

Meet the advocates They're the best, and they're organized

Special to IGWB

Gambling law is as diverse and complex a specialty as the industry it serves. But this goes without saying. Certainly it has called forth an array of skilled practitioners worldwide. Most of their names will be found on the membership roles of the International Masters of Gaming Law.

IMGL is a non-profit association founded in 2002 by a number of prominent attorneys desirous of sharing their expertise through education and providing a network for others in the field to stay abreast of the developments that affect their practices. Today the group is represented in 34 countries and 30 U.S. states, its membership includes regulators and other private- and public-sector stakeholders, and it continues stronger than ever in its mission to promote the exchange of ideas, principles and issues of importance to the profession.

IMGL accomplishes this in a number of ways, through publications such as *Casino Lawyer* and *Canadian Gaming Lawyer Magazine*. It publishes *International Casino Law & Regulation*, a three-volume loose leaf service containing up-to-date regulatory

information from around the world. Members also contribute electronic bulletins covering developments in their jurisdictions, which are distributed by e-mail throughout the organization.

IMGL's commitment to the profession is reflected also in symposiums co-sponsored with universities and law schools around the world and through the group's own yearly conferences. It works closely with the University of Mississippi and UNLV's Boyd School of Law. This year it is sponsoring *Law Review and Economics* and *Drake Law School Law Review*.

In the periodicals of the larger legal world IMGL members are highly regarded as contributors, and they're regularly sought after as speakers at the gaming industry's leading conferences and beyond.

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GAMES & TECHNOLOGY

If the purpose of a sign is to be seen, the goal of digital signage has moved far beyond that, to communicate. Page 25

Tribes and the courts: Battles rage on over the thorniest of issues

BY I. NELSON ROSE

Special to IGWB

Gaming has brought not only money and millions of visitors onto Indian lands. It has also brought sometimes unwanted attention to unresolved issues of Indian law.

Yet, the most important Indian gaming case to come before the U.S. Supreme Court in recent years technically did not involve Indian gaming at all.

In 1934, Congress passed the Indian Reorganization Act, which allows the U.S. Bureau of Indian Affairs to take land into trust on behalf of tribes without the approval of the states. The Indian Gaming Regulatory Act, on the other hand, clearly gives state governors veto power over land taken into trust for gaming for tribes that already have reservations.

In 1991, the Narragansett Tribe bought a 31-acre parcel in Charlestown, R.I. In 1998, the secretary of the Interior agreed to take it into trust. Gov. Donald L. Carcieri filed suit opposing the move. At stake was the issue of whether the land should be subject to state law — and the state's prohibition on casino gambling — or whether it should be governed by tribal and federal law. The Narragansetts said they had no intention of opening a casino. But tribes have been known to change their minds. A win for the tribe could have inspired expansions in a dozen states.

There were major constitutional issues, but the ultimate legal challenge revolved around a single word: "now".

The Indian Reorganization Act defines "Indian" as "all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction." Did Congress mean what the sentence literally says, that the BIA can take land into trust regardless of state laws only for tribes that were recognized in 1934? It would seem not. But in February, in a potentially landmark decision marking a victory for the states, the justices ruled in *Carcieri v. Salazar* that the federal government's authority in the matter applies only to tribes recognized to be under U.S. jurisdiction at the time of the 1934 act. The U.S. government argued that the law allows it to take land into trust for tribes regardless of when they were recognized, but Justice Clarence Thomas said in his majority opinion that the law "unambiguously refers to those tribes that were under the federal jurisdiction" when [the law] was enacted.

FEDERAL RECOGNITION

Only federally recognized tribes fall under the Indian Gaming Regulatory Act, so determinations by the BIA become matters of economic life and death for tribes. The recognition process takes years, and then almost always ends up with the BIA rejecting the application, followed almost always by lawsuits and almost always by

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A&L GOODBODY

A&L Goodbody is a leading Irish law firm with more than 600 employees, including 68 partners and more than 350 legal staff. It provides advice to a large, diverse domestic and international client base in the private and public sectors from offices in Dublin, Belfast, London and the United States. A&L Goodbody's Gaming and Betting Group is one of the leading specialists on Irish gaming, betting and lotteries law, combining expertise from across the firm to give coordinated and specialized advice to online casinos, casino clubs, betting exchanges, bookmakers, mobile service providers, leisure center operators and suppliers of software, technology and gaming equipment. Members of the Gaming



