Hello all. As I hope I have communicated in 2021 in Oklahoma Indian Country (page 6), this year has been a busy time for governmental officials and practitioners in Oklahoma. But, as I like to point out, the tremors created by the McGirt decision have been felt outside of Oklahoma. In Oneida Nation v. Village of Hobart, 968 F.3d 664 (7th Cir. 2020), the Seventh Circuit held that neither allotment nor the later conveyance of fee simple lands to non-Indians diminished the Oneida Reservation. Additionally, the Seventh Circuit’s decision confirms that the ruling in McGirt applies in the civil context to safeguard reservations against diminishment and disestablishment.

Another victory for tribal sovereignty, in 2021, is the decision in U.S. v. Cooley, 141 S.Ct. 1638 (June 1, 2021). If you haven’t had an opportunity to review that decision, you will want to do so. As Elizabeth Reese writes for SCOTUSblog that the "decision represents an important affirmation of tribal inherent sovereign power by the new court and the first time the court has ever found that a tribe’s interest in addressing a threat to its political integrity, economic security, health or welfare was strong enough for the tribe to exert government authority of any kind over a non-Indian."

This year NPLC once again participated in the AALL CONELL Marketplace. CONELL is an important opportunity for the Caucus to reach newer law librarians to share with them the value of networking with experienced law librarians knowledgeable about research resources relating to native peoples. Thank you to Anne Lucke for joining me in representing NPLC at CONELL. We had a limited number of visitors to our virtual room in the Marketplace, but it was great to welcome potential new members to the Caucus.

As many of you know, for several years the NPLC has desired to offer a session on tribal law research as part of the annual meeting. I was delighted to receive notice that the program I proposed was accepted for the virtual 2021 AALL Annual Meeting. I appreciate the willingness of Bonnie Shucha, David Greisen, and Christina Steinbrecker Jack to share their work on resources aimed at making tribal law more accessible.

Unfortunately, the schedule of the virtual AALL Annual Meeting did not provide an opportunity for the Caucus to meet. I am hopeful, however, that we will be able to arrange to meet virtually in the near future. I hope you all are continuing to stay safe and healthy!
Get To Know The NPLC

2021 OFFICERS

Chair: Darla Jackson
Webmaster: R. Martin Witt
Secretary: Vacant*
Newsletter Editor: Scott H. Stevens

*If you are interested in volunteering for the NPLC, please contact Darla Jackson

MISSION & VISION

The aim of the Native Peoples Law Caucus (NPLC) is to provide a forum in which Native law and other issues that impact Indigenous Peoples worldwide can be discussed, ideas shared, information exchanged, and education offered. The Caucus encourages and facilitates the analysis, cataloging, collection, dissemination, management, organization, and preservation of Native law in accordance with cultural tradition.

JOIN THE NATIVE PEOPLES LAW CAUCUS!

Are you interested in Federal Indian and Tribal Law? Please join the Native Peoples Law Caucus!

Already a member? Please invite your colleagues! AALL Members can join our community by going to bit.ly/aallnplc, signing in, and clicking on the “Join Community” button.

All AALL members are welcome!
New Tribal Law Digital Publishing Platform

by Anne Lucke

Last summer, the University of Wisconsin Law Library, the Great Lakes Indigenous Law Center, Open Law Library, and the National Indian Law Library (NILL) received grant funding through the Institute of Museum and Library Services for a Digital Publication of Tribal Laws Pilot Project (IMLS grant number LG-246285-OLS-20). Over the last year, the project has been developing a digital platform to publish tribal laws on library websites. The platform allows libraries to offer an online collection of tribal laws, while tribes maintain full control over the digital copies of their laws.

The project reached a milestone in April, when NILL published on its website the official laws of Stockbridge Munsee Community, Wisconsin. Much like the days when libraries held official print copies of codes on our shelves, we can now hold an official digital copy of a tribe’s laws on our website. You can see the Stockbridge Munsee Community’s laws at the NILL website here: https://narf.org/nill/triballaw/us/nsn/mohican/council/index.html.

