



State Bar of Michigan

# American Indian Law Section

Melissa L. Pope, Editor

Summer 2003

## Letter from the Chair

The American Indian Law Section began the 2002-2003 year with our Business Meeting on September 26, 2002, held during the State Bar of Michigan Annual Meeting. Following the Council update of the 2001-2002 Section activities, the Membership held its elections, as well as voted to continue the tradition of making a financial contribution to the Access to Justice Fund, with the contribution being designated to Michigan Indian Legal Services. The Section recommended that the Proposed Amendments to the Bylaws, detailed in this Newsletter, be voted on by the Membership at the Business Meeting to be held on Friday, September 12, 2003 during the State Bar of Michigan Annual Meeting. I then had the honor of presenting the 2002 Tecumseh Peacekeeping Award to Ronald Douglas who accepted the award on behalf of the Michigan Indian Judicial Association. Ronald Douglas has many responsibilities within the Michigan American Indian community. Whether we turn to him for help as an estate planning attorney, a noted Native American scholar, President of the Michigan Indian Judicial Association, a Tribal Judge, as a trusted Elder, or simply as a friend, we know that he will be devoted to helping us in any way he can. We are grateful for all of the roles he plays in our lives, and for the path he has made for Native American attorneys to follow.

Directly following the Business Meeting and Tecumseh Award presentation was the AILS Annual Program. Tribal Judge Jo Ann Cook and Court Administrator Donna Chippewa of the Grand Traverse Band of Ottawa and Chippewa Indians were the presenters for "MNAWEEJEENDWIWIN – Walking Together in a Good Way" a presentation about the Grand Traverse Band of Ottawa and Chippewa Indian Peacemakers Court. Cook and Chippewa used Power Point to illustrate the Peacemaking Court's use of traditional practices for dispute resolution and community healing. This presentation was an inspiration to all participants, regardless of the level of knowledge about Peacemaking.

AILS significantly expanded its community outreach efforts this year. On February 17, 2003, AILS partnered with the Michigan Department of Civil Rights and the Thomas M. Cooley Law School to host the "Michigan Anishnabe Educational Forum on Educational Issues Affecting American Indians." The purpose of the forum was to discuss the challenges facing the education of and about Michigan American Indians. The specific focus of this forum was the impact of American Indian logos and mascots on the

educational process for both American Indians and non-American Indians. The program was well attended, and the Michigan Department of Civil Rights and the Thomas M. Cooley Law School have invited the Section to co-sponsor future educational forums.

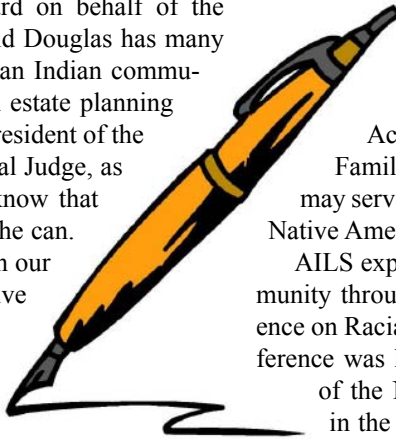
On March 14, 2003, AILS partnered with the Michigan Department of Civil Rights, the Little Traverse Bay Bands of Odawa Indians, the Little River Band of Ottawa Indians, and the United States Department of Agriculture to host the "Odawa Cultural Immersion Workshop." The program offered participants the opportunity to engage in activities that immersed them in Odawa culture, tradition, language and religion. Participants reported gaining tremendous knowledge of and sensitivity for the Odawa culture. I encourage the AILS to co-sponsor future cultural immersion projects.

In addition to co-sponsoring programs, AILS sent copies of articles about the Indian Child Welfare Act to the Department of Community Health and the Family Independence Agency in hopes that these articles may serve as a resource to department staff when working with Native American youth.

AILS expanded its involvement with the Michigan legal community through its involvement with the First Michigan Conference on Racial and Ethnic Fairness in the Legal System. This conference was hosted in conjunction with the 15<sup>th</sup> Annual Meeting of the National Consortium on Racial and Ethnic Fairness in the Courts. The AILS both endorsed and participated in this conference. At the opening luncheon, AILS arranged for Native American Practitioner, Cecil Pavlat, to offer a prayer and song to start the conference in a good way. In addition, I sat on a panel for the afternoon Plenary Session, "Achieving Diversity in the Legal Profession – A Minority Bar Perspective." Special thanks to the Conference planners in their efforts to include American Indian issues throughout the Conference.