Cahir

and Betting Group are regular contributors to conferences and discussions on the gaming, betting and lotteries sectors. Together with



Kelly

Joe Kelly heads up the Group. Kelly advises the leading players in Ireland's domestic gaming sector and is active in promoting the reform of Ireland's gaming laws. With Maire Conneely and Gambling Compliance he organized a very successful gaming conference in Dublin in October 2008 which attracted all of the players involved in Ireland's gaming and betting sectors and which significantly contributed to the momentum for generating legislative change. He is a regular contributor to international conferences and publications and is frequently quoted in the Irish media. Dr. John Cahir is a partner in both the firm's IP & Technology Group and the Gaming and Betting Group. He has extensive experience in advising domestic and international clients on compliance with Irish gambling legislation and also provides strategic structuring advice to clients that operate on a multi-jurisdictional basis. A particular area of focus for Cahir is Internet gaming, where he advises clients on compliance, data protection and general technology licensing issues.

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ADDISONS COMMERCIAL LAWYERS

Addisons is a leading Australian law firm comprising commercial lawyers committed to assisting clients to realize their corporate objectives. Key practice areas in addition to gaming and betting include: intellectual property, marketing and advertising, publishing and online content, litigation and dispute resolution, corporate and commercial/M&A, publishing and online content, property and real estate and employ-



Nettleton

ment/occupational health and safety. **Jamie Nettleton** heads up the Gaming and Betting practice, whose clients include gaming machine manufacturers, operators and other gambling service providers, online and land-based, as well as industry associations and other local and international industry participants. Nettleton is recognized as one of Australia's leading experts, advising on all aspects of gambling law and regulation. He and his team assist gambling companies in their business strategies, including international projects, through services that include regulatory issues and establishment of business in many jurisdictions, negotiations with regulators, commercial arrangements relating to operations and other commercial transactions in Australia and internationally, negotiation of product fee or "right to bet" arrangements with sports bodies, protection and enforcement of intellectual property rights and anti-money laundering programs. Nettleton is a former chairman of the Sports and Gaming Law Committee of the International Bar Association and has presented extensively on gambling law topics in Australia and internationally and has contributed to numerous authoritative international legal texts relating to gambling.

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CATANIA GAMING ASSOCIATES

Catania Gaming Associates offers a full-service international gaming consultancy that is available to provide a variety of legal services to the gaming industry and ancillary companies. The firm's gaming practice includes the representation of casinos, horse racetracks, lotteries, Internet companies and underwriters and encompasses all aspects of gaming law, including licensing, corporate, acquisition, development, financing, compliance policies and compliance investigations. Catania also assists with establishing professional relationships with key government representatives and serves many clients as a primary liaison with federal, state and



Catania



Ehrlich



Furlong

local governments. Catania's partners and associates are licensed to practice in New Jersey, New York and Nevada. The firm is led by **Frank Catania**, president and a principal of Catania Consulting Group of New Jersey, a former assistant N.J. attorney general, former director of the New Jersey Division of Gaming Enforcement and a former deputy speaker of the New Jersey General Assembly; **Gary Ehrlich**, whose expertise in land-based gaming stems from his many years as an assistant attorney general and deputy director of the NJDGE; **Keith Furlong**, general manager of Catania Gaming Associates, deputy director of the Interactive Gaming

Council and a former public information officer and legislative liaison for the NJDGE; and **Joseph M. Kelly**, a professor of business law at State College at Buffalo (N.Y.) and an associate of Catania Consulting Group, licensed to practice law in Illinois, Nevada and Wisconsin.

