280.[102] Both the state and the federal government must agree to a return of jurisdiction over Indian land to the United States.[103] A state can offer to give up Public Law 280 jurisdiction on a geographic basis, i.e., this reservation but not that one, or this part of a reservation but not that part, or on a subject matter basis, i.e., all crimes but vehicle-related offenses.[104]

The consent of any affected tribe does not appear to be strictly required.[105] Practically, tribal concurrence has been made a condition of federal acceptance of an offer of retrocession.[106]

In the event of total retrocession, jurisdiction would depend on the races of those involved and the nature of the offense. For crimes on a reservation by a non-Indian against a non-Indian, state law would apply.[107] If either the offender or the victim were Indian, jurisdiction would be federal with offenders being prosecuted in federal court under the Assimilative Crimes Act.[108] If both victim and offender were Indians, major crimes as specified in 18 U.S.C. § 1153 would be investigated and prosecuted by federal authorities.[109] Lesser offenses could be handled by an Indian justice system subject to the Indian Civil Rights Act of 1968.[110] Tribal courts do not have any inherent criminal jurisdiction to try and punish non-Indians.[111]

Prior to enactment of Public Law 83-280, this balkanized jurisdictional scheme coupled with marginal federal funding led to a "complete breakdown of law and order" on some reservations.[112] Today in non-PL 280 states, the Indian criminal justice system is criticized by tribal lawyers because of (i) inadequate federal funding of tribal law enforcement; (ii) inadequate training, (iii) conflicts in management and supervision of police agencies; (iv) inadequate standards of conduct and low salaries; (v) politics; (vi) lack of BIA accountability; and (vii) inability of tribal courts to reach non-Indians.[113]

Given these problems, whether complete retrocession would receive support in the Legislature is a major question. However, retrocession and various forms of partial retrocession have received some support in the past from tribal lawyers and elements of the law enforcement community.[114]

## XIV. RELIGIOUS USE OF PEYOTE

Under certain circumstances, use of peyote in a religious ceremony can be a valid defense to a drug prosecution.[115] This defense is based on the "free exercise" clause of the Constitution.[116] The basic constitutional requirements for the displacement of otherwise valid laws by the "free exercise" clause and: (i) that there be a religion, (ii) that the individual involved sincerely follow the tenets of that religion; and (iii) that the practice in question be central to the professed religious belief.[117] Once these three requirements are met, the courts determine whether compelling state interests justify infringement on the religious practice in question.[118]

In most drug cases, the "free exercise" defense has not worked. For example, Timothy Leary unsuccessfully sought to defend against drug transportation charges on the ground that he used marijuana for religious illumination and meditation.[119] Occasionally, the "church" involved is obviously fanciful. In *United States* v.

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[98] Office of the Solicitor, Dept. of the Interior, Opinion No. M86907 (Nov. 14, 1978).

[99] Letter from Attorney General John K. Van De Kamp to Solicitor Richardson dated August 1, 1985.

[100] 25 U.S.C. § 1302.

[101] *United States* v. *Wheeler* (1978) 435 U.S. 313.

[102] 25 U.S.C. § 1323, subd. (a).

[103] *Omaha Tribe of Nebraska* v. *Village of Walthill* (D. Neb. 1971) 334 F.Supp. 823 *aff'd* 460 F.2d at p. 1328.

[104] *United States* v. *Brown* (D. Neb. 1971) 334 F.Supp. 5365, 538; see also *Washington* v. *Confederated Tribes and Bands of the Yakima Nation* (1979) ___ U.S. ___ [58 L.Ed.2d 740].

[105] See Goldberg, *supra*, fn. 50, at p. 559.

[106] *United States* v. *Brown, supra*, fn. 104, at p. 542, *Omaha Tribe* v. *Village of Walthill, supra*, 334 F.Supp. at pp. 834–835.

[107] *United States* v. *McBratney* (1982) 104 U.S. 621, 624.

[108] 18 USC § 1152.

[109] See *Felicia* v. *United States* (8th Cir. 1974) 495 F.2d 353, 354.

[110] See generally *Oliphant* v. *Squamish Indian Tribe* (1978) 435 U.S. 191 [25 U.S.C. § 1302] 25 C.F.R. 11.1 *et seq.*

[111] *Oliphant* v. *Squamish Indian Tribe, supra*, fn. 6.

[112] *See* Goldberg, *supra*, fn. 50, at p. 541, quoting congressional debates on what became PL 83-280.

[113] *Justice in Indian Country, supra*, fn. 70, at p. 152.

[114] *Id.*, Office of Criminal Justice Planning, *Public Law 83-280. Retrocession and Other Alternatives* (Sept. 15, 1980) 26–31, 37–43.