The Importance of Access

The right to know the laws by which we are governed is a fundamental right. Libraries are keenly aware of the importance of access to legal information, but few are able to pay commercial legal databases’ high fees. Our hope is that this affordable digital publishing technology will allow other libraries—especially university libraries, public libraries, tribal college libraries, and tribal community libraries—to make tribal laws more accessible.

The ultimate goal of the Digital Publication of Tribal Laws Pilot Project is to increase public access to the laws of Native nations. Tribal members and leaders will benefit from ready access to their laws, which is essential for good governance and ensuring due process and equal protection. Meanwhile, broader public access to tribal law will facilitate inter-governmental collaboration, encourage economic partnerships, and foster greater understanding of tribal sovereignty and perspectives.

For More Information

If your library is interested in learning more about this project, please contact NILL at nill@narf.org. If you’d like to read the grant proposal, see the IMLS website: https://www.imls.gov/grants/awarded/lg-246285-ols-20
Restatement of the Law of American Indians — APPROVED!

The American Law Institute announced in May 2021 its approval of the proposed content for *The Restatement of the Law, The Law of American Indians*. In the press release reporter Matthew Fletcher noted that many of the principles covered in the work have existed since the earliest days of the U.S. Constitution. They just are not well-known. Reporter Wenona Singel went further by saying that some topics such as Indian country criminal jurisdiction have needed clarification since early U.S. history.

Beginning in 2012 with a slightly smaller scope in mind, the proposed final draft now covers the following chapters:

- Chapter 1 – Federal-Tribal Relations
- Chapter 2 – Tribal Authority
- Chapter 3 – State-Tribal Relations
- Chapter 4 – Tribal Economic Development
- Chapter 5 – Indian County Criminal Jurisdiction
- Chapter 6 – Natural Resources

As of the time this newsletter was published the final proposed draft was available on ALI’s website (www.ali.org) and could be cited as representing the Institute’s position until the official text is published. No publication date was stated. However, at this stage, the Reporters are authorized to correct and update citations and other references, to make editorial and stylistic improvements, and to implement any remaining substantive changes agreed to during discussion with the membership or by motions approved at the Annual Meeting.

American Library Association Interviews Caucus Member

Anne Lucke, librarian at the National Indian Law Library in Boulder, Colorado and past newsletter editor was interviewed by the ALA on its Call Number podcast #62. (https://soundcloud.com/dewey-decibel-703453552/episode-62-law-libraries).

She discussed why it’s important to have a library dedicated entirely to tribal law, the library’s materials, and other topics. She also talked about how the National Indian Law Library came about.
Indian Law vs. Indian Law – “The Other American Law”

“The Other American Law” (73 Stan. L. Rev. 555) by Elizabeth A. Reese begins with several powerful statements and facts. For example:

- 20 tribes collectively control an area larger than Rhode Island, the smallest state in the United States.
- All 574 Federally recognized tribes (tribes, bands, nations, pueblos, communities, villages) control an area larger than California the third largest state.
- American Indian Law is an outside force thrust upon Indian Country, not something developed from within.

Still, each tribal government has it’s own government, its own laws as worthy of study as any other subnational government such as states. Reese’s article “points out the error of excluding tribal law from our mainstream study of American law and legal systems.” (From the Introduction.)


Caucus Members Presented at AALL

Bonnie Shucha and Darla Jackson participated in “Sovereignty, Native America, and Legal Culture: Why Accessing and Understanding Tribal Law Just Became More Important” at AALL’s 2021 Annual Conference. They were joined by Christina Steinbrecker Jack of fastcase and David Greisen of the Open Law Library.

The landmark McGirt v. Oklahoma, 591 U.S. _________ (2020), decision determined that the “Five Civilized Tribes” had not been disestablished. Therefore, per 19th Century treaties, these tribes are not subject to Oklahoma state law as has been the practice. The Supreme Court upheld the federal government’s nearly 200 year-old promise of sovereign government for the tribes. This also meant that knowing tribal laws has become ever more important. Unfortunately, finding tribal law can be challenging. fastcase and Open Law Library are working for change in that area.

