

## Report of the Chairperson

Angela Sherigan

### Table of Contents

American Indian Law Section Annual Meeting .....	3
2005 Case Summaries .....	4
Cultural Corner .....	6
State Bar Annual Meeting ..	7

Dear Members –

The 9<sup>th</sup> year of the American Indian Law Section is near a close and a lot of exciting things have happened.

Thank you to John LeMire for his work on last year's annual meeting and the presentation of the Tecumseh Peace-Keeping award to Jim Keedy, Executive Director of Michigan Indian Legal Services. This year's annual meeting and program will be held on Thursday, September 22, 2005 from 2:00 p.m. to 4:00 p.m. at the Kellogg Hotel and Conference Center in East Lansing, Room 101. Our program will be *Tribal Employment Law*, featuring Donna Budnick, Larry Betz, and Richard Feeley. The program will be followed by the presentation of the 2005 Tecumseh Peace-Keeping Award to Donna Budnick. Donna has proven to be a tried and true advocate for Native peoples and has an exceptional record. I hope you will all be able to join us for this year's annual meeting and program and to celebrate Donna's achievements.

While the Program Committee was busy working on the program, Melissa Pope and Tom Myers were busy working on mascot legislation. Melissa was also busy working with Jeff Stone on

an amicus brief in the Loonsfoot case appeal (which settled out of court). In February and March I attended the Section Leaders Advisory Council meeting and the Section Leaders Summit at the State Bar. Both of these proved to be a great value to the sections. We were able to talk about section issues, form working relationships, and express our concerns to the State Bar. I also attended the Bar Leadership Forum in June. (Thank you to Wojnecka & Sherigan, P.C. for their financial support). The final kinks in the list-serv were also worked out and I am happy to say, as many of you know, it is up, running, and serving as a great tool for providing information to our members, as well as serving as a referral system. If you are not currently on the list-serv, please visit our updated section page at the State Bar website, [www.michbar.org](http://www.michbar.org), to join. For those of you who are on the list, please don't be shy - it is a completely open forum. I hope that the list-serv will continue to have success and be of benefit to the members.

The Council conducted its regular meetings and voted to co-sponsor a media symposium with the American Indian Policy Institute, along with

## Section Council

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### Chairperson-Elect

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### Secretary-Treasurer

Shelia Hackett Gaskell

### Term Expires 2005

Richard R. Feeley  
Katherine J. Scotta  
Jonathan J. Siebers  
Arthur D. Stine

### Term Expires 2006

Donna L. Budnick  
Larry R. Betz  
Michael Murray  
Thomas R. Myers  
R. John Wernet, Jr.

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Sheila Hackett Gaskell  
Jacqueline P. Hand  
John J. Lemire  
James A. Keedy  
Melissa Pope  
Thomas V. Silvia

### Commissioner Liaison

Edward L. Haroutunian

### Supreme Court Representative

Anne-Marie Voice

## Report from the Chairperson

Continued from page 1

several Tribes. The purpose behind the symposium is to have a "101," so-to-speak, on effective communication methods for attorneys and Tribes to utilize when dealing with the media about issues important to Indian Country. The symposium is scheduled to be held late fall of this year. With panelists from both the media and those working in Indian Country, the lines of communication are bound to open up.

AILS will also be sponsoring a fundraiser for Native American Spiritual Leaders on Friday, November 18, 2005, at the Grand Rapids Art Museum. In the past few years, there has been a drastic decline in the number of Spiritual Leaders getting to prisons due to financial constraints and problems at facilities with Sacred Items. Donna Budnick, Art Stine, and myself have been working very hard on these issues and hope that you will be able to join us on November 18.

AILS continued its support of Access to Justice with a donation earmarked for Michigan Indian Legal Services. We appreciate the opportunity to support Michigan Indian Legal Services in the important work they do for Indian Country.

Throughout my years with AILS, everyone has been so helpful and really pulling together when projects need to be done, and this year was no exception. I want to thank the following people for the continued support, compassion and hard work: members Melissa Pope, Donna Budnick, Ron Douglas, Shelia Hackett-Gaskell, Jeff Wojnecka, Jeff Stone, Tom Myers, our Commissioner Liaison, Ed Harotunian, and Sue McMann and Janet Welch at the State Bar.

As Chair, I was able to interact with many more members than usual and hope to meet all of you soon. Thank you for a great year.