On a law school level, AILS expanded its support of the American Indian Law Day sponsored by the Native American Law Student Association at the University of Michigan. AILS sent notifications about the program to its membership and hosted a business meeting following the days' programming to encourage attendance. Special thanks to Elizabeth Kronk of the Native American Law Student Association at the University of Michigan for her assistance in reserving AILS a room to hold our Business Meeting.

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## Case Summaries

### Editor's Note

The following summaries were provided by Michigan Indian Legal Services. Special thanks to Gregory J. Stevens for his diligent work with submitting these to the AILS for publication in the Summer 2003 Newsletter. Please note that these summaries provide a selection of the cases decided recently in the area of American Indian law, and do not purport to be comprehensive, but rather, to provide material that may be of interest to the Section members.

### United States Supreme Court Decisions

*United States v. Navajo Nation*, 537, U.S. \_\_\_\_ (2003),  
Docket No. 01-1375 (citation not available as of print date)

The Supreme Court held the tribe's claim for compensation from the federal government for breach of fiduciary duty failed due to the absence of liability-imposing statutes or regulations from which financial compensation could be reasonably inferred.

The Nation claimed then (1984) Secretary of the Interior Donald Hodel breached basic fiduciary duties of a trustee when he intervened on behalf of a coal company negotiating a coal mining lease with the Nation. The Secretary met ex-parte with coal company officials seeking relief from a 20% royalty agreement suggested by an Interior Department official. The Secretary then indirectly encouraged the Nation to resume lease negotiations with the coal company by suggesting the 20% royalty agreement may not be approved. The Nation resumed negotiations with the coal company and ultimately accepted a 12% royalty. In 1993 the Nation then brought suit against the federal government for breach of fiduciary duty.

The Nation overcame the government's sovereign immunity from suit by relying upon the Indian Tucker Act, which confers jurisdiction upon the Court of Federal Claims over any Indian tribe's claim against the government whenever such claim arises under the Constitution, laws or treaties of the United States. In this case the Nation cited the Indian Mineral Leasing Act (IMLA) as the law under which their claim arose.

The Nation argued it was owed compensation for the government's breach of its fiduciary duty as established by the IMLA. But the Court of Federal Claims held the tribe "failed to link the breach of duty to any statutory or regulatory obligation [in the IMLA] which could be 'fairly interpreted as mandating compensation for the government's fiduciary wrongs.'" The Court of Federal Claims held pursuant to *United States v. Mitchell*, 445 U.S. 535 (1980) (*Mitchell I*) that trust responsibility alone was insufficient to support a claim for damages and that absent a substantive source of law establishing specific duties for the government no duty exists to be breached.

At the appellate level, the Court of Appeals for the Federal Circuit reversed. In support of its holding that the Nation's claim resembled the claim in *United States v. Mitchell*, 463 U.S. 206 (1983) (*Mitchell II*), the Court of Appeals cited the provisions of the IMLA granting the federal government control over the leasing of Indian lands for mineral development in addition to a statute enacted some twenty years before the IMLA regarding the Secretary's leasing authority. In *Mitchell II* the existence of statutes

and regulations governing the harvesting of timber on Indian trust lands coupled with evidence of the government's failure to satisfy those statutes and regulations led the Supreme Court to find the existence of a trust relationship and subsequent breach from which monetary damages could be fairly inferred as a reasonable means of redressing the breach.

The Supreme Court disagreed with the Court of Appeals' holding that the Nation's claim resembled the facts of *Mitchell II* more than *Mitchell I*. Specifically, the Court found the IMLA lacked any provisions establishing the federal government had specific control over or duties regarding coal mining lease agreements on Indian lands. Instead the Court described the IMLA as a means of fostering Indian sovereignty because it limited federal involvement to mere approval of coal leases negotiated by Indian tribes on their own behalf.

The Court found its rulings in *Mitchell I* and *II* (that the presence of a trust relationship alone is insufficient to justify jurisdiction under the Indian Tucker Act and that a substantive source of law is necessary from which damages can be either fairly inferred or are expressly provided) controlled this case and prevented the finding of a fiduciary obligation as a result of a trust relationship between the Nation and the government. The Court held, "the IMLA and its implementing regulations can[not] be fairly interpreted as mandating compensation for the Government's alleged breach of trust in this case."