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DICKINSON WRIGHT

Dickinson Wright has more than 260 lawyers in eight offices and an international gaming law practice with offices in Michigan, Washington, D.C., Nashville, Tenn., Phoenix and Toronto. The firm is licensed in 24 U.S. states and all Canadian provinces and provides services in 16



Stocker



Lipton



Whittlesey

languages. Dickinson Wright's Gaming Practice Group, which has more than 25 lawyers, is chaired by **Robert W. Stocker II**, a founding member and current president of the International Masters of Gaming Law. **Michael D. Lipton Q.C.**, a former president and founding member of IMGL, oversees the firm's Canadian gaming and Internet gaming business. **Dennis Whittlesey** oversees the firm's Indian gaming law business. Dickinson Wright's gaming lawyers have been at the forefront in drafting legislation and regulations in the United States, Canada and worldwide. Clients include a veritable who's who of major casino operators, Canadian provincial government gaming corporations, foreign regulatory authorities, international manufacturers, Internet operators and suppliers and consultants. Stocker, who has a broad background in business law, mergers and acquisitions and regulatory matters, and Lipton, who has a broad background in litigation and regulatory matters, are

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recognized as tier-one international gaming lawyers by Chambers Global, Best Lawyers in America and Best Lawyers in Canada. Both are frequent speakers at gaming law conferences and authors of articles addressing critical issues in the industry. In addition to teaching gaming law and business law as an adjunct professor at Michigan's Thomas M. Cooley Law School, Stocker chairs the annual Gaming Law Minefield conference sponsored by the American Bar Association. Lipton chairs both the Canadian Institute gaming conference and the Canadian Gaming Summit conference sponsored by the Canadian Gaming Association.

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JONES WALKER

Since Louisiana's gaming industry was legalized in the early 1990s, Jones Walker has offered clients vast experience in licensing, financing and developing complex real estate transactions and handling disputes arising out of gaming operations. The firm's attorneys are nationally and internationally recognized for their expertise in the interpretation of Louisiana's gaming statutes and regulations, representing clients in proceedings before state police hearing officers and the Gaming Control Board and routinely advising them on operational issues. The firm negotiates and documents a wide variety of commercial contracts and provides real estate, construction, leasing, insurance, zoning, environmental and land-use regulation advice for developing facilities. Jones Walker's experience also extends to administrative proceedings before federal and state agencies and criminal, civil and administrative investigations in state and federal courts, and its attorneys regularly appear before legislative committees on behalf of clients and work closely with the staffs of the legislative and executive branches. The firm has offices in Louisiana, Alabama, Washington, D.C., Atlanta, Houston, Phoenix and Miami. **J. Kelly Duncan**, who heads the firm's Gaming Practice Group, has more than 25 years' experience in handling admi-



Duncan

rality, maritime and international and customs law matters and has been integrally involved in the representation of major casino companies, equipment manufacturers and suppliers and financial institutions regarding all matters relating to gaming development, financing and operation. His clients include many of the largest operators and suppliers in the world as well as major investment banks and large commercial lenders. He is a member of the International Association of Gaming Attorneys.

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LAZCANO SÁMANO

Lazcano Sámano, S.C., is an expert law firm in Mexico specializing in commercial, business and governmental law as well as complex litigation in related matters. Founded in 2001, today the firm advises and serves as legal counsel to a wide variety of local and international gaming clients in all jurisdictions and states of Mexico, including major casino licensees and operators, professional gaming associations and important suppliers of services, systems and equipment. The firm has acted in high-profile gaming cases involving private interests as well as the interests of the Mexican government and regulators. Currently, the firm is actively participating in the drafting of a new federal gaming law for Mexico. The founding partner and head of the firm,



Lazcano

Alfredo G. Lazcano, has more than 15 years of experience and is an active member of the Mexican bar association, Barra Mexicana, Colegio de Abogados, A.C., and serves as IMGL's general member for Mexico. Given his broad knowledge in the relatively new Mexican gaming market, Lazcano has had the opportunity to be one of the few Mexican attorneys invited to participate as a speaker and moderator at numerous gaming conferences and

events around the world and to contribute articles to several gaming industry and legal publications, including Casinos de Latinoamerica and La Barra and Colección Foro, the official publications of Barra Mexicana.