[115] *People* v. *Woody* (1964) 61 Cal.2d 716.

[116] The First Amendment to the United States Constitution provides: "Congress shall under no laws respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

[117] Brown, *Religion: The Psychedelic Perspective: The Freedom of Religion Defense* (1983) 11 Ann. Ind. L.Rev. 125, 126–133.

[118] *People* v. *Woody, supra*, 61 Cal.2d at p. 719.

[119] *Leary* v. *United States* (5th Cir. 1967) 383 F.2d 851, 857, reden., 392 F.2d 220 *rev'd on other grounds* (1969) 395 U.S. 6.

*Kuch,*[120] the Neo-American Church assertedly regarded psychedelic drugs, particularly LSD, as sacramental foods. After noting that the church motto was "Victory over Horseshit!" and that the official church hymns were "Puff, the Magic Dragon" and "Row, Row, Row Your Boat", the trial court determined that the church, while interesting, was not a bona fide religion.

In marked contrast to these cases, the California courts have dealt sensitively and sympathetically with the Native American Church.[121] In *People* v. *Woody,* the court determined that use of peyote was the "central event" of this church's religious meetings which were themselves the "cornerstone" of the religion.[122] After analysis of the State's interest in controlling peyote, the Court found the free exercise defense valid. In reaching its decision the Court paid particular attention to the safeguards against anti-social behavior arising from peyote use imposed by the church itself.[123] Subsequent cases have largely limited the *Woody* defense to the facts of that case.[124]

The current bottom line in this area is that a member of the Native American Church may have a "free exercise" defense to drug charges concerning peyote.[125] However, there is still the question of the extent to which an individual peyote user sincerely follows the tenets of that religion.[126] In one federal case, "the free exercise" defense was not extended to use of drugs other than peyote by members of the Native American Church.[127] In another potentially important federal case, it was determined that the use of normal criminal justice procedures did not have an unconstitutional "chilling effect" on the free exercise of religion by a member of the Native American Church.[128] This means that a defendant can be properly required to raise his "free exercise" claims in the context of a defense to a criminal action.

## XV. A MATTER OF RESPECT: ESTABLISHING EFFECTIVE WORKING RELATIONSHIPS WITH THE TRIBES

Every relationship depends on communication. This is particularly true in establishing and maintaining effective working relationships with Indian communities. The first step is development of a shared understanding, or at least a knowledge of local positions, concerning Public Law 280.

Native Americans in your area need to be apprised of the extent and limits of your authority. You must make it clear that you can and will fairly enforce state criminal laws in Indian country. The extent to which your office does not enforce local ordinances should be made clear. This is particularly important in dealing with reservations which have no effective controls of their own relating to animals, discharge of firearms, or curfew.

While the legal models of the tribes as "dependent domestic nations" [129] or small cities[130] fit many smaller Indian communities imperfectly, you must explain the legal reasons why you do not or cannot deal with local ordinance violations in Indian country. Otherwise, Indian citizens, who often mistrust law enforcement anyway, will feel that they are being denied equal protection in your jurisdiction.

One potentially dangerous implication of the non-enforcement of local ordinances is that self-help measures may be taken by individual Indians if the tribal council is not perceived as capable of dealing with local problems.[131] The most practical immediate antidote to this problem is to have continuing contact with the tribes to determine if tensions are rising due to problems which outside of Indian country would be handled through local ordinance. In situations in which an escalation of tensions may be imminent, you may need to carefully examine intervention as soon as your jurisdiction becomes clear.

A recurring problem, which is a function of a lack of communication, concerns the law of arrest as it pertains to misdemeanors. Because of the physical isolation of many reservations and rancherias, officers rarely see misdemeanors being committed in Indian country. As a consequence, a warrant, typically generated by a citizen complaint, is necessary.[132] You need to make the need for a complaint absolutely clear. Otherwise, Indian victims of misdemeanors may not sign complaints, and then perceive law enforcement as ineffectual.

The ineffectiveness of law enforcement in Indian country is a recurring complaint. One clear problem is a lack of resources to cover remote areas. Another is the perception that one can violate the order and peace of an isolated Indian community with relative impunity. This perception can be changed. In many Indian communities, law enforcement officers, particularly non-Indian law enforcement officers, are often regarded as outsiders only to be turned to when matters are fairly far along. As a consequence, hooligan-like behavior may have been going on for some time before you are called in. If, because the time required to book a suspect

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[120] *United States* v. *Kuch* (D.D.C. 1968) 288 F.Supp. 439.

[121] *People* v. *Woody, supra,* fn. 115.

