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- ²⁵ Id at 8.
²⁶ 941 F.2d 588 (1991).
²⁷ Id at 595.
²⁸ Id.
²⁹ Knudsen v. Lax at 9.
³⁰ Id.
³¹ Id.
³² Id at 10.
³³ Alistair Edwards "Tenant Entitled to Terminate Residential Lease After Sex Offender Moved to Adjacent Apartment, supra note 2.
³⁴ Knudsen v. Lax at 9.
³⁵ 221 A.D.2d 637, 634 N.Y.S. 2d 505 (1995).
³⁶ Id at 638.
³⁷ Real Property Law section 235-b(1).
³⁸ 47N.Y.2d316, 391 N.E.2d 1288 418 N.Y.S.2d 310 (1979).
³⁹ Id at 328.
⁴⁰ Knudsen v. Lax at 6.
⁴¹ Real Property Law Section 227-c (C 73, L2007).
⁴² Knudsen v. Lax at 10.
⁴³ Id.
⁴⁴ "Tenant Entitled to Terminate Residential Lease After Sex Offender Moved to Adjacent Apartment supra note 2.
⁴⁵ Knudsen v. Lax at 10.
⁴⁶ Editorial "Sex Offenders", The Litchfield County Times, Oct. 26, 2007 at 4.
⁴⁷ Nancy Barnes "Child Safety Rule for New Milford," The Litchfield County Times, Nov. 16, 2007 at 9. See also Nancy Barnes "To Sex Offenders: No Welcome Mat in New Milford", The Litchfield County Times. Oct 26, 2007 at land 7.
⁴⁸ Id.
⁴⁹ Maeve Slavin, "Anger, Disbelief at Rapist's Release in Southbury", Voices; Vol. 40 No 42, Oct 17, 2007 at 1-2. See also Chris Gardner, "Man At Center of Furor Speaks", Waterbury Republican – American, Nov 20, 2007 at 1A and 6A.

**NARRAGANSETT'S SMOKE SHOP RAID:
 NARRAGANSETT INDIAN TRIBE OF RHODE ISLAND
 V. THE STATE OF RHODE ISLAND**

by
 Charles Hickox*
 Andrew Laviano**
 Katherine Elisabeth Kosterlitz***

INTRODUCTION

On July 14, 2003, Rhode Island State Police, acting on orders from the Governor and pursuant to a search warrant, entered Narragansett Indian settlement land in Charlestown, Rhode Island.¹ The state had probable cause to believe that the tribe was selling cigarettes in violation of R.I.G.L., Title 44, Section 20-12² that imposes a tax in the form of a stamp to be affixed to all cigarettes sold in the State. Probable cause was based on direct observation, general knowledge and public advertising that the Indians had been selling untaxed cigarettes for the previous two days.³ A melee ensued when the Indians resisted the execution of the warrants.⁴ The video of the scuffle and consequent arrests made national news.⁵ Eight Indians, including Chief Sachem Matthew Thomas, were arrested and the tribe's entire inventory of contraband⁶ cigarettes was confiscated. The seized items consisted of approximately 1,200

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cartons of cigarettes.⁷ This incident was the latest of many confrontations between the tribe and government officials that go back to the early encounters with the colonists.

HISTORICAL BACKGROUND

The first recorded contact between Europeans and the Narragansett Indians occurred in June 1524 when Giovanni da Verrazzano sailed into Narragansett Bay.⁸ At that time the native population was estimated to have been approximately 90,000.⁹ Subsequent contact was rare until about 1590 when Rhode Island started to be regularly visited by traders and explorers.¹⁰ One result of this contact was the outbreak of epidemics of what was probably both hepatitis and smallpox. These diseases reduced the populations of the Southern New England tribes and made way for European settlement. In 1636, a group led by Roger Williams established Providence, the first permanent European presence in the Rhode Island. By 1670, the native population in southern New England was reduced to between 10,000 and 20,000.¹¹ A peace marked by minor incursions and growing distrust persisted until 1675-6 when the King Phillip War erupted. The war consisted of a number of skirmishes around the state ending in a rout of the Indians at the Great Swamp Fight in West Kingston, Rhode Island.¹² Warriors continued to fight and there followed a yearlong chase that took both the pursued and the pursuers west to New York State, back up the Connecticut River Valley, then east to what are now the western suburbs of Boston and finally back south to Eastern Rhode Island. Here the chase ended with the death of Canochet, the powerful chief of the Narragansetts. This substantially ended Indian sovereignty and resistance in Southern New England. From a pre-war population of 5,000, only about 200 Narragansett survived the war's end in 1682. Many of those who survived either fled their former land or lived among the white population as

