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The 35th Anniversary of the FBA Indian Law Conference: Numbers, Notes, and Tidbits

By **Melody L. McCoy**

Reflecting Back, Looking Forward

This year—2010—marks the 35th anniversary of the Federal Bar Association’s Indian Law Conference. Five years ago, the Indian Law Conference was described as “the single largest conference on Indian law in the country.”¹ Most would readily agree that the conference is a major learning, sharing, and converging event.

Less consensus might be found, however, regarding the importance of the conference’s anniversaries—or, for that matter, anniversaries in general. Modern American society is quick to celebrate a broad range of anniversaries beyond mere firsts and stately centennials. Zealous media and marketing representatives saturate us with the “13th this” and the “52nd that.” Anniversaries of all kinds of events

that have been experienced by, known to, or promoted to many seem to serve alongside or in place of more traditional rituals defined by culture, religion, and community.

One thing about anniversaries: although they are momentary, they incite us to look back and also to look forward. And, perhaps more so than is the case with other legal subjects, understanding, practicing, and advancing Indian law involves significant reflection of the past and the present, in addition to keen foresight. The success of the FBA’s Indian Law Conference as it turns 35 inspired me to review the topics, timing, and people that have contributed to the venture in an effort to accurately capture the historical data for current comprehension and future use.

Not a Trivial Pursuit

Some might view such efforts as trivial. But this review does not look at, for example, how many different colors were used in the cover pages of conference materials, who spilled the first cup of decaffeinated coffee at the conference, or what year the remodeling of Albuquerque’s airport was completed. If this review really deals with the premier Indian Law Conference, then information such as the answers to the following conference-specific questions may hold some clue regarding why that is the case, and the information may have significance in the larger picture of the metamorphosis of Indian law. (The answers are provided in the endnotes.²)

1. Who was the first tribal leader to be a speaker at the FBA’s Indian Law Conference?
2. When did a representative of the Office of the U.S. Solicitor General first make a speaking appearance?
3. What state attorney general has been a speaker three different years?
4. When did the topic of gaming first appear on the agenda?
5. What was the most recent year that litigation and legislative updates appeared as a topic on the agenda?

Methodology Used for Reviewing Topics and Speakers

In preparing this review, I examined at least some portion of the available agendas and materials for 33 of the conference’s 35 years (the exceptions being 1976 and 1981). These documents are limited to “what they are”—that is, they do not take into account post-preparation cancellations, substitutions, or additions. I focused my review primarily on the plenary session panels rather than the ethics panels. Because a few years had multiple simultaneous panels (breakout sessions), the topic counts for those years simply increased.

What?

Predictably, the overwhelmingly most frequent agenda topic has been tribal sovereignty, jurisdiction, and governance. I was unable to find a conference that did not have some variation of this topic, including such areas as criminal, tax, or regulatory jurisdiction; Pub. L. 93-638; sovereign immunity; and tribal–state relations. The topic of tribal courts has been a stand-alone topic on 17 agendas over the 35 years the conference has been held. Other frequent topics include litigation and legislative updates (on the agenda for 15 years); economic (nongaming) development, business and finance, and commercial relations (13 times); and gaming itself (10 times).

In the middle range, environmental issues

and climate change, Supreme Court and appellate practice, and water all have been topics at nine conferences. Civil rights and energy and natural resources have been agenda topics eight times, and topics appearing five to six times include the Indian Child Welfare Act; Indian country and tribal territory; Indian law and policy, history, and research; international issues; and religion.

The following other topics were covered at several conferences: trust responsibility, management, and reform (four years); Alaska Natives (three years); employment and labor law (three years); hunting and fishing (three years); land claims (three years); cultural property and resources (two years); domestic violence (two years); education (two years); probate (two years); voting (two years); and welfare (two years). Topics that have been on only one agenda include enrollment, health care, Indian preference, juvenile justice,

Table 1

35 years of 32 Topics (in order of frequency of appearance)

Topic	No. of Years
Tribal sovereignty, jurisdiction, and governance	35
Tribal courts	17
Litigation and legislative updates	15
Economic development, business and finance, and commercial relations	13
Gaming	10
Environmental issues and climate change	9
Supreme Court and appellate practice	9
Water	9
Civil rights	8
Energy and natural resources	8
Indian Child Welfare Act	6
Indian country and tribal territory	6
International issues	6
Indian law and policy, history, and research	5
Religion	5
Trust responsibility, management, and reform	4
Alaska Natives	3
Employment and labor law	3
Hunting and fishing	3
Land claims	3
Cultural property and resources	2
Domestic violence	2
Education	2
Probate	2
Voting	2
Welfare	2
Enrollment	1
Health care	1
Indian preference	1
Juvenile justice	1
Native Hawaiians	1
Tribal status	1

Native Hawaiians, and tribal status. Of all the conference topics, few have been abandoned, save for perhaps Hunting and Fishing, which last appeared on the agenda in 1992.

