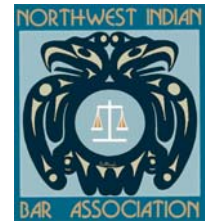


**The Northwest Indian Bar Association
Is Positively Changing
the Legal and Political Landscape for
Pacific Northwest Indian People**

“NIBA seeks to empower Northwest Indian people through legal education, and to provide them a voice on the legal issues and decisions that affect the very essence of life in Indian Country.”

– Gabe Galanda, NIBA President

NIBA News Bulletin



Edition 5/Summer 2003

2003 Governing Council

President

Gabriel S. Galanda
(Nomlaki /Concow)
Williams Kastner & Gibbs, Seattle,
WA
(206) 628-2780
ggalanda@wkg.com

President-Elect

Bernice Delorme
(Turtle Mountain Chippewa)
Puyallup Tribe of Indians, Puyallup,
WA
(253) 573-7876
bcd@puyalluptribe.com

Vice-President

Juliana C. Repp
(Nez Perce)
Columbia Legal Services,
Spokane, WA
(509) 324-2789 ext. 217
julie.repp@columbialegal.org

Secretary

Lisa DeCora
(Winnebago)
Department of Health & Human
Services, Seattle, WA
(206) 615-3666
Lisa_DeCora@hhs.com

Treasurer

Ron J. Whitener
(Squaxin Island)
University of Washington School of
Law, Seattle, WA
(206) 543-4099
ronw@u.washington.edu

At-Large Members (3)

Rion J. Ramirez
(Turtle Mountain Chippewa/
Pascua Yaqui)
Dorsey & Whitney,
Seattle, WA
(206) 903-5451
ramirez.rion@dorseylaw.com

Rob Smith

Morisset Schlosser Ayer &
Jozwiak, Seattle, WA
(208) 386-5200
r.smith@msaj.com

Suzanne Townsend

(Fond du lac Band of Lake Superior
Ojibway)
Cascade Alternative Resolution
Services,
West Linn, OR
(503) 650-3843

President's Message

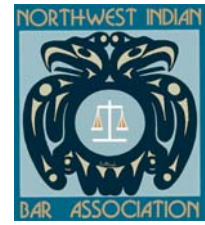
By Gabe Galanda



While NIBA ("knee-buh") was founded in 1991 by 8 visionary Indian attorneys in Seattle, it was not until early 2002 that NIBA had the "critical mass" of Native attorneys throughout the Northwest – 1/3 of NIBA's 150 members are now Indian – necessary to fulfill NIBA's goals and truly affect change throughout the Northwest. In the past 18 months, NIBA has enjoyed a resurgence and in that short span of time has already positively impacted the Northwest legal and political landscape for the benefit of local Indian people. Here's a brief recap of NIBA's recent activities and successes.

1. Since early 2002, NIBA:
 - Has grown its membership from 21 to over 150 and expanded its membership to Oregon, Idaho and Alaska, and all points and every reservation in between;
 - Incorporated as a 501(c)(3) and (6) non-profit organization;
 - Raised nearly **\$20,000** to fund scholarships for Northwest Native law students through the assistance of the **Squaxin Island, Muckleshoot, Tulalip and Swinomish Tribes**, and **NIBA Member Kevin Miller**; and
 - Provided valuable Indian legal information to Indian Country and the non-Indian public through its web-site – www.nwiba.org – and its newsletters.
2. In November 2002, NIBA sponsored an Indian law edition of the **Washington State Bar Association Bar News**, comprised entirely of articles written by Indian attorneys, through which NIBA sought to educate non-Indian practitioners about legal, political and cultural issues vital to Northwest Native people. NIBA members' Indian law articles have also recently been published by such Northwest magazines as **Oregon's Bar Bulletin** and the **Idaho State Bar's Advocate**. (Copies of the articles are available upon request by emailing ggalanda@wkg.com)
3. Throughout the Summer of 2002, NIBA met at the **Quinault, Tulalip and Puyallup Indian Reservations** to connect Northwest lawyers and bar leaders, and tribal communities. NIBA has also gathered at the **University of Washington, Seattle University and Gonzaga Law Schools** in an effort to reach out to aspiring Native and Indian law attorneys.
4. In July 2002, NIBA participated in the **Lower Elwha S'Kallam Tribe's Career Day** to encourage Lower Elwha tribal youth to obtain higher education and consider a legal career.