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LEWIS AND ROCA

Lewis and Roca is one of the leading law firms in the Southwestern United States. Founded in 1950 and with more than 210 attorneys in offices in Las Vegas, Reno, Nev., Phoenix, Tucson, Ariz., and Albuquerque, N.M., the firm serves a diverse base of local, regional, national and international clients. Lewis and Roca attorneys are variously admitted to practice in 30 U.S. states and the District of Columbia. The firm's gaming practice supports casino operators, suppliers, equipment manufacturers, state, local and tribal governments, businesses, non-profit organizations and others in addressing today's gaming law issues. The practice of gaming law is increasingly eclectic as legal gaming continues to proliferate across the United States and the world. With the exponential growth of the industry a distinct body of regulations governing riverboats, Native American casinos, Internet gaming and racinos now exists. The lawyers at Lewis and Roca have been at the forefront of all the major emerging gaming trends. Partner **Anthony**



Cabot

Cabot, who leads the gaming practice, has played an integral role in the development of gaming laws and regulations for the past quarter-century. In addition to representing several major casino companies and suppliers he has authored or edited eight books on gaming law. Cabot is an IMGL founder and the organization's current president and serves as an adjunct professor of law at UNLV's Boyd School of Law in Las Vegas. He is listed among The Best Lawyers in America (2005-2006 ed.) and in Chambers Global, Gaming 2008 and Chambers USA, Gaming and Licensing 2007.

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LIONEL SAWYER & COLLINS

Lionel Sawyer & Collins, the largest law firm in Nevada, serves clients from offices in Las Vegas, Reno, Nev., Carson City, Nev., and Washington, D.C., in the areas of gaming, real estate, corporate and business, litigation, employment and labor, health care, estate planning, intellectual property, utilities, environmental, mining, government relations, land use, tax, energy, telecommunications and water law. The firm's Gaming Law Practice Group was founded by the late Grant Sawyer, who as Nevada governor from 1959 through 1966 directed the creation of and established the foundation for the state's pioneer gaming control system. In the 42-year history of the firm, its attorneys have played leading roles in the legislative, administrative and judicial decisions that have shaped the course of gaming law in Nevada and the United States. They also have guided the establish-



Bryan



Faiss

ment of gaming control systems throughout the world as consultants to city, state and national governments. Today's team of 20 gaming law attorneys include: former U.S. Sen. **Richard H. Bryan**, who served as Nevada governor and attorney general; **Bob Faiss**, who served as a senior staff assistant to the first Nevada Gaming Commission and as executive assistant to Governor Sawyer; **Mark Clayton**, a former member of the Nevada Gaming Control Board; **Brian Harris**, a former member of the Nevada Gaming Control Board and legal counsel for Gov. Bob Miller; **Dan Reaser**, who served as chief deputy attorney general for the gaming control agencies; **Ellen Whittemore**, who served as supervising deputy attorney general for the gaming control agencies; and **Susan Myers**, who served as legal counsel for the New Jersey Casino Control

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courts upholding the BIA's decision. The view of many courts can be summed up in this quote from former U.S. Rep. Christopher Shays of Connecticut: "Regretfully, Indian recognition is too often not about recognizing true Indian tribes, but it is about Indian gaming and the license to print money."

SOVEREIGN IMMUNITY

Disputes surrounding tribal sovereignty, particularly sovereign immunity, continue to swirl. Tribes are often losing in federal and state courts, with decisions finding that tribes have accidentally waived their immunity to suits by such acts as agreeing to arbitration. Even when tribes win, courts often indicate they think the tribes should lose. The U.S. Supreme Court has clearly indicated that it thinks tribal sovereign immunity is a mistake and that Congress should eliminate it.

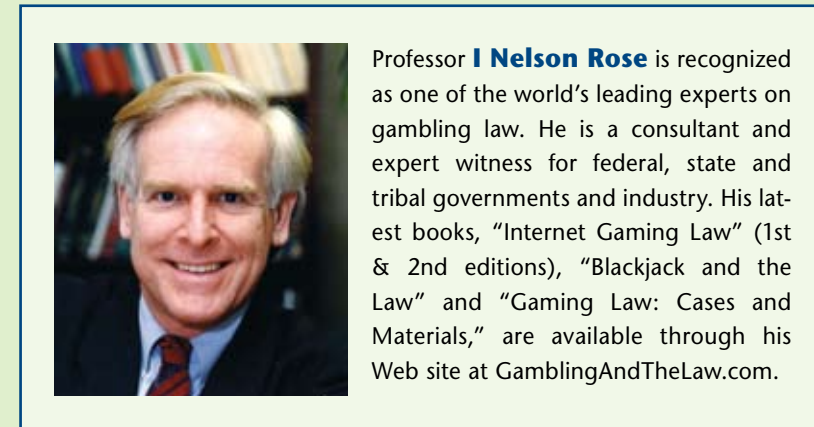
Possibly the most dangerous recent case for tribes operating casinos was a decision this year from the Supreme Court of Oklahoma. Loyman Cossey, a non-Indian, sued Cherokee Nation Enterprises in state court for personal injuries he received while he was a customer at the Roland Cherokee Casino. Although the tribe had set up this separate company to run the casino, the court first ruled that the tribe itself was a proper party to the suit. It then went on to hold that the case could proceed in state court because the casino patron "had not entered into a consensual relationship with the tribe, and customer's presence at the casino did not have a direct impact on the tribe's political integrity."