servants or slaves.¹³

By 1840, the Narragansetts' prospects were sufficiently dire that the State of Rhode Island appointed a "commissioner of the Indian tribe."¹⁴ His duty was to "superintend the affairs of the tribe; to bring, in his own name, all actions in behalf of the tribe, to settle all controversies among its members related to their estate, real and personal, and all other matters, subject to an appeal to the General assembly."¹⁵ The moribund condition of the tribe continued to worsen over time. In his report to the General Assembly in January 1858, the commissioner wrote:

The whole number of all grades residing in Charlestown at the present time is one hundred and forty-seven. Of this number fifteen are foreigners, eleven being connected with the tribe by marriage, and four by illicit intercourse. Of the whole number, there is not an Indian of full blood remaining; only two of three-fourths, and nine of half blood. The one hundred and twenty-one less than half blood are of mixed grades of Indian, Negro, and White.¹⁶

In January, 1879, Gideon Ammons, the president of the Narragansett Indian Council and other members of the council petitioned the Rhode Island House of Representatives to appoint a select committee to explore ways to abolish relations with the tribe, confer citizenship on its members, and dispose of its remaining land. At a meeting on December 26, 1879, the Indian Council agreed to Quitclaim all tribal lands to the state.¹⁷

In 1880, Rhode Island legislatively terminated their tribal status and the Narragansetts sold 3,200 acres of their reservation for the sum \$5,000.¹⁸ This sale left them with only two acres, which was the site of a stone Indian meetinghouse

built by Indian masons in 1859.¹⁹ This sum seemed generous since the state lost money when it subsequently resold that land. In 1898, The Rhode Island Supreme Court denied attempts by the tribe to rescind the 1880 purchase and sale and termination of their tribal status.²⁰

The Narragansetts did not regain their land until 1975, when they filed two lawsuits claiming the land. These suits clouded title to literally hundreds of parcels of land and made transfer of ownership difficult. United States Senator John H. Chafee (Republican, RI) brokered a compromise among the Federal government, the State of Rhode Island and Providence Plantations, and the Narragansett Indian Tribe. The compromise took the form of a Joint Memorandum (hereinafter referred to as the J-Mem). The federal enabling statute substantially mimicked the language of the J-Mem, and included in relevant part "settlement land shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island."²¹ After agreeing to the terms of the J-Mem, the relationship between the Narragansetts and the State of Rhode Island grew increasingly contentious for several decades. Two tribes in neighboring Connecticut²² established lucrative high stakes casinos in 1986 and 1996. The Narragansetts tried unsuccessfully to petition the state for a gaming license on several occasions claiming that the funds generated from a casino would be used for social programs. The tribe next devised a plan to sell untaxed cigarettes. It was their contention that since the sales took place on settlement lands; the Rhode Island tobacco tax scheme did not apply.

THE SMOKE SHOP RAID LITIGATION

Following the Rhode Island State Police raid on the Narragansett Indian Smoke Shop, the Narragansett's filed suit in federal district court seeking a declaratory judgment that its

sovereign status as a federally recognized Indian tribe precluded the state from applying its cigarette tax scheme to the tribe's sale of cigarettes on settlement lands. Relatedly, the tribe also sought a declaration that sovereign immunity insulated it from the State's criminal process and shielded from arrest those tribal members who had participated in the operation of the smoke shop.²³ The parties agreed to dismiss the criminal charges against the eight defendants without prejudice pending the outcome of this litigation.

