



HARVARD LAW SCHOOL

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Tribal Courts and the Federal System

Cambridge, MA

November 8th and 9th, 2012

This conference will bring together tribal judges and attorneys, tribal, state, and federal government policymakers, and scholars to explore issues Indian tribal courts currently face in criminal and civil enforcement, jurisdiction, and lawmaking. The first of its kind at Harvard Law School, the conference promises to provide expert dialogue on the latest developments in tribal civil and criminal jurisdiction and to increase awareness within the legal community of the unique place of tribal courts in the federal system.

During the first day, the conference will focus upon the work of the Indian Law and Order Commission, which Congress established in the Tribal Law and Order Act of 2010. Because the Commission's work focuses upon criminal jurisdiction, the panels on the first day will address criminal law enforcement in Indian Country, tribal criminal jurisdiction, and intergovernmental cooperation in criminal enforcement. We are fortunate to have the new Assistant Secretary for Indian Affairs, Kevin Washburn, to provide the keynote address. The second day will turn to tribal civil jurisdiction, with a half-day session on the federal common law rules affecting tribal adjudicatory and regulatory authority as well as a discussion of tribal lawmaking. The conference closes with an address from the Honorable Hilary Tompkins, Solicitor, U.S. Department of the Interior.

The conference will be an opportunity for tribal judges, attorneys, and officials to meet with federal and state judges and officials as well as academics for focused discussions of pressing issues in tribal civil and criminal theory and practice. The audience will also include members of the law school community and practitioners of federal Indian and tribal law. We expect this event will provide a unique opportunity to discuss tribal sovereignty and tribal judicial activity in the federal system with a wide audience at Harvard Law School.

While we have an outstanding set of presenters, we hope to keep presentations brief and allow for ample audience participation.

**Tribal Courts and Criminal Law:
Assessing the Work of the Indian Law and Order Commission
November 8, 2012**

- 8:30–8:45 am **Introductions and Overview of Conference**
- Robert Anderson, Oneida Nation Visiting Professor of Law, Harvard Law School, and Professor of Law, University of Washington School of Law
Seth Davis, Climenko Fellow and Lecturer on Law, Harvard Law School
- 8:45–9:30 am **Introducing the Work of the Indian Law and Order Commission (ILOC)**
- Commission Chairman Troy Eid
- 9:30–11:30 am **Improving Criminal Law Enforcement in Indian Country**
- Professor Carole Goldberg, Professor of Law and Vice-Provost, UCLA;
Honorable Theresa Pouley, Tulalip Tribal Court and ILOC Commissioner;
Kristen Carpenter, Professor, University of Colorado School of Law
- What are the major issues that arise in adjudication of crimes covered by the Major Crimes Act and Indian Country Crimes Act? What is the relationship between tribal and state authorities in jurisdictions where Congress has authorized state criminal jurisdiction within Indian country? Who is an Indian for federal criminal jurisdiction purposes?
- 11:30 am–12:15 pm **Break**
- 12:15–1:45 pm **Lunch and Keynote Address**
- Honorable Kevin Washburn, Assistant Secretary for Indian Affairs,
U.S. Department of the Interior
- 2:00–3:30 pm **Tribal Criminal Jurisdiction: Theory and Practice**
- Angela Riley, Professor of Law, UCLA; Professor Ron Whitener, University of Washington Public Defense Clinic; Anita Fineday, Annie E. Casey Foundation (former White Earth Tribal Judge)
- What are the major jurisdictional issues that tribal courts confront? How do tribal courts approach sentencing alternatives? What should be the long-term plan for strengthening tribal courts? What is being done to provide defense for indigent defendants?
- 3:30–3:45 pm **Break**

3:45–5:00 pm

Intergovernmental Cooperation Among Tribes, States, and the United States

Robert Anderson, Oneida Nation Visiting Professor of Law, Harvard Law School and Professor of Law, University of Washington School of Law; Carole Goldberg, Professor of Law and Vice-Provost, UCLA; Wenona Singel, Associate Professor of Law, Michigan State University

What are the legal and practical relationships between federal, state, and tribal courts and law enforcement officials in the area of criminal law? What are the opportunities for retrocession at the state level to return criminal jurisdiction to Indian tribes and the federal government? How can cooperative public safety agreements be a solution to jurisdictional complications in Indian Country?

Tribal Civil Jurisdiction and Sources of Tribal Law
November 9

8:30–8:45 am

Introductions and Overview of Day 2

Robert Anderson, Oneida Nation Visiting Professor of Law, Harvard Law School, and Professor of Law, University of Washington School of Law
Seth Davis, Climenko Fellow and Lecturer on Law, Harvard Law School

8:45–9:45 am

Tribal Civil Jurisdiction

Judge William C. Canby, Jr., Ninth Circuit Court of Appeals

9:45–10:15 am

Break

10:15–11:45 am

Tribal Civil Law Development

Judge Michael Petoskey, Pokagon Band of Potawatomi Indians; Professor Matthew Fletcher, Michigan State School of Law; Julie Kane, General Counsel, Nez Perce Tribe; Seth Davis, Climenko Fellow and Lecturer on Law, Harvard Law School

How do tribal courts approach the task of developing common law? To what extent do they focus on tribal norms and to what extent do they borrow from state or federal law? How do tribal courts understand their relationship to tribal councils or other legislative bodies? How do tribal courts relate to tribal executives?

11:45 am–12:00 pm

Break

12:00–1:30 pm

Lunch and Closing Address

Honorable Hilary Tompkins, Solicitor, U.S. Department of the Interior, Washington, D.C., *The Importance of Tribal Courts in the Federal System*