When?

Tribal sovereignty, jurisdiction, and governance as well as tribal courts are topics that have been covered consistently since the first conference was held. The topic areas of economic development, business and finance, and commercial relations also have appeared regularly throughout the decades, as have the topics of Supreme Court and appellate practice and water.

Civil rights was a popular topic in the 1970s and 1980s (appearing on the program six times), was not covered in the 1990s, and has reappeared twice since between 2000 and 2009. The same has been the case with the topic of energy and natural resources—between 1976 and 1984 these issues were included in the agenda four times and did not reappear until after 2000.

Several topics were introduced in the 1980s. International issues made its debut at the conference in 1980, and gaming first appeared on the agenda in 1983. The Indian Child Welfare Act was first included in 1987 and environmental issues first appeared on the agenda in 1988. Four topic areas were first included in the 1990s: religion in 1990; trust responsibility, management, and reform in 1992; and cultural property and resources as well as employment and labor law in 1995. Have any new topics been introduced in this new century? Not really, at least not yet.

Discussion of litigation and legislative updates probably has had the spottiest history. Case law and legislative development was a topic in 1979; federal legislation was discussed in 1983 and 1984; appellate litigation appeared on the agenda in 1985; and the audience received an update on federal litigation in 1987. From 1988 through 1998, updates on legislation and litigation became a standard feature of the conference, but no such general topic related to updates has appeared since then. Have we succumbed to electronic means or even other conferences for timely identification and dissemination of this critical information? Further analysis and determination of this point awaits a more technologically savvy and otherwise knowledgeable generation.

Who?

The vast majority of the speakers has been attorneys engaged in all types of practice, law professors, and representatives of various organizations and government agencies. According to the material I reviewed for this article, the first tribal leader to address the conference as a speaker was Hon. Peter McDonald, chairman of the Navajo Nation in 1980. Several other tribal leaders and various tribal officials have followed since his presentation.

Without more accurate information, it is impossible to determine, for example, who has been the highest ranking federal official ever to speak at the conference. Moreover, even with the information available, there is some degree of subjectivity involved in determining officials' rank. Nev-

ertheless, a few prominent federal speakers listed in the agendas and materials are worth mentioning.

Two solicitors from the U.S. Department of the Interior have been listed as speakers: Leo M. Krulitz, who was appointed by President Carter, appeared in 1977; and Ralph W. Tarr, who was appointed by President Reagan, spoke in 1988. Many associate, assistant, and regional solicitors from the Interior Department have been speakers. Assistant secretaries for Indian affairs who have spoken include Eddie F. Brown (1990) and Neal A. McCaleb (2002); acting assistant secretaries—Aurene M. Martin (2002 and 2003) and George T. Skibine (2009)—also appeared. James A. Joseph, undersecretary of the interior, spoke in 1980; and Timothy W. Glidden, counselor to the secretary spoke in 1992. Numerous attorneys from various offices of the U.S. Department of Justice have been speakers, including representatives from the Office of the Solicitor General, who appeared in at least 1980, 1985, 1992, 1997, and 1999. U.S. attorneys and assistant U.S. attorneys were speakers in at least 1983, 1985, 1995, 2004, 2005, and 2007.

According to the agendas, speakers representing almost a dozen different federal agencies have appeared at the conference. These agencies include the Departments of the Interior, Justice, Commerce, and Energy; Administration for Native Americans; Indian Health Service; U.S. Environmental Protection Agency; Smithsonian Institution; National Indian Gaming Commission; National Labor Relations Board; and the White House.

Several members of the federal judiciary have been listed as speakers, including current and former chief judges of the U.S. Courts of Appeals for the Eighth and Ninth Circuits: Hon. Donald P. Lay, chief judge, U.S. Court of Appeals for the Eighth Circuit, who appeared in 1986 and 1991; Hon. Roger L. Wollman, chief judge, U.S. Court of Appeals for the Eighth Circuit (2000); and Hon. J. Clifford Wallace, former chief judge, U.S. Court of Appeals for the Ninth Circuit (1997). Other federal appellate judges listed as speakers include Hon. William C. Canby Jr., U.S. Court of Appeals for the Ninth Circuit (1986 and 2002); Hon. Betty B. Fletcher, U.S. Court of Appeals for the Ninth Circuit (1991); and Hon. Diana E. Murphy, U.S. Court of Appeals for the Eighth Circuit (1998). At least two federal district judges also have been speakers: Hon. Donald J. Porter, U.S. District Court for the District of South Dakota (1984), and Hon. Juan G. Burciaga, chief judge, U.S. District Court for the District of New Mexico (1991).