NIBA *News Bulletin*



Edition 5/Summer 2003

5. In September 2002, NIBA awarded five students of **West Seattle High School Native Justice Awards** for their efforts in advocating against the use of Indian mascots and to encourage the students to continue towards careers in advocacy and perhaps the law. NIBA submitted positions paper to the local press in support of the students and in opposition to the use of Indian mascots, which were quoted by **The Seattle Times**. NIBA was also on hand in March 2003 to support the students and Seattle urban Indian community to witness King County Superior Court Judge James Doerty's ruling that upheld the constitutionality of the West Seattle High School Board's ban on the use of Indian mascots.

6. In September 2002, NIBA co-sponsored the **Indian Law Symposium** with the Native American Law Center at the University of Washington to provide continuing legal education to Northwest Indian law attorneys.

7. In October 2002, NIBA participated in the **King County Bar Association Foundation's Future in the Law Institute**, a two-day event aimed at inner-city, minority high-school students, which sought to encourage the students to pursue higher education and law-related careers, thus potentially broadening the pool of persons of color entering the study of the law. NIBA is working with the Foundation to include reservation youth in this year's Institute.

8. In February 2003, **NIBA pledged \$500 to the University of Washington Native American Law Students Association (NALSA)** to send a team of Indian advocates to the National NALSA Moot Court Competition at Columbia University Law School in New York City.

9. In March 2003, **NIBA held a Indian Art Auction in Spokane that raised over \$3,000** for the University of Washington Native American Law Center to assist in the Center's efforts to promote a better understanding of Indian law and policy in order to facilitate legal and institutional improvements among tribal, state and federal governments. **NIBA Vice-President Juliana Repp (Nez Perce)** and **NIBA member Melissa Campobasso (Colville)** were instrumental in the success of the auction.

10. In April 2003, **NIBA pledged a \$10,000 scholarship to Ralph Jefferson, an incoming student from the Lummi Tribe**, to pay for a year of his tuition and fees at the University of Washington Law School. NIBA intends to distribute in upwards of \$10,000 additional monies for scholarships by September 2003.

NIBA is honored and excited about the positive effect it is having on the non-Indian public and our people, particularly the tribal youth. With all that done and said, however, Indian Country "ain't seen nothing yet."

Gabe is an attorney with the Seattle-Portland law firm Williams, Kastner & Gibbs, PLLC. His practice focuses on the litigation of complex, multi-party commercial and Indian law matters, and consultation with tribes and non-tribal parties doing business in Indian Country. He is a descendant of the Nomlaki and Concow Tribes, and an enrolled member of the Round Valley Indian Confederation in Northern California. He serves as President of the Northwest Indian Bar Association and chair-elect of the Washington State Bar Association Indian Law Section.

NIBA *Profile*



Edition 5/Summer 2003

NIBA Co-Founder Assists Tribes With DC Lobbying Efforts *By Barry Brandon*



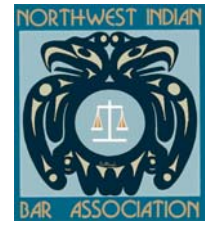
Greetings to my friends and colleagues at the Northwest Indian Bar Association (NIBA). Some of you may remember me as a past president and founding member of NIBA, as well as a member of the Muscogee (Creek) and Seneca Nation of Indians. First of all, I want to commend Gabe Galanda for the stellar job he is doing in his role as president of NIBA. A few years ago Gabe approached me for career advice while he was doing a summer internship in Washington, D.C. I provided him with some contacts in the Seattle legal market and told him that should he work in Seattle, he should get involved with NIBA. Little did I know that not only would he get involved, but that he would extend the reach of NIBA in such an organized and professional way.

