

## The FBA's Indian Law Section: Vetting the Important Issues Regarding Indian Country

The Federal Bar Association's Indian Law Section is the largest Indian law organization in the country. The section has a lot of which to be proud, including its members, who are leaders in the field.

This issue of *The Federal Lawyer* includes some important and comprehensive, scholarly discussions of Indian law issues written by the section's members. The Indian Law Section is pleased with the quality of the content. We are fortunate to be able to contribute such tremendous scholarship and debate on important issues in federal Indian law.

### Consultation with the U.S. Department of Justice

Recently, the U.S. attorney general, Michael B. Mukasey, an FBA member, invited the Indian Law Section to brief him on legal issues affecting Indian country. Professor Matthew Fletcher graciously took time out from his busy schedule to fly to Washington, D.C., and brief Attorney General Mukasey. During the hour-long briefing, Professor Fletcher outlined the section's concerns about domestic violence in Indian country. American Indian women living in Indian country are victims of domestic violence and sexual assault more than any other demographic group is, whereas a significant percentage of the perpetrators are non-Indian.

The FBA supports a congressional bill that would extend tribal court criminal jurisdiction to non-Indians who commit domestic violence within Indian country. Professor Fletcher sought the support from the Department of Justice for this legislation. We recommended that the statute contain an "opt-in" provision for tribes that meet certain criteria under a potential law. The criteria might include certain due process considerations regarding extending criminal jurisdiction over accused perpetrators who are not members of an Indian tribe: (1) right to counsel, (2) right to a jury trial that can include a jury pool of persons who are not members of the tribe, and (3) access to adequate jail space.

Professor Fletcher also discussed the case of *Plains Commerce Bank vs. Long Family Land and Cattle Company Inc.*, 491 F.3d. 878 (8th Cir. 2007), which is currently pending before the Supreme Court of the United States. Oral argument is scheduled for mid-April 2008—a week after the FBA's 33rd Annual Indian Law Conference. The case involves a commercial loan made to In-

dian citizens by a lender who was not a member of the tribe. The Long family's suit against Plains Commerce Bank originated in the Cheyenne River Sioux Tribal Court and deals with claims of breach of contract and discrimination. The case will test the limits of consensual relationships under the Supreme Court's *Montana* test. It is interesting to note that, as we understand, the tribal court offered *Plains Commerce Bank* a jury trial that would include noncitizens/non-Indians, but the bank declined to exercise that right. The *Plains Commerce Bank* case will address questions of tribal court jurisdiction over non-Indians and could have a tremendous impact on the power of Indian tribes, particularly their courts. Members of Indian country are watching the case closely.

Professor Fletcher discussed with Attorney General Mukasey the way some federal statutes, such as the Adam Walsh Act, already lay the infrastructure for a Violence Against Women Act and an *Oliphant* fix to cure jurisdictional problems that came up in earlier legislation and cases. We understand that U.S. attorneys currently will not seek to count tribal court convictions and federal sentencing determinations unless the convicting tribe has provided a right to counsel to the defendant.

General Mukasey also showed an interest in U.S. attorneys offices' general lack of adequate resources to investigate and prosecute domestic violence cases that are prosecuted in Indian country. Professor Fletcher emphasized the difficulties that tribal witnesses and victims encounter when they need to travel long distances to appear in federal court, specifically citing three examples: citizens of the Navajo Nation who have to travel hundreds of miles to Phoenix for federal court proceedings; members of the Keweenaw Bay tribe who must travel to Grand Rapids, Mich.; and Turtle Mountain Chippewa citizens who need to travel to Fargo, N.D. Overall, the meeting with the attorney general went very well and demonstrates the federal government's respect for the work of the FBA's Indian Law Section as well as its members. Thanks to Professor Fletcher for the excellent briefing.

### 33rd Annual FBA Indian Law Conference, April 10–11, 2008: "Identity in Flux: Challenging Outsider Definitions of Tribalism"

I am excited about the captivating topics and important speakers that have been assembled for the

33rd Annual Indian Law Conference, the country's largest conference focusing on Indian law, which will be held in Albuquerque again this year. This year the section will commemorate and reflect upon a number of anniversaries, including 60 years since the enactment of the statute dealing with Indian country ("Indian Country" statute found at 18 U.S.C. 1151), 40 years since the Indian Civil Rights Act was passed, 30 years since the Indian Child Welfare Act was enacted, and 20 years since the passage of the Indian Gaming Regulatory Act.

The lead chair of this year's conference, Jennifer Harvey Weddle, together with Patrice Kunesh, Matthew L.M. Fletcher, and Natalie Landreth, has crafted one of the best programs in the association's history. Titles of presentations on timely and cutting-edge topics include "Use What Your Ancestors Gave You: Tribal Court Judges' Reflections on Modern Indian Identity"; "Sovereignty as an Asset: Redefining Tribal Identity Through Economic Development"; "The Federal Government Giveth and It Taketh Away: The Indian Law Super Heroes Hall of Justice Take on the Anniversaries of Significant Indian Law Cases and Legislation" (the luncheon program); "Innovations in Tribal Commercial Law"; and "Governmental, Commercial, or Political: What's the Right Label for Tribal Labor and Employment Issues?" The first day of the conference will conclude with a special dinner and entertainment at the Indian Pueblo Cultural Center.