Sen. Daniel K. Inouye (D-Hawaii), who spoke in 1993; then Rep. John S. McCain III (R-Ariz.) in 1983; and Rep. Thomas S. Udall (D-N.M.) in 2003 were all listed as speakers. Countless staff members representing congressional committees have been speakers as well.

States need not be concerned that they have been underrepresented at this conference. A representative of New Mexico's attorney general first appeared as a speaker at the conference in 1978. Since then, 18 such representatives or the state attorneys general from 12 different states (including only one—Wisconsin—that is east of the Mississippi River) have appeared at the conference in 11 different years. The first state attorneys general to speak were

Table 2
Conference Chairs and Co-chairs, 1976–2010

Year	Chair and Co-chair(s)
1976	Joseph S. Fontana
1977	Uncertain
1978	Uncertain
1979	Uncertain
1980	R. Anthony Rogers
1981	Uncertain
1982	Uncertain
1983	Timothy Woodcock
1984	Uncertain
1985	Paul A. Alexander
1986	Lawrence R. Baca, Kevin Gover
1987	Lawrence R. Baca, Kevin Gover
1988	Lawrence R. Baca, Kevin Gover
1989	Lawrence R. Baca, Kevin Gover
1990	Kevin Gover, C. Bryant Rogers
1991	C. Bryant Rogers, Melody L. McCoy
1992	Melody L. McCoy, Lloyd B. Miller
1993	Lloyd B. Miller, Karen J. Atkinson
1994	Karen J. Atkinson, Mark C. Tilden
1995	Mark C. Tilden, Jeanette Wolfley
1996	Jeanette Wolfley, Mark C. Van Norman
1997	Mark C. Van Norman, Heidi Heitkamp
1998	Donna J. Goldsmith, Lee Berge
1999	Donna J. Goldsmith, Heather R. Kendall-Miller, Daniel I.S.J. Rey-Bear
2000	Daniel I.S.J. Rey-Bear, Faith R. Roessel
2001	Daniel I.S.J. Rey-Bear, Faith R. Roessel
2002	Robert T. Anderson, Tracy A. Labin, John P. LaVelle
2003	Robert T. Anderson, Tracy A. Labin, John P. LaVelle
2004	Robert T. Anderson, Stephanie P. Kiger, Stacy L. Leeds
2005	Robert T. Anderson, Stacy L. Leeds, Allie Greenleaf Maldonado
2006	Allie Greenleaf Maldonado, Cheryl D. Fairbanks, Matthew L.M. Fletcher, Gabriel S. Galanda
2007	Matthew L.M. Fletcher, Donald E. (Del) Laverdure, Jennifer Harvey Weddle, R. John Werner Jr.
2008	Matthew L.M. Fletcher, Jennifer Harvey Weddle, Natalie A. Landreth, D. Michael McBride III, Patrice H. Kunesh
2009	Matthew L.M. Fletcher, Kristin A. Carpenter, Richard A. Guest, Pilar M. Thomas
2010	Kristin A. Carpenter, Angela R. Riley, Paul W. Spruhan, Tracy Toulou

Larry Echohawk of Idaho and Tom Udall of New Mexico in 1991. Between 1994 and 2002, Bruce M. Bothelo appeared as a speaker at the conference three times while he was the attorney general of Alaska. Moreover, in 1997 Heidi Heitkamp, then attorney general for North Dakota, served as the co-chair of the conference, and R. John Werner Jr. of the Michigan governor's office and a former Michigan assistant attorney general, was a co-chair in 2007. Representatives of other governors' offices, various state agencies, district attorneys' offices, and state governors' and attorneys general's associations also have spoken at the conference.

The Indian Law Conference held in 1983 included a number

of firsts as speakers, including Hon. J. Thomas Brooks of the Arizona Court of Appeals and Hon. Cranston Hawley, chief judge of the Fort Belknap Tribal Court. Other state and tribal court judges have spoken since that time. It also appears that 1983 was the first year that female speakers were part of the conference. These speakers included Elizabeth J. Dunn, president of the FBA Arizona Chapter, who gave some opening remarks; Suzan Shown Harjo, legislative director of the Native American Rights Fund, who moderated a panel on legislation; and Arlinda F. Locklear, staff attorney for the Native American Rights Fund,

CONFERENCE *continued on page 33*

caused the trust to be mismanaged. An amount of \$2 billion will be set aside to purchase those fractional interests from sellers who consent to the sale. That key aspect of the settlement will place additional funds in the hands of individual Indians and will help establish a more stable foundation for management in the future.