Both parties cross-moved for summary judgment. The district court ruled in the State's favor on both issues. The court based its decision on two separate grounds. First, the incidence of such a tax falls upon the purchaser. Therefore, the Indians were not being taxed but were simply agents collecting the tax from the purchaser for the State.²⁴ The other finding was that, "The state did not violate federal law or the Tribe's sovereign rights when it enforced its criminal statutes by executing a search warrant, and making arrests pursuant to that warrant, on tribal land."²⁵

The Tribe appealed this decision and a panel of the First Circuit reversed the lower court's ruling. The court began by upholding the applicability of the State's statute which taxed sales of cigarettes within the geographic boundaries of Rhode Island whether those sales were made by tribal members, or were on tribal lands, as long as the purchasers were non-tribal customers. The court went on to rule that while the tribe had no sovereign right to sell untaxed cigarettes, the state had no right to violate the tribe's sovereign immunity by dispatching the state police to execute warrants on tribal land.²⁶

The State of Rhode Island appealed the decision and a hearing en banc was convened for purposes of determining whether the state could enforce its civil and criminal laws with

respect to the operation of the smoke shop and the effect (if any) of tribal sovereign immunity on the State's enforcement authority. As to whether the State may enforce its laws through the execution of a search warrant on settlement lands, the court stated:

As the unqualified language of both the J-Mem and the Settlement Act makes pellucid, the authority ceded to the State and assented to by the Tribe was broad in its terms. The negotiated arrangement and the confirmatory statute effectively extinguished the Tribe's right to resist the application of state authority as to matters occurring on the settlement lands. And that arrangement drew no distinction between tribal members and the Tribe itself, on the one hand, and the general public, on the other hand.²⁷

The court then turned to the question of whether tribal sovereign immunity prohibits the State from serving a warrant against the Narragansett Tribe or its members. The court dealt with dissenting justices from the earlier decision.

They suggest that our approach to this question disregards the subtle but important distinction between tribal sovereignty and tribal sovereign immunity... This criticism rests on shaky ground. It framed the distinction, as being that the doctrine of tribal sovereignty contemplates that, in certain circumstances, a tribe is not subject to state laws at all, whereas tribal sovereign immunity means that a tribe is not amenable to state judicial or quasi-judicial proceedings to enforce those laws.²⁸

In the court's view, this approach is a misreading of U.S. Supreme Court precedent and overruled the cited case with

respect to the distinction in question.

The Narragansett Tribe argued that its sovereign status as a federally recognized tribe rendered it immune from the exercise of State power, including, but not limited to, the search warrants. It argued that even if the State of Rhode Island executed a warrant against an individual on settlement lands, it lacked the authority to execute the warrant against the tribe or its property. The court dealt with this assertion by stating that, "the State's most potent retort is that the combined force of the J-Mem (by waiver) and section 1708 (a) (by abrogation) defeats the Tribe's claim of sovereign immunity."²⁹

The tribe appealed the ruling of the First Circuit decision. On November 27, 2006, the U.S. Supreme Court denied certiorari³⁰ and the state reinstated criminal charges against eight Indian defendants.³¹

CONSTITUTIONAL LIMITATIONS ON STATES' TAXING POWER

The dispositive factor in whether or not a state tax on Indians and Indian activity is valid is where and on whom the burden of the tax falls. States lack the authority to tax when the burden of the tax falls on Indians or on Indian property. States have been permitted to impose property tax on the property of non-Indians even though that property is located on reservation land. In *Utah and Northern Railroad Company v. Fisher*,³² a railroad line that was not owned by the tribe ran across the Fort Hill Indian Reservation. Idaho assessed a property tax against the owners. The Court held that since the Indians had no ownership interest in the property the state was permitted to impose the tax. *Thomas v. Gay*³³ extended the rule to personal property. In this case the taxpayer had paid the Indians a fee to permit his herd of cattle to graze on reservation land. While the

Court recognized that permitting Oklahoma to impose a tax on the herd might lessen the value of the grazing rights, it held that the tax was too remote and indirect to be a tax on lands or privileges of the Indians.³⁴ Where these cases involved taxing of non-Indians, the ban on taxing Indians for on-reservation activity is almost total. *McClanahan v. State Tax Commissioner of Arizona*,³⁵ decided the applicability of Arizona's state income tax to income earned by a Navajo Indian completely from on reservation activities. The Court held that "since appellant is an Indian and since her income derived wholly from reservation sources, her activity is totally within the sphere which the treaty and statute leave for the Federal Government and the Indians themselves."³⁶ State taxes on non-Indians working on reservations have also been held to be invalid if federal law preempts the subject. In *Warren Trading Post v. Tax Comm'n*,³⁷ The Court held that Arizona could not tax the gross receipts of the owner of a trading post, when trading with Indians on reservation land generated those receipts. The Ninth Circuit held the states may not tax fuel used by non-Indian contractors in cutting and transporting timber on reservation land when the harvest was subject to extensive federal regulation.³⁸