I wanted to take this opportunity to tell you a little bit about my career and what I have been doing since I left the Seattle area to assist tribes in raising their political profile in Washington, D.C. After leaving Seattle and my job at Thorsrud Can & Paulich, I moved to our nation's capital where I served as a senior trial attorney at the U.S. Department of Justice, handling civil litigation claims to enforce federally protected rights and interests of Indians and Indian tribes. From there, I moved to the U.S. Department of the Interior, taking the position of deputy director of the secretary's Indian Water Rights Office, where I was lead negotiator on several Indian water rights settlement negotiations. I then moved from Interior to become general counsel and then chief of staff at the National Indian Gaming Commission, where I assisted the Commission in formulating and implementing U.S. policies and priorities for more than 300 Indian gaming operations.

I gained a wide variety of substantive experience through these positions, but I started to see in a variety of contexts the same situation: tribes winning the battle but losing the war – that is, being right on the law, but still not getting what they are entitled to. I learned through my professional experiences that the missing piece of the puzzle usually came down to one thing – Washington, D.C., political knowledge and access. I developed a strong desire to assist tribes in becoming politically active and taking a seat at the political table in Washington, D.C. It is this desire that led me to my current position as senior counsel at Akin Gump Strauss Hauer & Feld LLP, where I am one of the founders of the American Indian law and policy practice group within the domestic policy practice.

Founded in 1945, Akin Gump Strauss Hauer & Feld LLP (Akin Gump) is one of the world's largest international law firms, with nearly 1,000 lawyers in 16 offices worldwide. The firm's domestic policy practice has a sterling reputation in Washington for its ability to understand clients' problems and solve them with a strategic combination of legal, practical and political skills. (You can read more about Akin Gump in the firm's insert to this edition of the newsletter and at www.akingump.com.)

NIBA *Profile*



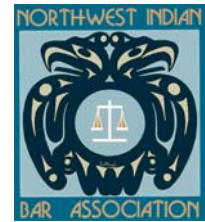
Edition 5/Summer 2003

At Akin Gump, the American Indian law and policy practice group has been able to supplement strong legal talent in Indian law with political savvy – knowing how to position a tribe with the executive and congressional branches to help achieve a tribe’s short- and long-term goals. We assist tribes and tribal corporations with a wide variety of Indian law and policy issues.

For example, Akin Gump lawyers have represented tribal governments in complex water rights litigation and settlement negotiations, tribal-state gaming compact negotiations, trust land acquisition issues, federal appropriations, land claims litigation, economic development projects, and with legislative advocacy and strategic advice. Most recently, Akin Gump has assisted tribal clients in getting legislation passed to distribute judgment funds, having legislation introduced to settle long-standing water rights disputes, and obtaining land within a metropolitan area in trust for the benefit of the tribe and opening a gaming facility.

In each of these situations, Akin Gump has been able to add an extra dimension of political skill to help the tribes achieve their goals. Along the way, we also have been helping tribes learn more about how to become more politically active in Washington, D.C. Just recently, for example, we coordinated strong tribal participation in the president’s fundraising dinner in Washington, D.C. – our tribal clients were represented at the president’s head table and at Secretary of Interior Gale Norton’s table. Looking around the room that night and seeing all the Indian faces represented at the event made me all the more certain that we are doing good things in Washington for tribes. I am thankful for organizations such as NIBA that have assisted Indian attorneys — like myself — and tribes in becoming more aware of the national issues relevant to tribes and the means by which to influence those issues. For more information on how tribes can make an impact in Washington, D.C., or the services that Akin Gump can provide these tribes, please feel free to contact me at Akin Gump Strauss Hauer & Feld LLP at (202) 887-4542.