[122] *Id.*, at p. 720.

[123] *Id.*, at pp. 719–723.

[124] *People* v. *Mitchell* (1966) 244 Cal.App.2d 176, use of marijuana not based on tenets of an organized religion; *People* v. *Collins* (1969) 273 Cal.App.2d 486, use of marijuana not "indispensible" to faith; *People* v. *Mullins* (1975) 50 Cal.App.3d 61, defendant didn't meet very heavy burden of showing that marijuana use was part of a religion he sincerely followed; *People* v. *Torres* (1982) 133 Cal.App.3d 265, use of marijuana not "integral" to church and church did not have safeguards against abuse as did the Indian Church in *Woody.*

[125] Other jurisdictions have not followed the California lead in *Woody,* coming to a different conclusion after balancing state interests in controlling drugs against religious freedom. See, e.g., *Town* v. *State ex rel. Reno* (Fla. (1979) 377 So.2d 648, *app. dismissed,* 449 U.S. 803, *reh'g den.* (1980) 499 U.S. 1004; *United States* v. *Middleton* (11th Cir. 1982) 690 f.2d 820.) However, federal regulations pursuant to the Controlled Substances Act provide for an exemption for members of the Native American Church. *See* 21 C.F.R. section 1307.31 (1982).

[126] See e.g., *People* v. *Mullins, supra,* fn. 124.

[127] *Native American Church of New York* v. *United States* (S.D. N.Y. 1979) 468 F.Supp. 1247.

[128] *Golden Eagle* v. *Johnson* (9th Cir. 1974) 493 F.2d 1179 *cert. den.,* (1975) 419 U.S. 1005.

[129] *Worcester* v. *Georgia, supra,* fn. 9, at p. 17.

[130] *Bryan* v. *Itasca County, supra,* fn. 29, at p. 388. fn. 14.

[131] *Justice in Indian Country, supra,* fn. 113, at p. 152.

[132] See, e.g., Penal Code section 836.

seems unreasonable in light of the offense[133] or for other reasons, you or your officers do not act, a scoff law situation can be created. In one relatively isolated Indian community, the tribal chairman reported that Indian "people just sort of gave up" on local law enforcement for these reasons. One obvious solution is increased resources devoted to law enforcement in Indian country. However, if that is currently infeasible, you and your department need to know just how serious a problem an accused has and does present to the public peace in tribal areas. This knowledge, which can only be gained by an on-going relationship with the Indian community, should be a factor in booking and prosecution decisions.[134]

Regular meetings with local tribal councils and development of on-going relationships with individual Indians can do nothing but improve your effectiveness. To be most useful, these interactions should be premised on respect for the traditions of Indian life. On this basis, the challenges of law enforcement in Indian country can be most effectively met within current resource and jurisdictional restraints.

* * * * * *

## CONCLUSION

The law as it applies to Indians and Indian country can be complex. However, one point is clear. This state's criminal law is fully enforceable in Indian country. You have both the authority and the obligation to protect Indians and non-Indians from criminals on California's reservations and rancherias. At the same time, California Indians carry with them a rich tradition and heritage. Part of that heritage is a unique status under the law in certain circumstances. This status, while potentially confusing, is part of the on-going accommodation by the rest of us to the Californians who were here first.

* * * * * *

[133] In some areas, booking of a suspect may cost as much as eight hours of an officer's time if the reservation is distant from county facilities.

[134] Obviously, no one should be booked or prosecuted simply because of a general history as a bad actor.