The U.S. Supreme Court seems to be somewhat more differential to state efforts to tax Indian cigarette sales. On four occasions, it has addressed issues of Indians on reservation land selling untaxed cigarette to non-Indians, and in each case the court has upheld the state's taxing scheme. However where and what methods the state may use to collect those taxes is still somewhat murky. In 1976, the Court decided *Moe v. Salish & Kootenai Tribes*,³⁹ a case that examined the validity of Montana's cigarette tax scheme. Montana argued that its tax scheme applied to all sales of cigarettes to non-Indians within the state regardless of the status or location of the seller. The Montana statute, like Rhode Island's statute, presumed that the

tax was a "direct [tax] on the retail consumer precollected for the purpose of convenience and facility only."⁴⁰ The tribe presented two arguments that the tax as applied to it was invalid. However, the Court found neither convincing. The first argument was that if the Indian seller were forced to sell taxed cigarettes, he would suffer a "measurable out-of-pocket loss."⁴¹ These expenses were the additional cost of purchasing taxed cigarettes over the cost of untaxed cigarettes. The court discounted this argument since it ignored the fact that the expense would be recouped upon resale to the end consumer. If Indians were permitted to sell untaxed cigarettes to non-Indians, either the smoker reaps the benefit of the untaxed cigarette in the form of a lower price or the Indian seller realizes the profits. The second argument was that the tax made the Indian seller an involuntary agent of the state and this was a gross interference with tribe status. The Court found this interference a "minimal burden"⁴² and not grounds to invalidate the statute.

The second case to come before the Court was *Washington v. The Confederated Tribes of the Colville Reservation*.⁴³ There were two factual differences between this case and the Idaho case. First, Washington State seized and impounded a shipment of untaxed cigarettes from out-of-state wholesalers bound for tribal sellers. The Court dealt with this issue by finding that, "Although the cigarettes in transit are as yet exempt from state taxation, they are not immune from seizure when the Tribes, as here, have refused to fulfill collection and remittance obligations."⁴⁴ The Court continued "It is significant that these seizures take place outside the reservation in locations where the state power over Indian affairs is considerably more expansive than it is within reservation boundaries."⁴⁵ The other important difference between the cases was that the State of Washington also imposed a sales tax on cigarettes and required that the tribes keep records of the identity of all purchasers and

the quantity of cigarettes purchased in all non-taxable transactions. Although the mechanism for collecting the two taxes is different [one involves pre-purchase of tax stamps while the other requires the seller to collect the tax from the buyer at the time of sale] the Court found that sales tax involved a "simple collection burden...legally indistinguishable from the collection burden upheld in *Moe*."⁴⁶ As to the records which the tribes were required to keep, the Court held that, "The Tribes not the State...bear the burden of showing that the record keeping requirements which they are challenging are invalid."⁴⁷ The tribe did not show that the requirements were not reasonably necessary to prevent fraudulent transactions.

In *California State Board of Equalization v. Chemehuevi Indian Tribe*,⁴⁸ the state's cigarette tax statute did not contain "an expressed statement that the tax is to be passed onto the ultimate purchaser."⁴⁹ Again the Court held the tax valid, further explaining the criteria for requiring tribes and tribal members to collect tobacco tax. If "the statutory scheme required consumers to pay the tax whenever the vendor was untaxable, and thus the legal incidence of the tax fell on the purchaser,"⁵⁰ then the state may impose the burden of collecting the tax on the tribe.