The tribe had agreed to a partial waiver of sovereign immunity in its tribal-state compact when it signed onto a provision that tort claims may be heard in a "court of competent jurisdiction". The court rejected an affidavit from Gov. Brad Henry that he meant tribal courts, not state courts. Instead, the court held that state courts were the only place the case could be heard because tribal courts do not have the power to hear any case involving a non-Indian casino customer unless the compact expressly says so.

The case will probably go up to the U.S. Supreme Court before a trial is heard on the merits.

'INDISPENSABLE PARTIES'

The question of tribal sovereign immunity arises not only when a tribe has been sued, but when it has not. Because tribes normally can-



Professor **I Nelson Rose** is recognized as one of the world's leading experts on gambling law. He is a consultant and expert witness for federal, state and tribal governments and industry. His latest books, "Internet Gaming Law" (1st & 2nd editions), "Blackjack and the Law" and "Gaming Law: Cases and Materials," are available through his Web site at GamblingAndTheLaw.com.

not be sued without their consent, they are usually not named as defendants. Non-Indian defendants then move to dismiss, especially in cases involving gaming compacts, on the grounds that the plaintiffs failed to join "indispensable parties," the tribes.

The trend seems to be for courts to let the lawsuits continue, even when it might have some impact on tribal gaming. For example, trial courts had dismissed suits filed by a few tribes challenging California's calculation of the state cap on slot machines under the 1999 compacts. The 9th U.S. Circuit Court of Appeals reversed, even though the other tribes that signed those compacts were not parties to the suits.

On the other hand, the Court of Appeals of the state of Washington has ruled that a private casino that also wanted to put in electronic scratch-ticket games could not even indirectly attack the state's tribal compacts because the tribes could not be joined as defendants.

The Indian Reorganization Act allows the Bureau of Indian Affairs to take land into trust on behalf of tribes without the approval of the states. The Indian Gaming Regulatory Act, on the other hand, clearly gives state governors veto power over land taken into trust. In 1991, the Narragansett Tribe bought a 31-acre parcel in Charlestown, R.I. In 1998, the secretary of the Interior agreed to take it into trust. Gov. Donald L. Carcieri filed suit opposing the move. There were major constitutional issues, but the ultimate legal challenge revolved around a single word: 'now'.

SOVEREIGNTY and the LAW

Sometimes federal and state courts are even changing standards that have existed for years. There used to be general agreement that laws did not apply to tribes unless the law contained a clear statement that Congress intended it to apply. But the U.S. Court of Appeals for the District of Columbia has ruled that the National Labor Relations Act applies to tribal casinos because Congress did

not specifically exclude tribes.

The case involved a dispute between two unions anxious to capture the workers at the San Manuel Tribe's casino in California. The federal government ruled that it was unfair for the tribe to help only one union. But the court went further, declaring that, at least for federal labor laws, a tribal casino was merely a casino, and the tribe was entitled to no special treatment.

Other courts are looking at this precedent. States in particular are attempting to apply their laws to tribes. The court in this case based its ruling in part on a case from California which held that a state law dealing with political donations applies to tribes.

REVENUE-SHARING and TAXES

Tribes and states continue to fight about regulations, revenue-sharing and taxes. Michigan's Bay Mills Resort & Casino, owned by the Bay Mills Indian Community, won an interesting mark-

from imposing its personal property tax on gaming machines leased from a manufacturer by the tribe's Foxwoods resort. And the 9th U.S. Circuit Court of Appeals has ruled that California could impose a sales tax on construction materials purchased by a non-Indian electrical subcontractor and delivered to the Barona Tribe's land for a casino expansion.