## APPENDIX A

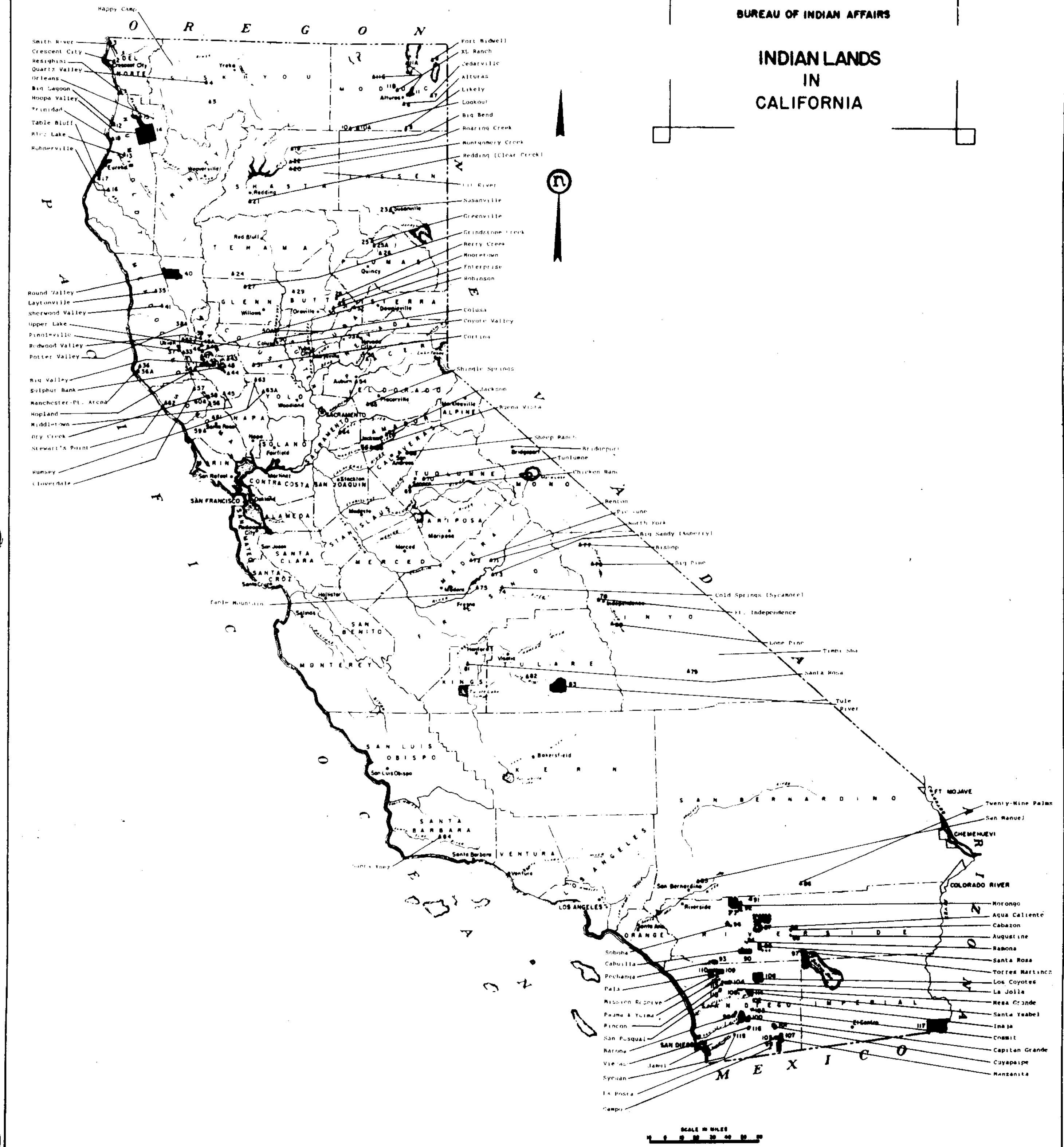
18 U.S.C. § 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

| State or Territory of | Indian country affected |
|---|---|
| Alaska | All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended. |
| California | All Indian country within the State. |
| Minnesota | All Indian country within the State, except the Red Lake Reservation. |
| Nebraska | All Indian country within the State. |
| Oregon | All Indian country within the State, except the Warm Springs Reservation. |
| Wisconsin | All Indian country within the State. |

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.



UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
INDIAN LANDS
IN
CALIFORNIA
OREGON
NEVADA
ARIZONA
MEXICO
PACIFIC OCEAN
Happy Camp
Smith River
Crescent City
Resighini
Quartz Valley
Orleans
Big Lagoon
Hoopa Valley
Trinidad
Table Bluff
Rohnerville
Fort Bidwell
XL Ranch
Cedarville
Alturas
Likely
Lookout
Big Bend
Roaring Creek
Montgomery Creek
Redding (Clear Creek)
Susanville
Greenville
Berry Creek
Mooretown
Enterprise
Robinson
Round Valley
Laytonville
Sherwood Valley
Upper Lake
Pinoleville
Redwood Valley
Potter Valley
Colusa
Coyote Valley
Cortina
Big Valley
Sulphur Bank
Manchester-Pt. Arena
Hopland
Middletown
Dry Creek
Stewart's Point
Rumsey
Cloverdale
Shingle Springs
Jackson
Buena Vista
Sheep Ranch
Bridgeport
Tuolumne
Chicken Ranch
Benton
North Fork
Big Sandy (Auberry)
Bishop
Big Pine
Cold Springs (Sycamore)
Ft. Independence
Lone Pine
Timbi Sha
Santa Rosa
Tule River
FT MOJAVE
Twenty-Nine Palms
San Manuel
CHEMEHUEVI
COLORADO RIVER
Morongo
Agua Caliente
Cabazon
Augustine
Ramona
Santa Rosa
Torres Martinez
Los Coyotes
La Jolla
Mesa Grande
Santa Ysabel
Inaja
Cosmit
Capitan Grande
Cuyapaipe
Manzanita
Soboba
Cahuilla
Pechanga
Pala
Mission Reserve
Pauma & Yuima
Rincon
San Pasqual
Barona
Sycuan
La Posta
Campo
DEL NORTE
SISKIYOU
MODOC
SHASTA
LASSEN
TEHAMA
PLUMAS
GLENN
BUTTE
SIERRA
YOLO
EL DORADO
ALPINE
NAPA
SOLANO
AMADOR
CALAVERAS
MARIN
CONTRA COSTA
SAN JOAQUIN
TUOLUMNE
MONO
ALAMEDA
STANISLAUS
MARIPOSA
SANTA CLARA
MERCED
SAN BENITO
MONTEREY
INYO
TULARE
KINGS
SAN LUIS OBISPO
KERN
SANTA BARBARA
VENTURA
SAN BERNARDINO
ORANGE
SAN DIEGO
IMPERIAL
SAN FRANCISCO
SACRAMENTO
LOS ANGELES
Yreka
Eureka
Weaverville
Redding
Susanville
Red Bluff
Quincy
Willows
Oroville
Downieville
Ukiah
Colusa
Auburn
Woodland
Placerville
Markleeville
Santa Rosa
Napa
Fairfield
Jackson
San Andreas
San Rafael
Martinez
Stockton
Sonora
Oakland
Modesto
Mariposa
Redwood City
San Jose
Merced
Santa Cruz
Hollister
Salinas
Madera
Fresno
Independence
Hanford
Visalia
Bakersfield
San Luis Obispo
Santa Barbara
Ventura
San Bernardino
Riverside
Santa Ana
El Centro
SCALE IN MILES