*Department of Finance and Taxation of New York v. Milhelm Attea & Bros.*⁵¹ arose out of a New York State audit, which revealed that if all the untaxed cigarettes sold on New York's reservations were consumed by tax-immune Indians, then tribal members were smoking at a rate 32 times greater than the general population. Alternatively if these cigarettes were being sold to non-Indians, New York was being deprived of about \$65 million in tax revenue.⁵² In response New York passed a law restricting the number of untaxed cigarettes that distributors could sell to tribes and tribal retailers. The number

was to be set either by agreement between the Department of Finance and Taxation and each tribe or in the absence of an agreement, by the Department based on a probable demand. Further, distributors were required to submit monthly reports to the state detailing the identity of all persons making tax-exempt cigarette purchases. The distributors filed suit seeking injunctive relief claiming the Indian Trading Statutes⁵³ preempted the New York law.⁵⁴ The Court once again found the state regulations valid and held that even in an area where the federal government imposed licensing regulatory requirements, the states could still impose reasonable regulatory burdens on Indian Traders when required by balancing federal state and tribal interests.⁵⁵

IMPACT OF THE FIRST CIRCUIT'S DECISION ON THE TREATY TRIBES

The first circuit's holding that Rhode Island officials acted within their authority to enforce the cigarette tax scheme by executing a search warrants against the tribe and arresting tribal members while searching for and seizing contraband from its smoke shop expands on previous law.⁵⁶ The court reasoned that the explicit language of the Settlement Act and the J-Mem, when considered in its historical context, allowed the state to enforce its civil and criminal laws on tribal lands and that the tribe is not immune from the state's enforcement activities.⁵⁷ The question remains of what impact, if any, the court's ruling will have on other tribes who became sovereign entities through similar settlement acts as the one considered here. Rhode Island, the Town of Charlestown, and the landowners whose title had been clouded by the tribe's claim came together with the tribe to execute an agreement that resolved the land disputes between the parties.⁵⁸ At all times, the negotiations and agreements were based on the mutual consent of all parties.⁵⁹ The fruits of their labor, the J-Mem,

provided that the 1,800 acres of settlement lands were to be formed out of two parcels, one of which was donated by the state and the other to be purchased from private landowners with federal funds.⁶⁰ The tribe gained control of these lands in exchange for its relinquishment of its claims, the voluntary dismissal of its lawsuits, and the agreement that the state would retain civil and criminal jurisdiction over the settlement lands.⁶¹ Therefore, in balancing state, federal, and tribal interests, the Settlement Act thus increases the room available for state intervention.⁶²

Perhaps more important is the first circuit's holding that general Indian law also supports this conclusion. A state may assert power that has not been preempted by federal law.⁶³ In applying the federal preemption doctrine, the court must consider the nature of the state, federal, and tribal interests at stake.⁶⁴ It must pay attention to the goals of promoting Indian self-government and self-sufficiency.⁶⁵ In this case, the court held that Rhode Island was lawful in asserting state power. There was no special federal legislation that gave the tribe any special powers to sell cigarettes.⁶⁶ Although the tribe has an interest in raising revenue for the benefit of its members, the goods it wished to sell were neither made by, nor had any special meaning to, the Tribe and any commercial connection was fleeting at best since the goods were largely being sold to non-members.⁶⁷ In balancing state, federal, and tribal interests, the Settlement Act thus increases the room available for state intervention.⁶⁸ The tribe's interest in selling cigarettes to nonmembers who do not benefit from tribal services is unpersuasive, as the state has a strong interest in preserving its tax scheme against cigarette purchasers who wish to avoid it.⁶⁹

A tribe's sovereign immunity can be either waived by tribal consent or abrogated by congressional authority.⁷⁰ Such actions must be clear and unequivocal in their meaning, but no

specific terms are required to effect such a waiver or abrogation.⁷¹ In this case, the Tribe voluntarily waived its tribal sovereign immunity when it signed onto the J-Mem. This waiver, as the court so aptly stated, was an "integral part of the bare-knuckled negotiations" that gave rise to the settlement lands.⁷² Rhode Island was thus within its authority to use all its powers to enforce its civil and criminal laws on tribal lands and the Tribe is not immune from such enforcement.

CONCLUSION

The thrust of the first circuit court's opinion in this case is that a unique historical context surrounded the negotiations that gave rise to the J-Mem and the resulting Settlement Act.⁷³ The court calls the Settlement Act a "carefully calibrated agreement between sovereigns" and maintains that it is a result of "idiosyncratic circumstances."⁷⁴ Thus it would seem that the holding of the court in this case is a narrow one, applying only to the specific circumstances of this case and the unique relationship, based on federal statute, between Rhode Island and the Tribe.