*United States v. White Mountain Apache*, 537 U.S. \_\_\_\_ (2003),  
Docket No. 01-1067, (citation not available as of print date)

Tribal officials brought suit against the United States for breach of its fiduciary duty to maintain property it held in trust for the Tribe. The Supreme Court found a fiduciary duty to maintain the property existed and the government had breached said duty.

The Tribe overcame the government's sovereign immunity from suit pursuant to the Indian Tucker Act which allows "any claim against the United States founded either upon the Constitution or any Act of Congress" to be brought against the government in the Court of Federal Claims. In this case, the Tribe cited a 1960 statute declaring the land in question, the former Fort Apache Military Reservation, would be held in trust by the U.S. for the Tribe. In its complaint, the Tribe alleged the government was guilty of breaching the simple principles of a trust that require the trustee to maintain the trust's corpus on behalf of the trust's beneficiary. The government countered this argument by contending the Court of Federal Claims had no jurisdiction over the Tribe's action because no statute or regulation expressly imposed a legal obligation on the government to maintain the trust property.

The Court of Federal Claims agreed with the government citing two Supreme Court cases regarding tribal trust claims for damages,

*United States v. Mitchell*, 445 U.S. 535 (1980) (*Mitchell I*) and *United States v. Mitchell*, 463 U.S. 206 (1983) (*Mitchell II*). *Mitchell I* held when the Indian General Allotment Act established a trust for Indian land it was merely a bare trust with no duty on the part of the government to manage or protect the trust corpus. *Mitchell II* held a trust obligation does arise when the trustee (federal government) establishes “elaborate control” over the trust corpus. The Court of Federal Claims found the 1960 Act established a bare trust as described in the first *Mitchell* case rather than satisfying the “elaborate control” requirement of the second *Mitchell* case.

The Court of Appeals for the Federal Circuit reversed the Court of Federal Claims’ decision. The Court of Appeals felt the government’s possession and control of the property in question satisfied the requirements in the second *Mitchell* case for “elaborate control” thus triggering common-law trust responsibilities on the government’s part.

Citing principles of “elementary trust law” the Supreme Court agreed with the Court of Appeals and found the 1960 Act created more than a bare trust and that a fair inference from the Act was that the federal government was subject to common-law trustee obligations and thus liable for damages if shown to have breached said obligations.

*Inyo County v. Paiute-Shoshone Indians*, 538 U.S. \_\_\_\_ (2003),  
(citation not available as of print date)

As part of a state welfare fraud investigation of three tribal members, the Inyo County, California District Attorney’s Office requested the Tribe provide casino employment records of three tribal members. The Tribe declined the district attorney’s initial request to release the records citing its privacy policy requiring employee consent before release of information to third parties. The district attorney’s office then obtained and served a search warrant on the tribal offices of the Paiute-Shoshone Indians. By force and without cooperation of the Tribe the district attorney’s office in conjunction with the sheriff’s department obtained the records sought. When the district attorney’s office contacted the Tribe three months later seeking another half dozen employee’s records the Tribe offered to release the information if the district attorney would provide copies of the employee’s welfare applications granting state officials permission to review their employment records. The district attorney refused and the Tribe, fearing another forced entry, brought suit in federal district court seeking declaratory, injunctive and monetary relief from further state action.

The Tribe argued its sovereign immunity shielded it from state court service of process and additionally that it was subject to relief pursuant to 42 USC Sec. 1983 due to the state’s violation of the Tribe’s Fourth and Fourteenth Amendment rights and the Tribe’s right to self-government.

The district court dismissed the Tribe’s claims holding instead the interest of fair and uniform application of California criminal law was paramount to the Tribe’s claims. The district court also found the state actors retained their qualified immunity from suit regarding the incident.

The Ninth Circuit Court of Appeals however reversed the district court and held, “Execution of a search warrant against the Tribe interferes with the ‘right of reservation Indians to make their own laws and be ruled by them.’” 291 F.3d, at 558 (quoting *Williams v. Lee*, 358 U.S. 217, 220 (1959)). The Ninth Circuit also cited the Supreme Court’s holding in *Oklahoma Tax Comm’n v.*

*Chickasaw Nation*, 515 U.S. 450, 458 (1995)) that denied state jurisdiction over a Tribe absent a waiver by the Tribe or a clear grant of authority by Congress. And the Ninth Circuit held the district attorney and sheriff were not shielded by qualified immunity because the act of seeking and executing a state warrant on tribal land and interests was action reasonable officers should have known to be outside their jurisdiction. And since the Fourth Amendment expressly guarantees protection from unreasonable search and seizure, the Ninth Circuit also held the Tribe was entitled to bring a Section 1983 claim against the state.