## APPENDIX B

| COUNTY | COUNTY INDIAN POPULATION PER 1980 CENSUS | Name | RESERVATIONS Population Within | Population Adjacent | Acreage |
|---|---|---|---|---|---|
| Alameda | 7,446 | | | | |
| Alpine | 146 | | | | |
| Amador | 336 | Buena Vista Rancheria | – | – | – |
| | | Jackson Rancheria | 13 | 10 | 330.66 |
| Butte | 2,062 | Berry Creek Rancheria | 12 | 173 | 33.04 |
| | | Mooretown | – | – | – |
| | | Enterprise Rancheria | 18 | – | 40 |
| Calaveras | 319 | Sheep Ranch Rancheria | 1 | – | .92 |
| Colusa | 194 | Colusa Rancheria | 29 | 43 | 273.21 |
| | | Cortina Rancheria | 9 | 92 | 640 |
| Contra Costa | 3,892 | | | | |
| Del Norte | 1,301 | Elk Valley Rancheria | 17 | – | 47.58 |
| | | Hoopa Valley Reservation | 2,499 | 1,774 | 86,727.88 |
| | | Resighini Reservation | 34 | 810 | 228 |
| | | Smith River Rancheria | 32 | – | 92.42 |
| El Dorado | . 739 | Shingle Springs Rancheria | 16 | – | 160 |
| Fresno | 4,748 | Big Sandy Rancheria | 65 | 66 | – |
| | | Cold Springs Rancheria | 156 | 53 | 110.65 |
| | | Table Mountain | 68 | 20 | 160 |
| Glenn | 353 | Grindstone Creek Rancheria | 113 | 20 | 80 |
| Humboldt | 5,665 | Big Lagoon Rancheria | 11 | – | 9.26 |
| | | Blue Lake Rancheria | 28 | – | 10.71 |
| | | Hoopa Valley Reservation | (See Del Norte) | | |
| | | Karuk Tribe of California | 1,696 | 400 | 10.6 |
| | | Rohnerville Rancheria | 8 | – | 10 |
| | | Table Bluff | 51 | 20 | 20 |
| | | Trinidad Rancheria | 69 | – | 43.68 |
| Imperial | 1,375 | Torres-Martinez Reservation | (See Riverside Co.) | | |
| Inyo | 1,609 | Big Pine Reservation | 384 | 28 | 279 |
| | | Bishop Reservation | 1,606 | 97 | 875 |
| | | Death Valley | – | – | – |
| | | Ft. Independence | 65 | 35 | 352.24 |
| | | Lone Pine Reservation | 215 | 10 | 237 |
| Kern | 6,008 | | | | |
| Kings | 725 | Santa Rosa Rancheria | 266 | 44 | 170 |
| Lake | 806 | Big Valley Rancheria | – | – | 38.28 |
| | | Middletown Rancheria | 32 | 30 | 108.70 |
| | | Robinson Rancheria | 23 | 148 | 43.05 |
| | | Sulphur Bank Rancheria | 87 | 44 | 50 |
| | | Upper Lake | 55 | 99 | – |
| Lassen | 634 | Susanville Rancheria | 145 | 228 | 150 |
| Los Angeles | 48,158 | | | | |
| Madera | 1,045 | North Fork | – | – | – |
| | | Picayune | – | – | 28.76 |
| Marin | 772 | | | | |
| Mariposa | 357 | | | | |
| Mendocino | 2,375 | Coyote Valley Rancheria | 39 | 186 | 57.76 |
| | | Hopland | 56 | 132 | 2,070 |
| | | Laytonville Rancheria | 122 | 70 | 200 |
| | | Manchester-Pt. Arena Rancheria | 118 | – | 363.09 |
| | | Pinoleville Rancheria | – | – | 9.02 |
| | | Potter Valley Rancheria | – | – | – |
| | | Round Valley Reservation | 759 | 42 | 19,022.87 |
| | | Redwood Valley Rancheria | – | – | – |
| | | Sherwood Valley Rancheria | 15 | 146 | 292.22 |
| Merced | 1,091 | | | | |
| Modoc | 346 | Alturas Rancheria | 11 | – | 20 |
| | | Cedarville Rancheria | 10 | 3 | 17 |
| | | Ft. Bidwell Reservation | 124 | 39 | 3,334.97 |
| | | Likely Rancheria | – | – | 1.32 |
| | | Lookout Rancheria | 16 | – | 40 |
| | | X-L Ranch (Pit River Council) | – | – | 79 |
| Mono | 334 | Benton Paiute Reservation | 45 | 3 | 160 |
| | | Bridgeport Indian Colony | 68 | 10 | 40 |
| Monterey | 2,927 | | | | |
| Napa | 725 | | | | |
| Nevada | 507 | | | | |
| Orange | 12,942 | | | | |
| Placer | 1,131 | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Plumas | 498 | Greenville Rancheria | – | – | – |
| Riverside | 7,202 | Agua Caliente Reservation | 119 | 84 | 24,074 |
| | | Augustine Reservation | – | 1 | 502.29 |
| | | Cabazon Reservation | 25 | – | 1,461.53 |
| | | Cahuilla Reservation | 31 | 117 | 18,272.38 |
| | | Morongo Reservation | 367 | 376 | 32,247.99 |
| | | Pechanga Reservation | 215 | 218 | 4,093.80 |
| | | Ramona Reservation | – | 3 | 560 |
| | | Santa Rosa Reservation (Mission) | 25 | 82 | 11,092.60 |
| | | Soboba Reservation | 405 | 150 | 5,035.68 |
| | | Torres-Martinez Reservation | 81 | – | 24,822.74 |
| Sacramento | 8,827 | | | | |
| San Benito | 179 | | | | |
| San Bernardino | 10,063 | San Manuel Reservation | 56 | 33 | 653.15 |
| | | Twenty-Nine Palms Reservation | – | 18 | 402.13 |
| San Diego | 14,616 | Barona Reservation | 230 | 74 | 5,180.66 |
| | | Campo Reservation | 213 | – | 15,010 |
| | | Capitan Grande Reservation | – | – | 15,753.40 |
| | | Cuyapaipe Reservation | 18 | 7 | 4,100.13 |
| | | Inaja & Cosmit Reservation | – | 10 | 851.81 |
| | | Jamul Indian Village | 25 | 41 | 6.03 |
| | | La Jolla Reservation | 222 | 24 | 8,228.06 |
| | | La Posta Reservation | 3 | 11 | 3,672.29 |
| | | Los Cayotes Reservation | 84 | 101 | 25,049.65 |
| | | Manzanita Reservation | 18 | 22 | 3,579.38 |
| | | Mesa Grande Reservation | 28 | – | 120 |
| | | Pala Reservation | – | 455 | 11,488.13 |
| | | Pauma & Yuima Reservation | 93 | 14 | 5,877.25 |
| | | Rincon Reservation | 390 | – | 3,960.25 |
| | | San Pasqual Reservation | 189 | 158 | 1,379.58 |
| | | Santa Ysabel Reservation | 198 | 694 | 15,526.78 |
| | | Sycuan Reservation | 52 | 20 | 640 |
| | | Viejas (Baron Long) Reservation | 217 | – | 1,609 |
| San Francisco | 3,548 | | | | |
| San Joaquin | 3,457 | | | | |
| San Luis Obispo | 1,785 | | | | |
| San Mateo | 2,481 | | | | |
| Santa Barbara | 2,697 | Santa Ynez Reservation | 169 | 26 | 99.28 |
| Santa Clara | 8,506 | | | | |
| Santa Cruz | 1,515 | | | | |
| Shasta | 2,630 | Big Bend Rancheria | 6 | – | 40 |
| | | Montgomery Creek Rancheria | 30 | – | 72 |
| | | Redding Rancheria | 36 | – | 17.46 |
| | | Roaring Creek Rancheria | 8 | 32 | 80 |
| Sierra | 46 | | | | |
| Siskiyou | 1,485 | Karuk Tribe of California | (See Humboldt Co.) | | |
| | | Quartz Valley Rancheria | 7 | – | 50.55 |
| Solano | 1,981 | | | | |
| Sonoma | 3,480 | Cloverdale Rancheria | – | – | – |
| | | Dry Creek Rancheria | 35 | 108 | 75 |
| | | Stewarts Point | 29 | 203 | 40 |
| Stanislaus | 3,195 | | | | |
| Sutter | 587 | | | | |
| Tehama | 603 | | | | |
| Trinity | 453 | | | | |
| Tulare | 2,557 | Tule River Reservation | 473 | 190 | 54,116 |
| Tuolumne | 599 | Chicken Ranch Rancheria | – | – | 2.85 |
| | | Tuolumne Rancheria | 137 | 510 | 335.77 |
| Ventura | 4,901 | | | | |
| Yolo | 1,206 | Rumsey Rancheria | 12 | 173 | 185.43 |
| Yuba | 1,146 | | | | |