Barry advises clients regarding American Indian law and policy, with particular emphasis on Indian gaming and water rights. He received his B.A. in 1983 from Western Washington University and his J.D. in 1987 from the University of Washington School of Law. Barry is past president and founding member of NIBA, and he remains a member of the Washington State Bar.



Alaska Supreme Court Rejects Native Preference ***By Aaron Schutt***

On May 16, 2003, the Alaska Supreme Court ruled in Malabed v. North Slope Borough, ___ P.3d ___, No. 5692 (Alaska 2003), that the North Slope Borough's hiring preference for Native Americans violated the Alaska Constitution. In 1997, the North Slope Borough enacted an ordinance that created a mandatory hiring preference in favor of Native Americans for borough government employment. The ordinance defined "Native American" to include any person belonging to a federally recognized Indian tribe. Before enacting the hiring preference, the borough consulted the Equal Employment Opportunity Commission to determine whether the borough might qualify for an exemption from federal employment discrimination laws under section 703(i) of the Civil Rights Act of 1964. The 703(i) exemption excludes hiring preferences favoring Native Americans on or near Indian reservations from the anti-discrimination laws of Title VII of the Civil Rights Act. The EEOC told the borough that the 703(i) exemption extended to the borough. Three non-Native individuals (collectively Malabed) brought suit in federal district court challenging the borough's ordinance as violating state and federal equal protection, the Alaska Human Rights Act, federal civil rights laws, and the borough's charter. The district court ruled on summary judgment that the preference violated the borough's charter and federal equal protection. The borough appealed to the Ninth Circuit, which certified a question to the Alaska Supreme Court asking whether the preference violated local law, state statutory law, or the Alaska Constitution. In the Alaska Supreme Court, Malabed continued to argue that the preference must be considered as a racial classification subject to the highest level of scrutiny under the Alaska Supreme Court's sliding scale equal protection analysis. The borough argued that the preference was based upon the political classification of Native Americans under federal law recognized in Morton v. Mancari, 417 U.S. 535 (1974) and was constitutional under a lower level of equal protection scrutiny.

The Alaska Supreme Court declined to classify the preference as inherently race based. Instead, the Court answered the question of whether the borough, as a state government entity, had a legitimate governmental interest in enacting the preference. The Court concluded that the borough did not, relying principally on State, Departments of Transportation & Labor v. Enserch Alaska Construction, 787 P.2d 624 (Alaska 1989). In Enserch, the Court held that the state did not have a legitimate interest in creating a statutory hiring preference in favor of state residents of economically distressed zones for employment on public works projects. Applying Enserch, the Court rejected the argument that the borough's proffered interests – reducing unemployment of the borough's Inupiat Eskimo population, strengthening the borough's economy, and training its workforce – were legitimate. The Court also rejected the borough's arguments that it had legitimate interests created by either the Alaska Constitution or the 703(i) exemption. The Court ruled that the Alaska Constitution creates no implied guardianship powers with respect to Alaska Natives. The Court also ruled that the 703(i) exemption alone does not create a legitimate governmental interest to enact the hiring preference at issue. The Court noted that Congress can, through federal legislation, create specific mandates and interests that empower states or local governments to legislate in favor of Native Americans; but the Court ruled that 703(i) does not create a mandate or a state interest. The Court recognized that 703(i) reflects Congress's strong desire to encourage hiring preferences in favor of Native Americans, but also that 703(i)'s mechanism is fundamentally passive and creates no *state* interest, much less a mandate, in enacting a hiring preference. Because the Court concluded that the borough lacked a legitimate state interest in enacting a hiring preference in favor of Native Americans, it ruled that the preference violated the Alaska Constitution's guarantee of equal protection.

Aaron Schutt (Athabaskan) is an attorney with Heller Ehrman White & McAuliffe, LLP, in Anchorage, Alaska, and is a former law clerk to Justice Alexander Bryner of the Alaska Supreme Court (the author of the Malabed decision).