The Supreme Court concluded differently. Instead the Court held since the warrant at issue was otherwise valid and Section 1983 was intended to secure private rights from wrongful government encroachment rather than the assertion of a sovereign’s immunity, it did not follow that the Tribe was entitled to Section 1983 protections. In analyzing the Tribe’s claim under Section 1983 the Court also noted that States are not “amenable to suit under Section 1983” and that Tribes are analogous to States for purposes of this case.

But on the central issue of whether Tribes are immune from state process, the Supreme Court remanded for further analysis. The Court found “unclear” the Tribe’s claim that its case arises under the “federal common law of Indian affairs”. The Court went further stating, “In short, absent Section 1983 as a foundation for the Tribe’s action, it is unclear what federal law, if any, the Tribe’s case ‘arises under.’” Rather than recognize tribal sovereign immunity or the long established principle from *Worcester v. Georgia* barring exercise of state jurisdiction on the reservation, the Court instead remanded for resolution of the jurisdictional question it perceived as unanswered.

## United States Courts of Appeal

*NLRB v. Chapa De Indian Health Program*, 316 F.3d 995,  
C.A.9 (Cal.), 2003

The Ninth Circuit Court of Appeals held the National Labor Relations Act is a statute of general applicability and thus applies to Indian Tribes. However, the Court also held the jurisdiction of the National Labor Relations Board over the Tribe in this case is to be determined.

Chapa De had asserted its sovereign immunity as grounds for requesting the Court quash subpoenas issued it by the National Labor Relations Board (NLRB) pursuant to its authority under the National Labor Relations Act (NLRA). Chapa De argued the NLRB lacked jurisdiction to issue subpoenas against it. The Court held pursuant to *Donovan v. Coeur d’Alene Tribal Farm*, 751 F.2d 1113 (9th Cir. 1985), the NLRA was applicable to Chapa De since the NLRA was silent as to its applicability to Indian Tribes (and by extension their organizations) and since Chapa De could not satisfy any of the three (3) exceptions as enumerated in *Coeur d’Alene* that would shield it from statutes of general applicability. However, the Court then concluded Chapa De’s request for judicial intervention to quash the NLRB’s subpoenas was premature and the NLRB’s jurisdiction was not “plainly lacking”. Instead the Court stated the

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## Case Summaries

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NLRB should be allowed to determine its jurisdiction before judicial intervention was warranted.

*Navajo Nation v. Department of Health & Human Services*,  
325 F.3d 1133, C.A.9 (Ariz.), 2003.

The Ninth Circuit held a welfare program is not a program specifically for the benefit of Indians because of their status as Indians, thus the Navajo Nation must pursue funding for the program through a general welfare funding program and not through an Indian specific program.

The Navajo Nation sought funding for its Temporary Assistance to Needy Families (TANF) program through the Indian Self-Determination and Education Assistance Act (ISDEAA) in part because provisions of the ISDEAA require the government to provide additional funding to cover the administration of funds. The Ninth Circuit held en banc the Nation could not seek TANF funding via ISDEAA because TANF was not “a program specifically for the benefit of Indians because of their status as Indians”.

Instead the Court held since TANF was intended to operate for the benefit of needy families without consideration for the status of recipients as either Indian or non-Indian the Nation would have to seek TANF funds as the states do, through the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). The Court acknowledged the lack of sufficient funding provided by Congress to administer programs like TANF under PRWORA but did not agree with the Nation’s attempt to obtain TANF funding through the more fully funded ISDEAA.

*Burlington Northern Santa Fe Railroad Company v. the Assiniboine and Sioux Tribes of the Fort Peck Reservation*,  
323 F.3d 767, C.A.9 (Mont.), 2003.

The Ninth Circuit held the Assiniboine and Sioux Tribes of the Fort Peck Reservation’s civil regulatory jurisdiction over non-member fee land can only be justified if an exception to the *Montana* rule is satisfied.