## APPENDIX C

28 U.S.C. § 1360. State Civil jurisdiction in actions to which Indians are parties

(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

| State or Territory of | Indian country affected |
|---|---|
| Alaska | All Indian country within the Territory |

| | |
|---|---|
| California | All Indian country within the State |
| Minnesota | All Indian country within the State, except the Red Lake Reservation |
| Nebraska | All Indian country within the State |
| Oregon | All Indian country within the State, except the Warm Springs Reservation |
| Wisconsin | All Indian country within the State |

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

## APPENDIX D

### FIELD OFFICES
### AGENCIES

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Acting Superintendent

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Joe C. Christie
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Palm Springs Field Station
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Bell C. Haney
Director

Southern California Agency
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Riverside, California 92501
(714) 351-6624
Tom W. Dowell
Superintendent

Klamath Field Office
P.O. Box 789
Klamath, California 95548
(707) 482-6421
Wilson Gillette
Field Representative

### SUB-OFFICE

Wendell Thomas, Supv. Appraiser
Bureau of Indian Affairs
Southern Calif. Appraisal Office
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Palm Springs, California 92262
FTS: 8-619-323-1726
Comml: (619) 323-1726

## RECENT CASES

**CASE:** *Kuhlman* v. *Wilson*
54 U.S.L. Week 4809
(June 26, 1986)
Opinion by Powell, joined by Burger, White, Blackmun, Rehnquist and O'Connor; concurring opinion by Burger; dissenting opinions by Brennan, which Marshall joined, and by Stevens

**SUBJECT:** Admissibility of Incriminating Statements Made to Prisoner Inmate Acting as a Police Informant

**FACTS:** The defendant and two confederates robbed a garage and fatally shot the night dispatcher. Shortly before the incident, two employees observed the defendant on the premises conversing with two other men. They also saw the defendant flee after the robbery. The defendant told the police he had been present when the crimes took place, that he had witnessed the robbery, and he gave the police a description of the robbers. He denied knowing the robbers and also denied any involvement in the robbery or murder. After his arraignment, the defendant was placed in a cell with a prisoner who had agreed to act as a police informant. The prisoner had entered into an arrangement with a detective where he agreed to listen to the defendant's conversations and report his remarks to the detective. The purpose of placing the informant in the cell was to determine the identities of the defendant's confederates. The informant was instructed by the detective not to ask the defendant any questions but simply to "keep his ears open" for the name of the other perpetrators.

The defendant first spoke to the informant about the crimes after he looked out of his cell window at the garage where the crime had occurred. He essentially told the same story he had given the police and the informant advised him that his explanation "didn't

sound too good." The defendant did not alter his story. After the defendant received a visit from his brother who told him that members of the family were upset because they believed that he had murdered the dispatcher, the defendant later admitted to the informant that he and two other men whom he never identified had planned and carried out the robbery and had murdered the dispatcher. The informant informed the detective of the defendant's statements and furnished him with notes he had written while sharing the cell with the defendant.

**ISSUE:** Were the incriminating statements obtained pursuant to police investigative methods that violated the defendant's Sixth Amendment right to counsel?

