

President's Message

LAWRENCE R. BACA

35 Years of the FBA Indian Law Conference

IN APRIL 1976, the Federal Bar Association held its first conference on Indian law in Phoenix, Ariz. This year the Indian Law Section is celebrating the 35th anniversary of the conference. The program planners have compiled a fairly complete list of the conference chairs



and topics for all the past programs, which is found in this issue, but it is interesting to take a look at America and Indian law through the lens of the year the first conference was held. Some of the most important cases in the history of federal Indian law were in the judicial pipeline in 1976.

In 1976, the Supreme Court was made up of the following justices: Chief Justice Warren Burger and Justices William J. Brennan Jr., Potter Stewart, Byron White, Thurgood Marshall, Harry Blackmun, Louis F. Powell Jr., William Rehnquist, and John Paul Stevens. Justice Stevens had just replaced the legendary William O. Douglas and is the last member of the 1976 Court remaining on the Court today.

The year of the first Indian Law Conference was the bicentennial of the United States. Iconic movies like "Taxi Driver," "Rocky," and "All the President's Men" were released in 1976. Steve Jobs and Steve Wozniak formed Apple to compete with Microsoft. The Civil Rights Division of the U.S. Department of Justice hired the first American Indian attorney through the Attorney General's Honor Law Program in 1976¹—the first American Indian attorney in the history of the Civil Rights Division. Gas cost 59 cents a gallon. Jimmy Carter, who defeated Gerald Ford in the run for President of the United States, would appoint the first American Indian to the federal bench, Frank Howell Seay.² Lawyers and courts were still citing the 1945 and 1958 editions of Cohen's *Handbook on Federal Indian Law*. The update and revision of the *Handbook* called for in the 1968 Indian Civil Rights Act³ had yet to be published, but the authors held meetings in 1975 and 1976 for what would become the 1982 edition. Today, of course, we have the edition published in 2005, which was written by a true "Who's Who" of scholars of federal Indian law.⁴

The year 1976 was an interesting one for both the U.S. Supreme Court and federal Indian law. That year the Court decided three cases: *Northern Cheyenne Tribe v. Hollowbreast*⁵ (dealing with subsurface mineral rights); *Moe v. Confederated Salish and Kootenai Tribes*⁶ (state taxation of tribal property); and *Bryan v. Itasca County*⁷ (state taxation of tribal property under

Pub. L. 280). All three cases were decided by a unanimous vote that was primarily in favor of Indians' tribal interests. I do not remember another year in the 35 years since in which the Court was so united in favor of the positions argued by Indian tribes.

Three cases of considerable weight that would all be decided by the Supreme Court between March 6, 1978, and May 15, 1978, were at critical junctures in 1976. In *Santa Clara Pueblo v. Martinez*,⁸ the Court held that the Indian Civil Rights Act prohibited suing an Indian tribe in federal court and reaffirmed the inherent sovereign immunity of tribes and their fundamental right to declare their own membership. In 1976, the Tenth Circuit had decided in favor of Martinez in *Martinez v. Santa Clara Pueblo*. In *Oliphant v. Suquamish Tribe of Indians*,⁹ which was appealed from a ruling handed down by the Ninth Circuit in 1976, the Supreme Court shifted from stating that tribes lost sovereignty only through treaties or acts of Congress to declaring that some powers were "inconsistent with their status" as domestic dependent nations. In the 35 years since then, that phrase has come to dominate federal Indian law jurisprudence, but in 1976, those words were not yet the most powerful words in the Indian law lexicon, and the Ninth Circuit had found that tribes retained criminal jurisdiction over non-Indians;¹⁰ Circuit Judge Anthony Kennedy, later Justice Kennedy, filed a dissent in the 1976 case. Finally, on Dec. 2, 1976, in *United States v. Wheeler*,¹¹ the Ninth Circuit affirmed the dismissal of the federal indictment against Wheeler,¹² an Indian who had claimed that the Double Jeopardy Clause¹³ had been violated when he was prosecuted by both the Navajo Nation and the United States for a crime committed on the Navajo Reservation. Two years later, the Supreme Court declared that, because Indian nations are sovereigns that are separate from the United States, double jeopardy did not attach. These three cases represented the brightest lines yet in the distinctions the Supreme

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William Sanderson has also been active as a private citizen. He is past chairman of the Administrative Board at the First United Methodist Church of Richardson, Texas. He has also served on the board of the Greater Dallas Community of Churches and now is an elder at Northpark Presbyterian Church in Dallas. He and his wife Sandra once shared the presidency of the Dallas Opera Guild. In addition, he is an active member of the Rotary Club of Dallas.