CLASS II vs. CLASS III

The issue of Class II versus Class III gaming devices continues to be fought in the courts, with the tribes being nearly universally successful. But it is doubtful the issue will finally be decided by any judge because making law through lawsuits can never keep up with changes in technology.

The states may try again to get Congress to step into this fight. But tribes have become not only politically powerful but more politically sophisticated. Tribes now make the argument that if proposed administrative regulations or legislation that affects states can require that there first be consultations with the 50 sovereign states, then why should there not be similar consultations with the separately sovereign tribes, even if there are hundreds of them?

SCOPE of GAMING

Although disputes over the scope of gaming usually revolve around gaming devices, even card games can become a center of controversy.

The Florida Supreme Court has ruled that Gov. Charlie Crist did not have the power to enter into a compact allowing blackjack and baccarat to the Seminole Tribe's casinos, but the Seminoles continue to spread the games in their properties. The tribe takes the position that the compact had already been approved by the secretary of Interior and so is binding.

INTERIOR vs. the STATES

The mess in Florida and other states is the direct result of the U.S. Supreme Court's failure to give guidance to states, tribes and the federal government after it declared part of IGRA unconstitutional in 1996. Courts are struggling with the question of whether the secretary of Interior can make Class III gaming regulations when a state refuses to negotiate in good faith.

Someday soon either Congress or the Supreme Court is going to have to determine what happens when a tribe has the right to have Class III gaming but the state refuses to enter into a compact. [igwb](http://igwb.com)

Commission.. Nearly half of Lionel Sawyer & Collins' shareholders are listed in The Best Lawyers in America, and the firm received the most No. 1 rankings among Nevada law firms in the 2008 edition of Chambers USA.

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JOHN K. MALONEY

For more than a decade and a half, John Maloney and the law offices of **John K. Maloney** have focused exclusively on legal solutions for problems faced by participants in the gaming industry. Clients are assisted with initial license applications ranging from casino management and operations and new game development and approval to vendor licensing and key employee



Maloney

licensing to creation and compliance plans. For new participants in the industry the firm provides advice concerning business formation and entity selection as well as due diligence covering investor and vendor relationships. With more than 24 years in the gaming field dating back to 1983 the firm's founder and principal attorney, John K. Maloney, has been a pioneer in the field of gaming law. Licensed to practice in Nevada and California, he has served with the Nevada Gaming Control Board and the Casino Control Division of Queensland, Australia, offering clients the skills of an experienced jurist, a vast knowledge of international finance and forensic accounting and a worldwide network of contacts. Maloney is a founding member of IMGL and is listed in The Best Lawyers in America in the Gaming Law Section and is also recognized by Chambers & Partners' Chambers Guide. He is a frequent speaker and author on gaming law issues.

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JUDITH A. SHAPIRO

Judith A. Shapiro, Esq., opened her Indian law office in Washington, D.C., in 2003 and has now practiced in the field for 24 years. She has extensive expertise in tribal gaming, including management, development and financing agreements, tribal/state compacts, administrative regulation of gaming agreements and the continuing development of standards governing Class II technologic aids. She has long been involved in battles to establish tribal recognition and litigation to preserve tribal sovereignty and has been involved in litigation on behalf of tribes in federal and tribal courts, as well as years



Shapiro

spent on behalf of the Seminole Tribe of Florida to secure a compact or Secretarial Procedures for Class III gaming. Shapiro has provided advice in connection with tribal development and financing, acquisition of trust land bases and the establishment and expansion of tribal gaming facilities. Her clients have included the Mohegan Tribe of Connecticut, the Seminole Tribe of Florida, the Rosebud Sioux Tribe and the Cheyenne River Sioux Tribe. She was involved in all phases of the litigation of Seminole Tribe of Florida v. Florida, eventually decided by the U.S. Supreme Court. In addition, she has provided advice on Indian law to International Game Technology and to Merrill Lynch & Co. Shapiro routinely brings in other experienced lawyers as necessary for larger projects. She is admitted to practice in the District of Columbia, before several tribal courts and before the Supreme Court of the United States.

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