

Legacy of a lawsuit: 30 years after Cabazon decision, state tribes harvesting economic benefits

By: Molly M. Fleming The Journal Record March 1, 2017



Blackjack dealers deal a hand to patrons at the Grand Casino Hotel & Resort in Shawnee. (Photo courtesy Citizen Potawatomi Nation)

OKLAHOMA CITY – Lindsay Robertson started his law career working on business development. He was familiar with laws regarding tribal sovereignty, but he was asked to combine the two areas starting in 1987.

On Feb. 25, 1987, the U.S. Supreme Court ruled in favor of the Cabazon Band of Mission Indians in its lawsuit with the state of California. The decision ultimately allowed tribes to have gaming operations, even where states were given criminal jurisdiction over Indian tribes.

California was a Public Law 280 state, which gave the state criminal jurisdiction over Indian lands. In the mid-1980s, the Cabazon and Morango Bands of Mission Indians operated bingo parlors on their lands. In 1986, the state tried to shut down the games, claiming they violated state regulations.

The Cabazon Band’s argument and the Supreme Court’s decision rested on the state not prohibiting gambling as a criminal act. The state did not have jurisdiction over the operations.

Robertson was working in Washington, D.C., at the time the decision was announced. He was one of the few attorneys familiar with Indian law. When the calls started coming in from tribes that wanted to open gambling operations, they were directed to him.

Eventually, he was asked to teach Indian law at the University of Virginia. He is now the Chickasaw Nation Endowed Chair in Native America Law at the University of Oklahoma’s College of Law.

“I’m a kid of the Cabazon case,” he said.

The case not only changed Native American operations, it also changed law as a profession. Crowe & Dunlevy attorney Jimmy Goodman said he worked with the tribes before 1987, when he helped them on tribal sovereignty, constitutions, federal land and trust issues, among other situations.

He said most people who worked with the tribes did it because they had a connection. For him, his wife and children are Native American.

"Most tribes were relatively limited economically," he said. "It wasn't a lucrative practice. You might do some work with the tribe and then the administration would change and you might not get paid."

That's not how it is today. In 2016, Oklahoma collected a record \$132 million in total tribal gaming exclusivity fees, a 3-percent increase from 2015. When the fees were first collected in 2006, only \$14.2 million came into the state.

Under a compact, the tribes pay fees based on a sliding scale for Class III electronic games. Tribes pay 10 percent of the monthly net win from table games.

The tribes are able to use that money for citizen services, infrastructure, community development, and even political campaigns, among other financial endeavors. Attorneys are needed for a lot of that work, Goodman said.

"I think it would be fair to say that working for an Indian nation is a lot more economically rewarding today than it was in 1987," he said. "The tribes are more sophisticated. The lawyers are more sophisticated. It has attracted more people to the law. The field has expanded enormously, easily by 20-fold."

But the ruling in *California v. Cabazon Band of Mission Indians* was only the beginning of Native American-related changes in gambling. In 1988, the Indian Gaming Regulatory Act laid out the rules for how tribes could run their gaming facilities. It limited how the income could be used. It also allowed states to enter into compacts with the tribes.

Crowe & Dunlevy Indian law and gaming practice chair Michael McBride III graduated from law school in 1993. He said he focused on tribal law and started working in Indian gaming law almost immediately.

"I saw there was a need for lawyers in Indian gaming law," he said.

He said the *Cabazon* decision was the most important case in the modern era for federal Indian law. He called the IGRA the most successful economic development law in the history of the United States.

"(*Cabazon*) really stabilized the tribes' economies," he said. "That's one of the legacies of *Cabazon*."

GableGotwals attorney Dean Luthey Jr. said not only did *Cabazon* affect the tribes' economies, in Oklahoma, those gambling operations provided jobs, especially in rural Oklahoma.

In 2015, the tribes reported they spent a total of \$363 million on capital improvements, creating an estimated 2,768 jobs and earnings of nearly \$124 million in the construction industry. The construction positions were part of a total employment impact of 48,942 jobs, which included gambling operations, according to the study.

Cabazon gave the tribes a boost like they had never seen before, Luthey said.

"The tribes that had always been political entities were now political entities with a revenue stream," he said. "This resulted in significant advancement of health care facilities, education, economic development, and the growing of non-gaming, tribally owned facilities. This strengthened tribal infrastructure and allowed the growth of tribal self-sufficiency such as government, tribal courts, legislators and executive branches."

As Goodman pointed out, the tribes have used the revenue increase for keeping their culture alive as well. The Choctaw Nation, the Chickasaw Nation, and the Cherokee Nation all have programs where people can learn their language. Chickasaw is now available on Rosetta Stone as well.

Tribes have built museums and restored buildings important to their history.

"It was a sea change of what ultimately occurred in terms of opportunities for tribes and opportunities for lawyers to help them do those things," Goodman said.

<http://journalrecord.com/2017/03/01/30-years-after-cabazon-decision-state-tribes-harvesting-economic-benefits/>