



ILLUSTRATION: PAUL GIOVANOPOULOS

Freedman Plies Uncharted Waters in Tribal Law

The Dakota Access pipeline protests at Standing Rock became a big national story, thrusting Native American issues into the spotlight.

But for Seattle-based **Bart Freedman L'82**, the issues surrounding the standoff were nothing new. Much of his work as a longtime partner at K&L Gates revolves around tribal law.

Freedman began his work in tribal law back in the 1990s as part of K&L Gates' municipal practice, in which he represented a lot of local governments that had business with tribal governments. He came to concentrate on federal Indian Law, which is a fairly common area of practice in the West, he said.

While the field involves environmental and infrastructure law, Freedman spends most of his time on commercial and transactional law. Freedman said that Native Americans near urban areas have become bigger economic players than they ever used to be, due to the profits generated from gaming operations on their lands.

"They're investing hundreds of millions in projects," he said. "In Washington, a tribe developed a major commercial area that has big box stores with all kinds of retail. Other tribes are huge landowners involved with logging."

The tax benefits that accrue to tribal lands have made them attractive to many businesses, leading to uncharted legal issues stemming from the lack of U.S. legislative guidelines concerning Native Americans. "There's a lot of uncertainty about which federal laws apply to tribes in areas such as elections, banking and labor laws," Freedman said.

Tribes can't have sovereignty without federal recognition. Recognition grants the ability to have land held in trust by the United States, the rights to a reservation, control of regulation of the tribe's land base, and health, welfare and tax benefits.

Freedman said he believes many more tribes should be recognized. "It's very hard for people who are struggling to preserve their identity, where they don't have a reservation, in the middle of a culture that's been hostile to them."

He works with the Duwamish, which is the tribe of Seattle's namesake, Chief Si'ahl. While Freedman is working pro bono to help the tribe become federally recognized, he also spends time on matters involving 19th century treaty agreements still in place between the Native Americans and the U.S. federal government. These kinds of cases, he noted, are becoming more frequent.

For instance, last May the Army Corps of Engineers refused to approve a major coal terminal because the Lummi Tribe, about 100 miles north of Seattle, contended it would violate fishing treaties.

And just last summer, the Ninth Circuit Court of Appeals ruled that the State of Washington must repair culverts — spanning more than 1,000 miles of streams — that block salmon's paths to spawning grounds. The blockage of the salmon, the court found, was also a treaty violation.

That decision, Freedman said, could be indicative of more changes to come. "This is something that is just beginning to play out, but it has some pretty broad implications," he said, explaining that the ruling could be applied to dams, floodgates, and rivers.