Following *Strate v. A-1 Contractors*, 520 U.S. 438 (1997), the Court held the Burlington Northern rail line running through the Fort Peck Indian Reservation was non-Indian fee land and thus exempt from the Tribe’s civil regulatory jurisdiction (in the form of an ad valorem tax) pursuant to *Montana v. United States*, 450 U.S. 544 (1981) unless the Tribe could satisfy one of the two exceptions to *Montana* (the establishment of a consensual relationship between the nonmember and the Tribe or nonmember action directly threatening the political integrity, economic security, health or welfare of the Tribe).

The Court held the Tribe could not satisfy the first *Montana* exception because the Tribe’s purpose for the tax was simply to realize a fair assessment value on the property - a purpose that had no nexus to any consensual relationship between the Tribe and the railroad. The Court then held pursuant to *Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001) that *Montana*’s second exception could only be satisfied when the nonmember conduct at issue directly threatens the Tribe or so drains tribal resources as to imperil the political integrity of the Tribe.

The Court let stand the railroad’s successful FRCP 56(f) motion for summary judgment regarding the first *Montana* exception holding it would be futile to allow the Tribe to try to demonstrate a consensual relationship between the Tribe and railroad regarding the ad valorem tax. However, the Court refused to grant the railroad’s rule 56 motion as it related to the second *Montana* exception saying instead the Tribe should be given an opportunity to attempt to demonstrate the operation of the rail line was a threat to the Tribe.

*United States of America v. Frank Long*,  
324 F.3d 475, C.A.7 (Wis.), 2003.

The prosecutorial power of a Wisconsin Tribe terminated then later restored flowed from the Tribe’s pre-termination inherent sovereign authority over its members, *not* from a delegation of power by the federal government.

A member of the Menominee Tribe of Wisconsin prosecuted by his Tribe and the federal government for commission of the same criminal act argued the dual prosecutions violated the Double Jeopardy clause. The tribal member argued since the Tribe had been terminated then restored by the federal government its powers flowed from an express delegation of authority by the federal government and thus the authority for both prosecutions flowed from the federal government and therefore violated the Double Jeopardy clause.

The Seventh Circuit held pursuant to the dual sovereignty exception to the Double Jeopardy clause (as discussed in *United States v. Wheeler*, 435 U.S. 313 (1968)) the Menominee Tribe’s prosecution would not violate double jeopardy if the source of the Tribe’s prosecution was its inherent sovereign authority rather than authority expressly delegated to the Tribe by the federal government. The Court reiterated the holding in *Wheeler* that a Tribe’s power to make and enforce criminal laws over members on tribal land is an exercise of inherent sovereignty that survived any Tribe’s submission to the United States’ ultimate authority since the exercise of such a power is confined to tribal members and lands.

Ultimately the Court found the termination of federal recognition of the Tribe did not abolish the Tribe or its membership and since the Tribe continued to exist, its inherent sovereign authority to make and enforce laws upon tribal members on tribal land also continued to exist. The Court cited the language of the restoration act that emphasized the restoration of the Tribe’s pre-termination status and powers by Congress rather than a delegation of new powers to the Tribe as evidence the Tribe’s prosecutorial powers flowed from a separate authority thus permitting dual prosecution of the tribal member in tribal and federal court.

*Margaret A. Penn v. United States of America*, 324 F.3d 992,  
C.A.8 (N.D.), 2003, (Withdrawn from N.R.S)

Please note, publication of this case has been delayed according to Westlaw because 1) the court asked, or 2) some other activity concerning the case met their editors criteria for removing or potentially delaying the actual publication. According to Westlaw, this DOES NOT MEAN the case will never be published. However, if it is subsequently published it will receive a new cite.

The Eighth Circuit held a tribal court judge and the judicial officers who enforced his order were entitled to judicial and quasi-judicial immunity for issuance and enforcement of a facially valid tribal court order.

A non-Indian plaintiff sued a variety of federal and state defendants responsible for the service and enforcement of a tribal court order excluding her from the Standing Rock Sioux Indian Reservation. Plaintiff sued those she felt were responsible for her removal, including the tribal court judge who granted the restraining order resulting in Plaintiff's removal as well as the tribal police officers who oversaw her physical removal from the reservation.

