THE TENTH JUSTICE LOST IN INDIAN COUNTRY

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Supreme Court Outcomes 1958-2009

OT 1958-1986

OT 1986-2009
Current, ongoing study on the success of the Office of Solicitor General in Indian law cases (OT 1998 to 2008)

Rule of Thumb in SCT litigation – get the OSG on your side (Patricia Millet’s paper on obtaining the OSG’s support in SCT cases)

Preliminary research strongly suggests that the OSG is likely to succeed in Indian law cases when it opposes tribal interests

But when the OSG sides with tribal interests, the success rates drop dramatically
Petitioning for certiorari – 65-70 percent
Opposing certiorari – ~99 percent
Opposing certiorari as amicus – 75-83 percent
 Recommending certiorari as amicus – 44-93 percent
Non-OSG petitioner certiorari success rate – less than 1 percent

OSG Merits Stage Success Rates

- Forthcoming – expected to be pretty good 😊
OSG Certiorari Success Rates: Indian Law Cases – Cert Opposition

- OSG siding with Tribal Interests
  - Deny: 19
  - Grant: 2
- OSG Alone
  - Deny: 23
  - Grant: 2

Legend:
- Deny
- Grant
OSG Merits Stage Success Rates: Indian Law Cases

US as Tribal Trustee

US versus Tribal Interests

Failure on Merits
Success on Merits


Representative Cases: Statutory Interpretation

- Carcieri v. Salazar (2001)
Contra: Treaty Rights Cases

- Idaho v. United States (2001)
Representative Cases: U.S. Opposing Tribal Interests

- Chickasaw Nation v. United States (2001)
One Special Case

- OSG’s main theory: Duro Fix a reaffirmation of inherent tribal authority (Breyer, Stevens, O’Connor, Rehnquist, Ginsburg)
- OSG’s alternative theory: tribal court jurisdiction invalid (Kennedy, Thomas)
- Is Lara safe? Simply put, no.
- The line up: Breyer, Stevens (?!?!), and Ginsburg versus Scalia, Kennedy, and Thomas
- Unknowns? Roberts, Alito, Sotomayor