**HOLDING:** No. A defendant does not make out a violation of his Sixth Amendment right to counsel simply by showing that an informant, whether through prior arrangement or voluntarily, reported his incriminating statements to the police. The Court observed tha the primary concern of *Massiah* v. *United States* (1964) 377 U.S. 201 and *United States* v. *Henry* (1980) 447 U.S. 264, was secret interrogation by investigatory techniques equivalent to direct police interrogation. The Court stated that "the defendant must demonstrate that the police and their informant took some action, beyond merely listening, that was designed deliberately to elicit incriminating remarks". The Court observed that the informant did not ask questions concerning the pending charges, but only listened to unsolicited and spontaneous statements.

LAUREN E. DANA
Deputy Attorney General

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**CASE:** *People* v. *Lindsey*
___ Cal.App.3d ___
(June 24, 1986)
Opinion by Eagleson,
joined by Feinerman and Ashby

**SUBJECT:** Scope of Search for Vehicle Identification Numbers in an Automobile Suspected by Police to be Stolen

**FACTS:** While executing a search warrant to the defenant's home, a police officer assigned to the auto theft investigation unit saw a BMW parked in the driveway. The police officer also arrested the defendant for receiving a stolen Chevrolet automobile.

At this time, the arresting officer had information from a reliable informant that the defendant was a member of an auto theft ring which specialized in Cadillacs, Mercedes Benzes, and BMWs. The auto theft ring would steal VINs off the junked automobiles, place them on the stolen automobile, and then inform the Department of Motor Vehicles that the wrecked car had been restored and registered in the name of a famous person.

The police officer then ascertained from the defendant's wife that the BMW would be parked later that day at a public parking lot behind their daughter's place of employment. While standing by the BMW, the police officer could see that the VIN on the steering column was scratched and bent in a way inconsistent with factory installation. Although the VIN and license plate number did not turn up to be stolen over the police radio, the police officer unsuccessfully attempted to enter the car. He then asked the defendant's daughter for the keys saying that her father had given him permission to enter the car.

Upon entry into the BMW, the police officer discovered that the federal standard sticker had been tampered with, the secondary VIN under the hood had also been altered, and the "secret" VIN located in the engine area was different from the steering column VIN. The "secret" VIN on the BMW belonged to a stolen automobile.

**ISSUE:** Did the police officer have sufficient probable cause to make this warrantless search of the automobile for its vehicle identification numbers?

**HOLDING:** Yes. Applying *New York* v. *Class* (1986) ___ U.S. ___ [89 L.Ed.2d 81] and Vehicle Code section 2805, the court ruled that the police officer's search was lawful. Because the VIN is a part of pervasive governmental regulation and is required to be placed in plain view, a defendant has not reasonable expectation of privacy in the VIN. Moreover, the police officer had a right to be where he was when he viewed the VIN and this coupled with the information he already had justified the ensuing minimal intrusion to search for the other VINs.

ROBERT N. KWONG
Deputy Attorney General

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**CASE:** *People* v. *Superior Court of Monterey County (Calamaras)*
181 Cal.App.3d 901
(May 29, 1986)
Opinion by Agliano,
joined by Brauer and Phillips

**SUBJECT:** Destruction of Marijuana Plants Pursuant to Health and Safety Code Section 11479

**FACTS:** Pursuant to a search warrant, officers seized a total of nearly half a ton of marijuana plants from three separate gardens on a single parcel of property. The officers recognized considerable differences in appearance among the marijuana plants. The plants were cut and co-mingled into a unitary pile. Photos were taken and five samples were randomly selected from the pile and preserved. The remainder was weighed and ultimately destroyed.

**ISSUES:** 1. Were police officers required to examine all seized plants and preserve samples of each different variety and cultivation technique prior to destruction pursuant to Health and Safety Code section 11479?

2. If so, were the dismissal of a possession for sale charge and the exclusion of all destroyed plants appropriate sanctions?

**HOLDING:** 1. Officers substantially complied with Health and Safety Code section 11479 requirement that a "representative sample" of destroyed marijuana be preserved; horticultural distinctions among the products of the three separate marijuana gardens are not necessarily relevant to the selection of a "represenative sample" under that section.

2. Even assuming non-compliance with the statute, the destroyed marijuana did not meet the federal constitutional standard of materiality under *California* v. *Trombetta,* 467 U.S. 479, and therefore need not be suppressed. Peremptory writ of mandate directing the Superior Court to vacate its previous order and enter a new order denying defendant's motion to set aside the information in its entirety issued.

JOSANNA BERKOW
Deputy Attorney General