Judge Sanderson has given a lot of his time to the legal community. He frequently gives lectures at national law institutes and to local bar associations, especially the Dallas Chapter of the Federal Bar Association. He also finds time to serve as a Master with the William B. "Mac" Taylor Inn of Court and was awarded the honor of Serjeant at Law. Martha Hardwick Hofmeister, past president of the Mac Taylor Inn of Court and an officer in the Foundation of the Federal Bar Association, recalls Judge Sanderson's unflagging willingness to give back to the legal community and his particular desire to ensure that young lawyers are mentored by more senior attorneys. Her husband, Kent Hofmeister, past president of the FBA, notes that "Judge Sanderson has always been a true friend and supporter of the Federal Bar Association, both at the local level and in our nationally sponsored events and activities. His collegiality and willingness to work with young lawyers, especially in Dallas, have been invaluable to this community, and we will miss him both personally and professionally."

Judge Sanderson retains a passion for history, especially the Civil War. As he enters retirement, Karen Mitchell, clerk of court for the Northern District of Texas, remembers "Judge Sanderson's institutional knowl-

edge and vivid stories of court history. He should be congratulated for his lifetime of service to the United States as a magistrate judge."

In retirement, Judge Sanderson and his wife may have time to pursue their passions for traveling and opera. They snorkel in places like the Caribbean, and they have traveled to spots as far away as Okinawa, Japan, where their son-in-law, an Army officer, was stationed for a time. Judge Sanderson's love of the ocean extends to lighthouse art and memorabilia, and he is also devoted to the maintenance of his 2002 Ford Thunderbird, which is painted in "Thunderbird blue."

Not too long ago, Judge Sanderson reflected that he had served on the bench long enough to have seen a generation of lawyers appear before him. As a judge, he loved the opportunity to be a student of human nature and, as a subject of such study by those who have come before him in court, Judge Sanderson has been a model of gentlemanly conduct—thoughtful and respectful of all who have brought their cases and controversies before his court. For those of us who remain on active duty in the federal courts, he will be recalled as the kind of person that we hope that the magistrate judges in our federal courts will always be. **TFL**

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Court has made between of tribal powers over tribal members and non-Indians.

Also in 1976, Justice Sotomayor was awarded a bachelor's degree from Princeton University, Chief Justice Roberts received a bachelor's degree from Harvard University, and two future FBA presidents—Tom Schuck and I—were members of the graduating class of Harvard Law School. **TFL**



Endnotes

¹The Honor Law Program was established in 1954.

²See Federal Judicial Center Web site, www.fjc.gov. Judge Frank Howell Seay, U.S. District Court for the Eastern District of Oklahoma, is now retired and has

assumed senior status.

³See 25 U.S.C. 1341(a) (2) and Felix S. Cohen et al., *HANDBOOK OF FEDERAL INDIAN LAW*, ed. by Rennard Strickland and Charles F. Wilkinson (Michie and Bobbs-Merrill Publishing, 1982).

⁴Felix S. Cohen et al., *HANDBOOK OF FEDERAL INDIAN LAW*, ed. by Nell Jessup Newton, (LexisNexis Mathew Bender, 2005).

⁵425 U.S. 649 (1976).

⁶425 U.S. 463 (1976).

⁷426 U.S. 373 (1976).

⁸436 U.S. 49 (1978).

⁹435 U.S. 131 (1978).

¹⁰*Oliphant v. Schlie*, 544 F.2d 1007 (9th Cir. 1976).

¹¹435 U.S. 313 (1978).

¹²545 F.2d 1255 (9th Cir. 1976).

¹³U.S. Constitution, Amendment 5, clause 2.