To provide incentives for fractional landowners to sell their land, an incentive program was negotiated. The parties agreed to create a \$60 million scholarship fund for post-secondary academic and vocational scholarships for Indian youth to be funded as landowners sell their fractionated land. Elouise Cobell, the lead plaintiff in the lawsuit, succinctly explained the critical importance of the scholarship fund: "The scholarship fund will establish a great legacy for Indian children and grandchildren, providing them the education necessary to break the cycle of poverty that has held too many Indians in its grip for generations."²

In addition, the settlement includes a commitment by the federal government to appoint a commission that will oversee and monitor specific improvements to the way the Interior Department accounts for and manages the assets of individual Indian trusts going forward. The day the settlement agreement was publicly announced, Secretary Salazar followed through on that commitment by issuing a Secretarial Order that creates a Secretarial Commission. There is also an agreement to perform an audit of the trust, which is critical to ensuring that the beneficiaries and the public can scrutinize the effectiveness of the commission. (Detailed information about the settlement is available at [www.Indian](http://www.Indiantrust.com)

[trust.com](http://www.Indiantrust.com).)

CONFERENCE *continued from page 30*

who participated on a panel entitled "Trade and Intercourse Act Suits: Legislation as an Alternative to Litigation."

In its first 35 years, the FBA Indian Law Conference has had more than 40 different chairs. The conference chairs represent an illustrious group of federal, state, and tribal attorneys as well as law professors. Table 2 presents a partial historical list of the conference chairs.

Why?

The FBA Indian Law Conference has played a role not only in our profession but also in the lives of our clients, law students, and association members. As Indian law has expanded, diversified, and fluctuated in many ways, this conference has adjusted and maintained accordingly. Notwithstanding the many other Indian law conferences now hosted by law schools, national and regional organizations, state Indian bar associations and sections, and even state Supreme Courts, the FBA conference still holds its own and is a standout. *Wado* ("Thanks," in Cherokee) to attendees, chairs, speakers, and the FBA. **TFL**

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There is no doubt that settling *Cobell* is an important step toward a genuine resolution of the long-standing conflict between the beneficiaries of the individual Indian Trust and the federal government. The settlement is perhaps the only way to lay the foundation for a more successful administration of individual Indian Trust assets in the future. Nevertheless, it is important to note that the settlement has not been finalized. Congress must enact legislation to authorize implementation of the settlement, and the district court must provide preliminary approval. Following the preliminary approval, notice will be sent to all class members, who will then have the ability to provide their comments on the settlement and, if they choose, opt out of it. After that notice and comment period, the settlement will be further scrutinized for its fairness, reasonableness, and adequacy, and the district court will have to provide final approval. The most critical step is clearly the first, because without congressional approval, this historic settlement will not materialize. **TFL**

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Endnotes

¹BUREAU OF MUNICIPAL RESEARCH, 63RD CONG., REPORT TO THE JOINT COMMISSION TO INVESTIGATE INDIAN AFFAIRS: BUSINESS AND ACCOUNTING METHODS EMPLOYED IN THE ADMINISTRATION OF THE OFFICE OF INDIAN AFFAIRS 2 (Comm. Print 1915).

²Testimony Before S. Comm. on Indian Affairs, 110th Cong. (2009) (statement of Elouise Cobell, lead plaintiff, *Co-*

dian Law Conference in 1991 and 1992. All views and errors and omissions in this article are hers.

Endnotes

¹Lawrence R. Baca, *Ignore the Man Behind the Curtain: A Brief History of Thirty Years of the Indian Law Conference*, 52 *FED. LAW.* 4 (2005).

²Answers: (1) In 1980, Hon. Peter McDonald, chairman of the Navajo Nation, was a luncheon speaker. (2) In 1980, Hon. Louis F. Claiborne, U.S. deputy solicitor general, was a banquet speaker. (3) Bruce M. Bothelo, attorney general of the state of Alaska, was a speaker in 1998, 2000, and 2001 (*Bonus*: Bothelo also appeared in 2006 in his present capacity as mayor of Juneau). (4) In 1983, the conference included a panel entitled "Gambling on Indian Reservations: Legal Context and Relationship to Economic Development." (5) The most recent year that litigation and legislative were topics was in 1998.