Sincerely,  
*Angela Sherigan*



# American Indian Law Section Annual Meeting

Thursday, September 22, 2005  
2:00 p.m. to 4:00 p.m.  
Kellogg Hotel and Conference Center  
Room 101  
East Lansing

Program: *Tribal Employment Law*

## Speakers:

*Donna Budnick, American Indian Affairs Specialist*  
Michigan Department of Civil Rights

*Larry Betz, former Staff Attorney*  
Michigan Department of Civil Rights

*Richard Feeley, Associate General Counsel*  
Saginaw Chippewa Indian Tribe

2005 Tecumseh Peace-Keeping Award

to be presented to  
*Donna Budnick*



# 2005 Case Summaries

Angela Bilen; Krysten Niemiec, University of Detroit, Indian Law Practicum, Instructor;  
Professor Kathryn J. Scotta

*City of Sherrill v. Oneida Nation of New York*, 125 S.Ct. 2290 (mem), 73USLW 3685 (May 2005).

In an opinion written by Justice Ruth Bader Ginsberg, the Court held that the Oneida Nation of New York could not assert jurisdiction over lands originally held by the Oneida, illegally obtained by non-Indians, and recently repurchased in fee by the Tribe. The Court ruled that it would be unduly burdensome on non-Indians living on the repurchased lands to allow the Oneida claim sovereign immunity from taxation and that the Oneida waited too long to make such claims over the land. Holding that it would cause "financial uncertainty and jurisdictional chaos" to allow the Tribe to assert sovereignty, the Court ruled that the Tribe's jurisdiction over the lands had been extinguished by the passage of 190 years. Justice Stevens, in his dissent, wrote that the Court's opinion was contrary to years of precedent and that the Court by its ruling extended the powers of the states in a manner never contemplated by Congress. He opined that the majority had, without legal authority, used an un-raised laches argument to support the diminishment of the Tribe's sovereign power over tribal lands. The City of Sherrill and other localities are now threatening the Oneida Nation with tax foreclosure if Oneida does not pay over \$5 million in taxes due. An injunction against the City was rendered on July 6, 2005.

*Richards v. Prairie Band of Potawatomi Nation*, 125 S.Ct. 1397, 379 F3d 979 10th Cir. (Feb 2005).

The Tenth Circuit Court of Appeals held that a tax on fuels at the point of distribution interferes in

tribal self-governance when the fuel supplied is used exclusively at a gas station located on the reservation. The State's interest in taxing the fuel at the distribution point is outweighed by the Tribe's interest in self-governance and economic development.

*Cherokee Nation of Oklahoma et.al., v. Leavitt*; 125 S.Ct. 1172, 161 L.Ed.2d 66, 73 USLW 4177 (March 2005).

The Court held that when Congress appropriated sufficient funds to pay support cost pursuant to self-governance contracts, the government had a contractual obligation to pay the costs and could not avoid doing so by claiming insufficient appropriations. The U.S. government is legally bound to pay support costs.

*Kahawaiolaa v. Norton*; 386 F.3d 1271 (March, 2001).

The Department of the Interior regulations restricting federal recognition of Indian Tribes extends only to the Indigenous Peoples in the continental United States and Alaska. The exclusion of Native Hawaiians does not violate equal protection rights under the 5th Amendment.

*Carcieri et. al. v. Norton et. al.*, 398 F.3d 22, 35 Envl. L.Rep. 20,035 1st Cir. (R.I.) (Feb 2005).

The First Circuit Court of Appeals upheld a district court grant of summary judgment in favor of the Secretary of the Interior's taking of land into trust for the Narragansett Tribe under Section 5 of the Indian Reorganization Act (IRA). The Court rejected the argument that the IRA is inapplicable to any tribe not under

federal jurisdiction at the time the IRA was enacted in 1934. The Court also rejected the argument that Section 5 is an unconstitutional delegation of legislative authority. Several Michigan tribes contributed amicus briefs. The State of Rhode Island has petitioned for an en banc review of the decision.

*Economic Employment Opportunity Commission v. Peabody Western Coal Company*, 400 F.3d 774, C.A.9 (Ariz.) 2005 (March 2005).

The Ninth Circuit Court of Appeals held that it is permissible to join the Navajo Nation in an action brought by the EEOC against Peabody for asserting the Navajo preference in hiring standards at its mines on Navajo lands. The Court ruled that the Navajo Nation could not assert sovereign immunity against the EEOC because it is a U.S. agency. The Court also held that the EEOC claim is not a political question and that the district court erred in dismissing EEOC claims that Peabody did not keep records required by Title VII of 42 U.S.C. 2000e-8(c). Remanded.

*ACLU of Minnesota et.al., v. Kiffmeyer*, No. 04-CV-4653 MJR/FLN (October 2004).

The District Court held that tribal identification cards containing specific identifying information shall have the same status as a Minnesota driver's license for purposes of voter registration.

*Boneshirt v. Hazeltine*; 200 F.Supp.2d 1150 D.S.D., 2002 (May 2002).

The District Court in South Dakota held that a redistricting plan establishing 90% of the concentration

of Indian voters in one district dilutes voting rights in violation of the Voting Rights Act.

*Cabazon Band of Mission Indians et. al. v. Smith*; 388 F.3d 691 (2004).