The Eighth Circuit, citing *Gaming World Int'l, Ltd. v. White Earth Band of Chippewa Indians*, 317 F.3d 840 (2003), held judicial immunity extended to tribal court judges as part of "the long standing federal policy supporting the development of tribal courts" for the purpose of encouraging tribal self-government and self-determination. And the Court further extended quasi-judicial immunity to the tribal police officers who enforced a facially valid tribal court order. The Court held, "to subject police officers to suit for serving or executing a facially valid court order that is later held to be unlawful would require them to 'act as pseudo-appellate courts', *Valdez v. City and County of Denver*, 878 F.2d 1285 (1989)".

The Court, citing *Nevada v. Hicks*, 533 U.S. 353, (2001) and *Montana v. United States*, 450 U.S. 544 (1981) also commented on the Tribe's exercise of civil jurisdiction over non-members stating, "A Tribe's civil jurisdiction over nonmembers is limited but broadest with respect to nonmembers who voluntarily involve themselves with tribal activities," as had the Plaintiff.

*Gobin v. Snohomish County*, 304 F.3d 909, C.A.9 (Wash.), 2002.

Snohomish County, Washington argued it had regulatory jurisdiction when it tried to enforce its planning and development regulations on land owned in fee by tribal members and situated within the reservation boundaries of the Tulalip Tribes of Washington. The County argued it had regulatory jurisdiction in part because the land was freely alienable rather than held in trust for the Tribe. The Ninth Circuit disagreed and held the County could not exercise regulatory jurisdiction over the land. The Ninth Circuit rejected the County's attempt to justify its regulatory jurisdiction, refusing to accept the County's broadened interpretation of two Supreme Court cases that permitted state taxation of fee lands within a reservation.

In support of its argument, the County cited *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463 which held Section 5 of the General Allotment Act (1887) (Indian lands held in trust eligible to be freely alienated) and Section 6 of the Burke Act (1906), (owners of said Indian lands were subject to the jurisdiction of the State or Territory in which the land was situated) together justified State regulatory jurisdiction. The County additionally cited two Supreme Court cases, *County of Yakima* and *Cass County*, which it claimed demonstrated the Court's intent to subject trust land subsequently allotted to state in rem jurisdiction.

The Ninth Circuit held the County's argument extended the principle behind those Supreme Court decisions further than intended by the Court. The Court found *Moe* explicitly limited its

holding to *allottee's* of Indian fee land only. Subsequent *Indian* owners of allotted parcels were not intended to be included according to the Court. The Ninth Circuit also held the Supreme Court intended its decisions in *County of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation*, 112 S.Ct. 683, (1992) and *Cass County, Minn. v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103, (1998) to narrowly establish the principle that "freely alienable fee lands are subject to State ad valorem property taxes" and nothing else. The Ninth Circuit rejected the County's argument that *County of Yakima* and *Cass County* stood for the principle of state jurisdiction over reservation fee lands simply because the lands were alienable. The Ninth Circuit distinguished *County of Yakima* and *Cass County* as prefaced on "the inextricably linked concepts of alienability of land and taxation (of said land)" where as in the case at bar the County was arguing the alienability of the land justified the County's plenary in rem jurisdiction. The Court held the alienability of the land and in rem jurisdiction were two unrelated concepts thus the County could not rely upon *County of Yakima* and *Cass County* to justify their claim of jurisdiction.



## Proposed Amendments to the Bylaws

The American Indian Law Section will vote on the following amendments at the next annual meeting:

ARTICLE V, SECTION 5. QUORUM. Seven (7) voting members of the Council present shall constitute a quorum for both regular and special meetings of the Council.

ARTICLE VI, SECTION 3. QUORUM. Eleven (11) members of the Section present at any Section meeting shall constitute a quorum for the transaction of business.

ARTICLE V, SECTION 8. PARTICIPATION. For all purposes under these bylaws, a person shall be "present" at any meeting (including any Section or Council meeting) if such person participates in the meeting either: (a) in person, or (b) with the permission of the Chairperson or the Chairperson's designee by any means of telephonic, electronic, video conference or other interactive communication as shall be convenient.

SECTION 1. SECTION COUNCIL...Each year the Council shall appoint a minimum of one (1) law student, with the maximum of three (3) law students, to the Section Council. Law students will serve as ex officio (non-voting) members of the Section Council.



# American Indian Law Section

## Cultural Corner

By Melissa L. Pope

On Thursday, June 26, 2003, the Michigan State Board of Education unanimously passed a Resolution strongly recommending the elimination of American Indian nicknames, mascots or logos, fight songs, insignias, antics and team descriptors by Michigan public schools.