If you missed this presentation, it may still be available for virtual attendees. Please check with AALL for further information.
In January 2021, six months after the McGirt decision, significant issues regarding criminal jurisdiction in Oklahoma remained. Many in tribal communities recently celebrated the one-year anniversary of the McGirt decision. Yet, despite significant investment in both tribal and federal law enforcement and prosecution resources and the subsequent federal prosecution of Jimcy McGirt, there continues to be issues arising as a result of the decision. And rather than lessening, the schism between tribes and the Oklahoma Governor appears to many to be growing. Further, issues beyond the criminal jurisdiction effects of the decision also continue to be disputed.

When speaking of investment of federal and tribal resources, the amounts are much greater than some had anticipated. The Biden Administration is seeking eighty-two million dollars for additional funding for U.S. attorneys, FBI agents, marshals and other federal staff to handle the caseloads resulting from the change in criminal jurisdiction on the affirmed Indian reservations in Oklahoma. The Justice Department requests compose the largest portion of the eighty-two million with “… $33 million more for the three U.S. attorneys offices in Oklahoma for the budget year that begins Oct. 1 … $25.5 million more for FBI operations in Oklahoma; $8.7 million for the U.S. Marshals Service; and $2.7 million for the Drug Enforcement Administration.” Tribes, including the Muscogee Nation, have also asked the federal government to honor trust responsibilities and fully fund tribal justice systems.

But the tribes are not relying solely on the federal government. The Muscogee Nation has doubled the number of cross-deputization agreements with law-enforcement agencies and more than doubled the number of its Lighthorse police officers, investigators, and dispatchers. This was accomplished, in part, by increasing its law-enforcement budget with $7 million in tribal funds through special appropriation and supplemental legislation, as well as improving its prosecutorial capacity through several actions, including a $1 million budget increase for the Muscogee Nation Attorney General’s Office and adding five prosecutors, a criminal investigator, and additional legal assistants and records clerks. District-court judge positions have also been added to the Muscogee Nation Tribal Bench.

Principal Chief Hoskins has also noted that the Cherokee Nation has … hired more than a dozen new marshals and more prosecutors, judges and victim advocates. We are expanding court space so that we can bring centers of justice to our communities beyond our capital of Tahlequah. We will commit no less than $35 million per year in new dollars to build the largest criminal justice system in Oklahoma (other than the State of Oklahoma). And, we will do it better than the state of Oklahoma.

Despite the efforts of the tribal nations, in April 2021, the rhetoric surrounding the McGirt case seemed to intensify. A spokesperson for Governor Stitt was quoted as saying:

Oklahoma’s tribes are valued partners, but Governor Stitt believes the U.S. Supreme Court’s decision in McGirt represents an unprecedented assault on the sovereignty of Oklahoma and threatens the future of the state. We are in close contact with law enforcement officials across eastern Oklahoma as hundreds of criminal cases are going unprosecuted and hardened criminals are being set free.

The intensity of the rhetoric appeared to be, in part, a response to the positions taken in the Bosse case. Shaun Bosse, who is not a Native American, was convicted in Oklahoma state court and was sentenced to death for killing a mother and her two children. The victims were citizens of the Chickasaw Nation and the killing occurred on lands within the historical Chickasaw Nation reservation. In March, the Oklahoma Court of Criminal Appeals reversed Bosse’s conviction when it affirmed the continued existence of the Chickasaw Nation reservation. The federal government plans to retry Bosse, but Oklahoma requested that the Bosse decision be stayed while the state prepares a cert petition. The Supreme Court granted the stay on
May 28, signaling, some suggested, that some of the justices may be willing to reexamine or limit McGirt.