The Ninth Circuit Court of Appeals reversed a district court ruling and held that a California statute prohibiting the use of emergency light bars on vehicles not authorized by the State of California does not apply to tribal public safety vehicles. The Court held that even when tribal vehicles are not being operated on tribal lands, the Tribe's ability to execute government functions would be diminished by such a prohibition.

*United States v. James Archambault aka James Skunk*, 174 F.Supp.2d 1009, D.S.D. 2001 (October 2001).

The Eighth Circuit Court of Appeals held that pursuant to 540 US 1099, 124 S.Ct. 782 (Lara ), tribes have inherent, rather than delegated rights, to prosecute non-member Indians. In addition, prosecutions brought by tribes and the U.S. government do not violate the Double Jeopardy Clause, even when charges arise from the same circumstances.

*United States of America v. Efrain Becerra-Garcia*; 397 F.3d 1167, C.A.9 (Cal.), 2005 (Feb 2005).

The Ninth Circuit Court of Appeals upheld the denial of Appellee's Motion to Suppress evidence discovered by Tohono O'Odham Rangers and was turned over to the Immigration and Naturalization Service (INS). Stopping Appellee on reservation land was held to be a reasonable exercise

of the Rangers' duties to investigate criminal trespass. The Court ruled that tribes have the sovereign power to enforce laws and that minimally intrusive stops did not violate Appellee's 4th Amendment rights.

#### Update on *Cobell v. Norton*

A settlement plan created by a group of Native American leaders and organizations has been offered to resolve this litigation. The settlement calls for the United States to pay \$27 billion to the individual trustees. The Department of Interior and the Justice Department claim there is no factual basis to support a \$27 billion settlement of the case.

Judge Lamberts found that claims that problems in computer security at the Department of the Interior were false.

The Senate Committee on Indian Affairs held hearings in July to discuss the *Cobell v. Norton* settlement proposal.

#### Michigan Cases

*US v. Peltier, Lewis Alexander*, 344 F.Supp.2d 539, E.D. Mich., 2004 (Oct. 2004)

The U.S. Court of Appeals Eastern District of Michigan, Northern Division, held that it has jurisdiction to adjudicate charges against police, and that police did not act improperly in obtaining evidence used to support a search warrant. The Court held that the State had no authority to issue a search warrant to search within Indian Country but that defendant's statements were not obtained in violation of right to due process.

*Taxpayers of Michigan Against Casinos v. Michigan*, 125 S.Ct. 1298, U.S. 2005 (Feb 2005).

The U.S. Supreme Court denied writ of cert. to appeal the Michigan Supreme Court ruling that, although the Indian Gaming Regulatory Act (IGRA) provides that tribal casinos and other Class III gaming activities are lawful only if conducted under a tribal/state compact, states have no authority under IGRA to regulate gaming in absence of a compact. State legislative approval of compacts executed by the governor is not required.

*Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the U.S. Attorney General for the Western District of Michigan*, 369 F.3d 960, C.A.6 (Mich.), 2004 (May 2004).

The Court held that the U.S. engaged in a government-to-government relationship with the Band until the improper termination of the Band's status as a federally recognized tribe by the Secretary of Interior in 1872. The Secretary of the Interior re-acknowledged the Band as a federally recognized tribe pursuant to the federal acknowledgement process, 25 C.F.R. Part 54 (now 25 C.F.R. Part 83) in 1980. The 6th Circuit affirmed the District Court ruling that GTB is a restored tribe and eligible to engage in Class III gaming operations. The Court also held that the state governor has no greater veto power than that vested by 25 U.S.C. 2719.



## Cultural Corner

By Melissa L. Pope

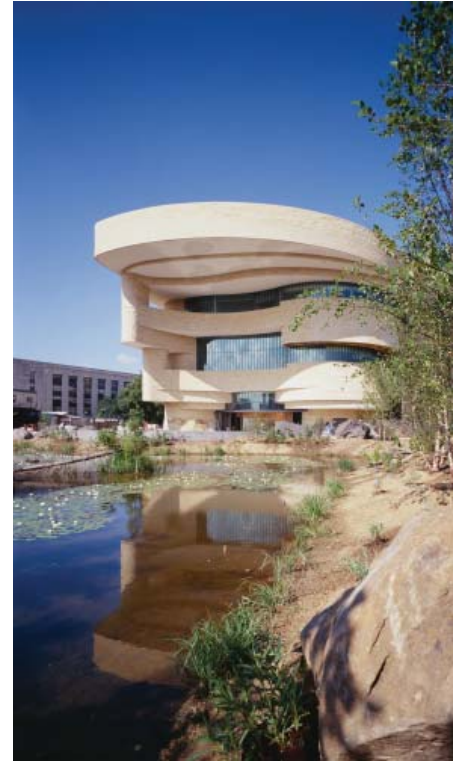
Last year at this time, Indigenous Peoples throughout North America eagerly awaited the opening of the National Museum of the American Indian. The National Museum of the American Indian is the eighteenth Smithsonian museum and is located in the last space along the National Mall in Washington, D.C.