However, the court's observation that general Indian law supports its conclusions regarding a state's enforcement activities opens the possibility that other tribes and states whose concurrent jurisdiction is codified in federal legislation may be affected by the same rule of law that is articulated in this case.⁷⁵ In the general body of Indian law, while a court decision usually involves only one tribe, the rules of law are applied more generally.⁷⁶

While the Rhode Island Settlement Act may have unique historical antecedents, it is not unique in its structure or its origin. Several formerly all-but-extinct tribes have similar settlement agreements that re-established them as sovereign

entities.⁷⁷ In the 1970s, a number of tribes began asserting claims over ancestral lands, alleging that state authorities had violated the Trade and Intercourse Act of 1790⁷⁸ by purchasing land from the tribes without approval from the federal government. In order to avoid costly pending litigation, most states where these former tribes were located entered into settlement agreements.

For these so-called "Treaty Tribes" (the tribes that have entered into settlement agreements with government), the Narragansett case should have special relevance. If such settlements were reached voluntarily and with assistance of counsel, they might well prove dispositive of the tribe's rights, as they proved to be in the Narragansett case. While important to the parties, this case has implications for many other tribes and states. The settlements that the tribe entered into voluntarily and with the assistance of legal counsel are now the basis upon which their legal status rests.

ENDNOTES

¹ *Narragansett Indian Tribe of Rhode Island v. The State of Rhode Island* 296 F. Supp. 153, 157 (2003).

² R.I.G.L. § 44-20-12 A tax is imposed on all cigarettes sold or held for sale in the state. The payment of the tax to be evidenced by stamps, which may be affixed only by licensed distributors to the packages containing such cigarettes. Any cigarettes on which the proper amount of tax provided for in this chapter has been paid, payment being evidenced by the stamp, is not subject to a further tax under this chapter. The tax is at the rate of one hundred twenty-three (123) mills for each cigarette.

³ Providence Journal, July 12, 2003, at A1-A4.

⁴ *Supra*, n. 1, at 158.

⁵ See, e.g., New York Times, Tuesday, July 15, 2003.

⁶ R.I.G.L. § 44-20-37 Any cigarettes found at any place in this state without stamps affixed as required by this chapter are declared to be contraband

goods and may be seized by the tax administrator, his or her agents, or employees, or by any sheriff, deputy sheriff, or police officer when directed by the tax administrator to do so, without a warrant. Any cigarettes seized under the provisions of this chapter shall be destroyed.

⁷ See Mulvaney, *Trooper Uses Reasonable Force in Smoke Shop Raid*, Providence Journal, July 29, 2008, available at A1, <http://www.projo.com/extra/2003/smokeshop/pfd/searchwarrant.pdf>.

⁸ proceeded to another place, fifteen leagues distant from the island where, we found a very excellent harbor. Before entering it, we saw about twenty small boats full of people, who came about our ship, uttering many cries of astonishment, but they would not approach nearer than fifty paces: stopping, they looked at the structure of our ship, our persons and dress, afterwards they all raised a loud shout signifying that they were pleased. By imitating their signs, we inspired some measure with confidence, so they came near enough for us to toss them some small bells and glasses, and many toys, which they took and looked at, laughing, and then came on board without fear" Giovanni da Verrazzano, *To His Most Serene Majesty the King of France, 14, Voyages in Sailors' Narratives of Voyages along the New England Coast 1524-1624*, George Parker Winship ed. Burt Franklin, 1905.

⁹ Kathleen J. Bragdon, *Native People of Southern New England, 1500-1650*, 25, University of Oklahoma Press, 1996.

¹⁰ In the early seventeenth century several English Expeditions led by men like Bartholomew Gosnold, Martin Pring, and George Waymouth, two French expeditions led by Samuel de Champlain, and a Dutch expedition commanded by Henry Hudson all investigated southern New England.

¹¹ *Northeastern Indian Lives 1632-1816*, 21, Robert S. Grumet ed., University of Massachusetts Press (1996).

¹² For an interesting discussion of the fight by one of the participants see Colonel Benjamin Church *Diary of the King Phillip Wars, 1675-1676*, 94-102 The Pequot Press (1975).

¹³ William S. Simmons, *Spirit of the New England Tribes*, 28, University Press of New England (1986).

¹⁴ Acts and Resolves of the General Assembly of Rhode Island, January 1840, An Act in relation to the Indian Tribe of this state. pp 96.

¹⁵ *Id.* Section 1.

¹⁶ *Id.* at 754.