The titles of the second day's program include "Facing the Consequences of Climate Change in the Absence of Governmental Action" and "The Importance of What Lies Beneath: The Push for Tribal Energy." Later in the morning there will be concurrent group focus sessions that will "drill down" on specific topics of interest in greater detail, with titles including the following: "Indian Probate Resources in a World of Ever-Changing Regulations: What Does AIPRA Mean This Month?"; "What Tribes Need to Do Now on Labor to Protect Their Jurisdiction"; "Indian Child Welfare Act: 30-Year Update"; and "Fundamentals of Tribal Finance: Lawyers' Edition." The luncheon program will include a speech entitled "The Outlook for Use of International Legal Tools in U.S. Federal Courts" as well as presentation of awards for the Indian Law Section. Finally, the conference will wrap up with "Ethical Considerations of Using Plenary Power in the Legislative Arena" and "Revisiting Civil Rights in Indian Country Four Decades After the Indian Civil Rights Act." Attendees should consider staying after the conference for a special symposium on the 60th anniversary of the Indian country statute, which will be held at the American Indian Law Center at the University of New Mexico School of Law on Saturday, April 12.

#### **Fall 2007 Washington, D.C., Indian Law Conference**

On Oct. 19, 2007, the Indian Law Section held the Ninth Annual D.C. Indian Law Conference, entitled "Pragmatic Approach to Modern Indian Country Con-

cerns." The event, which was co-sponsored by the National Native American Bar Association and the Native American Bar Association of Washington, D.C., brought together a dream team of federal officials and practitioners to participate in a roundtable with decision-makers, titled "Indian Gaming, Indian Lands: How Do the Feds Make Decisions?" The session that followed, "Jurisprudence for Native American Cases," focused on the Roberts Court. At the luncheon, Professor Maylinn Smith gave the keynote address: "A Pragmatic Approach to Ethical Issues in Indian Country." The day concluded with two presentations: "Case Study: Tribal Best Practices—Innovative Ways of Meeting Tribal Goals and Cooperation with Tribal Government: Standing Rock Sioux Tribe Takes Charge of Its Road and Infrastructure" and "Protecting Tribal Rights Through Environmental Regulation." The section owes special thanks to Danna Jackson and Ed Gehres for their excellent work in organizing and planning the conference.

#### **Leadership With Horse Power**

The Indian Law Section's newly energized bylaws continue to take the section to new heights by providing a platform for great practitioners and judges to stay engaged in the important issues and debates related to Indian country. This year, Allie Greenleaf Maldonado, assistant general counsel for the Little Traverse Bay Bands of Odawa Indians of Michigan, serves as the deputy chair of the section; Professor Elizabeth Kronk, University of Montana School of Law, serves as secretary; and Lloyd Benton Miller, a partner of Sonosky Chambers in the firm's Anchorage office, is the section's treasurer.

Other committee chairs include Kevin Gover, who recently left his teaching job at Arizona State University Sandra Day O'Connor College of Law to become director of the Smithsonian Institution's National Museum of the American Indian in Washington, D.C. Kevin chairs the section's Committee on the Development of Federal Indian law, a think tank committee that monitors critical developments in Indian law. Denette "Dennie" Mouser, justice of the Muscogee (Creek) Nation Supreme Court, a board member of the National Judicial College, and a lawyer at Wal-Mart, chairs the Committee on Public Education, which is responsible for keeping tabs on current events and also helps develop statements to be made in the name of the section, and potentially the association when appropriate, addressing public misperceptions of Indian law and other issues affecting Native Americans. The Committee on Public Education will also help ensure that the Indian Law Section continues to provide excellent content for *The Federal Lawyer* on issues related to Indian law.

The Committee on Tribal Justice works with the National Native American Bar Association to develop

**SIDEBAR** *continued on page 14*



## Memorials and Remembrances Gift Program

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### SIDEBAR *continued from page 5*

programs to help improve tribal justice systems. Professor Wenona T. Singel, assistant professor of law and the associate director of the Indigenous Law and Policy Center at Michigan State University College of Law, chairs this committee. She recently held a panel on Criminal Jurisdiction in Indian Country at M.S.U. Elizabeth Homer, of Homer Law, chartered in Washington, D.C., chairs the Committee on Legislation and was instrumental in helping to formulate the association's policy on supporting legislation to extend tribal court criminal jurisdiction over noncitizen/non-Indians involved in domestic violence situations. O. Joseph Williams, a lawyer with Pitchlynn & Associates in Norman, Okla., chairs the section's Membership Committee. Professor Gloria Valencia-Weber is the chair of the Committee on Indian Law on State Bar Exams; this committee's efforts—together with those of Gabe Galanda, a bar leader from Seattle—have helped shape this issue and have had a national impact on the inclusion of Indian law in state bar exams. Finally, Lawrence Baca, the section's chair emeritus, has just retired from the U.S. Department of Justice after more than 30 years of service on Feb. 1. The American Bar Association honored him with one of its most prestigious awards—the "Spirit of Excellence Award" presented by the Commission on Racial and Ethnic Diversity in the Profession—for his work in federal Indian law. Congratulations Lawrence for this recognition!

I hope that each of you will consider deeper involvement with the association's Indian Law Section. Feel free to contact any member of the section if you would like to participate in or contribute your talents to this area of law. We would love to welcome your articles and enthusiasm. I am deeply honored to serve as the chair of the FBA's Indian Law Section. Mvto! **TFL**

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#### **Editorial Policy**

*The Federal Lawyer* is the magazine of the Federal Bar Association. It serves the needs of the association and its members, as well as those of the legal profession as a whole and the public.

*The Federal Lawyer* is edited by members of its editorial board, who are all members of the Federal Bar Association. Editorial and publication decisions are based on the board's judgment.

The views expressed in *The Federal Lawyer* are those of the authors and do not necessarily reflect the views of the association or of the editorial board. Articles and letters to the editor in response are welcome.