The June 29, 2003 Lansing State Journal Editorial, along with the majority of the Letters to the Editor on July 4, 2003, opposed the Resolution. I began this "Cultural Corner" with the intention of giving all of the reasons for why eliminating Indian logos is so important. But, after I read my nephew's "Letter to the Editor" on July 4, 2003 in the Lansing State Journal, I am reminded of a traditional teaching: Learn from our children.

I am writing in response to your June 29 editorial on North American Indian school names.

I will attend Okemos' Kinawa Middle School this fall. I'm Odawa (not Ottawa) and Ojibwe (not Chipewewa); those are the names European settlers gave us. Schools with Indian names allow for discrimination.

Some think it's OK to make goofy so-called "Indian" sounds, have Indian mascots in weird clothes and do the tomahawk chop. Okemos High School's nickname is the chiefs. Okemos already means chief (little chief) so it would mean chief chiefs. Redundant!

No other racial group still has to deal with nicknames, so why should we? If people saw "fightin' whiteys" jerseys, they would get mad. What's the difference? Instead of "honoring" Indians by naming schools after us, you should teach the correct history of my people.

Zhaawosh Bardy, age 10  
East Lansing

Gratitude to the Michigan State Board of Education for passing this Resolution. As illustrated by my nephew, this Resolution is important to American Indians in Michigan because it makes a positive step towards supporting American Indian children in their educational pursuits, as well as encouraging non-American Indians to learn the true history and current status of American Indians living within the borders of the United States and Canada.

### Letter from the Chair

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AILS made significant efforts to become more visible to its Membership. I contacted the Membership by mail regarding programs co-hosted by AILS, sent e-mails to keep the Membership informed about AILS activities on a more timely basis, and sent a copy of the "Michigan Indian Quarterly Special Edition Resource Guide," a publication of the Michigan Department of Civil Rights, to the Membership who responded to my e-mail. For those who have not submitted their e-mail address to the State Bar of Michigan, there will be copies of this publication available at the Business Meeting. Special thanks to Donna Budnick, the American Indian Affairs Specialist at the Michigan Department of Civil Rights, for making the Guides available to our membership.

I expect the AILS to remain very active over the next year as we have been invited to contribute a theme issue to the Michigan Bar Journal for publication in June 2004. There will also be a special edition of the Newsletter giving the "Legislative Update" that has been missing from the last couple of Newsletters. Special thanks to Donna Budnick for always making these available and my apologies as Editor for the technical difficulties that have prevented these highly informative updates from getting to you.

I hope that the Membership has been pleased with our progress over the last year. My sincere thanks to our Council for their support and assistance. It has been my honor to serve as the 2002-2003 Chair of the American Indian Law Section.

*Melissa L. Pope*

## American Indian Law Section 2002-2003

Officers	Position Expires	Council	Term Expires
<b>Chair</b> Melissa L. Pope	2003	Larry Betz	2004
<b>Chair-Elect</b> John Lemire	2003	Kent Bourland	2004
<b>Secretary/Treasurer</b> Angela Kay Sherigan	2003	Ron Douglas	2003
		Jenny Lee Kronk	2004
		Jonathan Siebers	2003
		Katharine Scotta	2003
		Gregory Stevens	2004
		Art Stine	2003
		Wilson Tanner	2004

### Student Representatives

Position Open

Do you know of anyone  
interested in joining  
the American Indian Law  
Section?

For more information, have them  
contact the  
State Bar of Michigan  
306 Townsend Street  
Lansing, MI 48933-2083  
517.346.6341

Call for Attorneys who Practice  
American Indian Law

The American Indian Law Section is often contacted by American Indians seeking representation in tribal, state and federal court, as well as non-Indians who have actions pending against them in tribal court. The Section is compiling a referral list of attorneys who practice in this area. If you are interested in being on this referral list, please contact Melissa Pope at (517) 371-5140, extension 2247 or via e-mail at [popem@cooley.edu](mailto:popem@cooley.edu).





State Bar of Michigan  
American Indian Law Section

Business Meeting  
Friday, September 12, 2003 at 2 p.m.  
Room 102, Lansing Center, Lansing

Annual Program to follow at 3 p.m.  
"Taxation Issues in Indian Country"  
*Speaker: Kathryn Tierney*  
*2003 Tecumseh Peacekeeping Award Recipient*

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**American Indian Law Section**  
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