¹⁷ *Id.* at 756.

¹⁸ Public Laws of Rhode Island, Chapter 800.

¹⁹ *Enduring Traditions: The Native Peoples of New England*, 85, Laurie Weinstein, ed. Bergin Garvey (1994).

²⁰ *The Narragansett Indians*, 20 R.I. 715.

²¹ 25 U.S.C. section 1708 (a).

²² The Mashatucket Pequots and the Monheagans.

²³ *Supra*, n. 1, at 158.

²⁴ *Id.* at 167.

²⁵ *Id.* at 177.

²⁶ *Narragansett Indian Tribe v. Rhode Island*, 407 F.3d 450 (2006).

³¹ *Narragansett Indian Tribe v. Rhode Island*, 449 F.3d 16 @ 22 (2006).

²⁸ *Id.*

²⁹ *Id.* at 26.

³⁰ *Narragansett Indian Tribe v. Rhode Island*, 127 S. Ct. 673, 166 L Ed. 2d 516, 2006 U.S. Lexis 9038 Nov. 27, 2006.

³¹ Three of those charged were convicted and on June 20, 2008 were sentenced although none were ordered to serve jail time. Providence Business News, June 20, 2008, available at http://www.projo.com/extra/2003/smokeshop/content/Smokeshop_20_06-20-08_DMAJ2C9_v21.3e80e02.html.

³² 116 U.S. 28 (1885).

³³ 169 U.S. 264 (1898).

³⁴ *Id.* at 273.

³⁵ 411 U.S. 164 (1973).

³⁶ *Id.* at 179-180.

³⁷ 380 U.S. 685 (1965).

³⁸ *Hoppa Valley Tribe v. Nevins* 881 F2d. 657 (1989).

³⁹ 425 U.S. 463 (1976).

⁴⁰ *Id.* at 482.

⁴¹ *Id.* at 481.

⁴² *Id.* at 483.

⁴³ 447 U.S. 134 (1980).

⁴⁴ *Id.* at 162.

⁴⁵ *Id.*

⁴⁶ *Id.* at 159.

⁴⁷ *Id.* at 160.

⁴⁸ 474 U.S. 9 (1985).

⁴⁹ *Id.* at 11.

⁵⁰ *Id.* at 11.

⁵¹ 512 U.S. 61 (1994).

⁵² *Id.* at 65.

⁵³ 15 USCA 261 et seq.

⁵⁴ *Supra* note 77, at 67.

⁵⁵ *Id.* at 73-74.

⁵⁶ *Supra* note 31, at 19.

⁵⁷ *Id.* at 21.

⁵⁸ *Id.* at 19.

⁵⁹ *Id.* at 25.

⁶⁰ *Id.* at 19.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333 (1983).

⁶⁴ See *Id.* (quoting *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 145 (1980)).

⁶⁵ *Supra*, n. 102, at 334-335.

⁶⁶ *Supra*, n. 31, at 23.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Kiowa Tribe v. Mfg. Techs. Inc.*, 523 U.S. 751, 754 (1998)

⁷¹ *C & L Enters v. Citizens Band Potawami Tribe of Oklahoma*, 532 U.S. 411 (2003).

⁷² *Id.* at 25.

⁷³ *Id.* at 31.

⁷⁴ *Id.* at 26, 31.

⁷⁵ *Id.* at 22.

⁷⁶ Sharon Wheeler, *Is the Die Cast? Indian Casino Gambling in Maine*, 50 Me. L. Rev 143, 150 (1998).

⁷⁷ See Florida Indian Claims Settlement, 25 U.S.C. 1741-50e; Massachusetts Indian Claims Settlement, 25 U.S.C. 1771-71i; Washington Indian Claims Settlement, 25 U.S.C. 1773-73j; Seneca Nation Land Claims Settlement, 25 U.S.C. 1774-74h; Mahantucket Pequot Indian Claims Settlement Act, 25 U.S.C. 1754; Mohegan Nation Land Claims Settlement, 25 U.S.C. 1775-75h, Joseph Salvador, Blumenthal v. Babbitt: How Three Words May Help Redefine Sovereignty for America's Most Powerful Native American Tribe, 23 Quinnipiac L. Rev. 247, 257 (2004).

⁷⁸ 25 U.S.C. section 177 (2007).