On September 21, 2004 over 25,000 Native Peoples from over 500 Tribes participated in the Native Nations Procession. The Procession started at the Smithsonian Institution Building and traveled along the Mall towards the Capitol. Present were Indigenous Peoples from as far north as Alaska, and as far south as Chile. According to the National Museum of the American Indian website, this was the largest gathering of Indigenous Peoples in North America.

The Opening Ceremony included a presentation of the colors by the Hopi Honor Guard in honor of Pfc. Lori A. Piestewa (Hopi), the first Native American servicewoman to give her life in overseas combat, a flag song by Black Eagle out of the Jemez Pueblo in New Mexico, and speeches by Secretary Lawrence M. Small of the Smithsonian Institution, President Alejandro Toledo (Quechua) of Peru, Senator Ben Nighthorse Campbell (Northern Cheyenne) of Colorado, and Senator Daniel K. Inouye of Hawaii (Sponsor of the 1989 legislation that created the museum), and founding director W. Richard West Jr. (Southern Cheyenne).

The National Museum of the American Indian remained open all night, allowing over 27,000 people to visit the museum the first day. To celebrate the opening, there was a six-day celebration, called the First Americans Festival. The Festival attracted more than 600,000 people.

For more information about the National Museum of the American Indian, as well as pictures, speeches, and press releases from the Opening last September, visit [www.AmericanIndian.si.edu](http://www.AmericanIndian.si.edu). Also consider checking out newsletters from Michigan Tribes, as many sent delegations to the Opening.



*The National Museum of the American Indian  
Washington, D.C.*

*Photo courtesy of the National Museum of the  
American Indian*



*Smithsonian Deputy Secretary Shelia Burke, Senator Daniel Inouye, National Museum of the American Indian Director Rick West, Senator Ben Nighthorse Campbell and Smithsonian Secretary Larry Small take part in the Native Nations Procession.*

*Photo by James DiLoreto, Smithsonian Institute*



*Opening Day Procession Participant  
Photo by James DiLoreto, Smithsonian Institute*

# State Bar of Michigan 70th Annual Meeting

September 22-23, 2005

Location: Kellogg Hotel & Conference Center  
East Lansing, Michigan

“70 Years of Progress” is the theme of this year’s State Bar of Michigan Annual Meeting to be held September 22-23 at the Kellogg Hotel and Conference Center in East Lansing. Members of the legal profession will converge in the area to attend business meetings, section conferences, seminars and other programs.

At a special luncheon on Thursday, September 22 the 71<sup>st</sup> president of the State Bar, Thomas W. Cranmer, and other officers will be sworn in. Also during the luncheon, the State Bar Representative Assembly and the Michigan State Bar Foundation will present special awards to exemplary members. The luncheon speaker is John W. Reed, an attorney and Thomas M. Cooley Professor of Law Emeritus at the University

of Michigan Law School. In addition to his decades of service on the Michigan faculty, Professor Reed has maintained close contact with courts and the practicing bar in such fields as evidence rules, judicial selection, bar examinations, and continuing education for both lawyers and judges.

On Friday, September 23, a special awards ceremony will be held at noon to honor the winners of five major State Bar of Michigan awards. The Michigan Defense Trial Counsel and the Michigan Trial Lawyers Association will also present their Respected Advocate Awards during this ceremony. Another highlight of the day is a tour of Michigan State University’s College of Law Moot Courtroom — a facility that is considered the most technologically ad-

vanced of its kind among Michigan’s six law schools.

New this year will be a law school golf championship scramble that will be held at East Lansing’s Timber Ridge Golf Club on Wednesday, September 21. This two-person team event will challenge law school alumni and students to compete for a \$1,000 donation to the winning school. Proceeds from skill games will be donated to the Access to Justice operations fund for civil legal needs for low-income people throughout the state.

For more information about the Annual Meeting, follow the links below for accommodations and materials, or call Events Coordinator Kari Brandel at (517) 346-6371.

## Helpful links:

Annual Meeting Program	<a href="http://www.michbar.org/news/releases/archives05/Annual_Meeting_Prog_05.pdf">http://www.michbar.org/news/releases/archives05/Annual_Meeting_Prog_05.pdf</a>
Attendee Registration Form	<a href="http://www.michbar.org/news/releases/archives05/Annual_Meeting_Reg_05.pdf">http://www.michbar.org/news/releases/archives05/Annual_Meeting_Reg_05.pdf</a>
Kellogg Hotel & Conference Center	<a href="http://www.hfs.msu.edu/kellogg/">http://www.hfs.msu.edu/kellogg/</a>

