

Ninth Circuit Amicus

A federal appeals court reversed itself January 10th in an important case involving tribal jurisdiction. Last summer, a team from Hughes Hubbard assisted the National Congress of American Indians (NCAI) in helping to write an amicus brief in support of an en banc rehearing of the case in the Ninth Circuit.

The case, *Smith v. Salish Kootenai College*, stems from a traffic accident on Flathead Reservation land, in which the plaintiff, a student at the college, was injured when the college-owned truck he was driving flipped over. Seeking state court jurisdiction, Smith claimed that since he was from a different tribe he was effectively a non-Indian there and thus the tribal court had no jurisdiction. In the amicus brief, Hughes Hubbard argued that tribal courts, like other courts, should have civil jurisdiction over their lands, regardless of who the parties are.

In August 2004, a three-judge panel of the Ninth Circuit ruled for the plaintiff, citing the U.S. Supreme Court's 1981 decision in *Montana v. U.S.*

The full Ninth Circuit Court reheard the case last June. The en banc panel ruled, 8-3, with the majority holding that the lawsuit implicated tribal interests because the tribe's college and two tribal members were being sued.

The NCAI and the Native American Rights Fund established the Tribal Supreme Court Project to assist with Indian law cases and to ensure that the tribal point of view is fully brought before the courts.

Assisting with the brief were Steve McSloy and Vanessa Brown in New York and Todd Piro along with summer associates Brian McEvoy, Aaron Lowenstein and Lorna Wilson in Los Angeles.