The Chickasaw Nation Brief as Amicus Curiae filed before the Oklahoma Court of Criminal Appeals in Bosse noted:

… we feel that we must also speak to another challenge we face. While differences of our historic rulings are to be expected, the Oklahoma Governor has sensationalized and exaggerated accounts of transitional challenges, which actions have heighten ed political concerns over the process and undermined faith in the law … Perhaps most troubling, he has argued recent changes in the makeup of the United States Supreme Court without any regard to the law, may alone provide a path for obtaining a sweeping reversal of the McGirt ruling … To be clear: The Oklahoma Governor’s overtly political rhetoric is unhelpful, misleading, and divisive.

The brief as well as comments to the media also suggested that the frustration over the difficulties of trying to correct "generations of Oklahoma’s jurisdictional error" should be properly "attributed to the fact that the state was prosecuting people it shouldn’t have."

The Cherokee Nation Attorney General acknowledged that while it would not be a lot of cases, there "may be in fact situations where there are people who are able to walk away (from prison) with the time that they served, … it may not be possible to prosecute [all] those cases, especially if the crime occurred a long time ago." Further Hill warned that some cases that are retried "will be painful for the victims and their families through no fault of their own."

The national media seems to have adopted the Stitt Administration’s view that the McGirt decision has "upended Oklahoma's criminal justice system" causing a state of "chaos" and unjustly affecting victims and their families. However, results from a recent poll indicated that forty percent of registered voters surveyed in Oklahoma were aware of the McGirt decision and characterized the decision as a “good thing,” while only twenty-four percent indicated that they were aware of the decision and reported a negative response to the effects of the decision.

Further, in another case before the Oklahoma Court of Criminal Appeals (OCCA) in which the state is challenging “retroactive” application of the McGirt decision and seeking a writ of prohibition regarding the case of Oklahoma v. Clifton Parish, the amicus brief filed by tribal nations notes, "Instead of implementing McGirt, the state appears to be using the criminal justice system to set up a challenge to the Supreme Court’s recent ruling in that case." In contrast, the Nations:

… have a firm commitment to the implementation of McGirt—but the State's litigation of this and other cases have raised our concern that the State is not committed to this goal … The State already had an opportunity to establish the non-retroactivity of the ruling in McGirt and of the Tenth Circuit's earlier decision in Murphy v. Royal. The Tenth Circuit in Murphy squarely addressed the issue, ruling that a court’s application of the Solem v. Bartlett, 465 U.S. 463 (1984), test for diminishment to a particular reservation's existence was not a "new" rule and therefore did not face bars against retroactivity … But the State chose not to challenge this ruling in its petitions for rehearing to the Tenth Circuit and for certiorari in the Supreme Court. This enabled the State to describe the impacts of an unfavorable decision in McGirt as unlocking all jailhouse doors and to paint itself as powerless to prevent that result … That strategy failed. Now, in an attempt to frustrate the implementation of McGirt, the State is relying on possible negative impacts of the McGirt decision to convert criminal cases in Oklahoma arising on the Nations’ Reservations into vehicles for Supreme Court review—despite its own role in creating these results. [citations omitted]

On August 12, 2021, the OCCA, while reaffirming its recognition of the Cherokee, Choctaw and Chickasaw Reservations, held "that McGirt v. Oklahoma announced a new rule of criminal procedure which" the Court "decline[d] to apply retroactively in a state post-conviction proceeding to void a final conviction." Seemingly acknowledging the inconsistency of the ruling with some of its previous decisions, the Court noted:

… exercising our independent state law authority to interpret the remedial scope of the state post-conviction statutes, we now hold that McGirt and our post-McGirt decisions recognizing these reser-
vations shall not apply retroactively to void a conviction that was final when McGirt was decided. Any statements, holdings, or suggestions to the contrary in our previous cases are hereby overruled.

Judge Hudson in a concurring opinion wrote:

While this decision resolves one aspect of the post-McGirt jurisdictional puzzle, many challenges remain for which there are no easy answers ... It is now up to the leaders of the State of Oklahoma, the Tribes and the federal government to address the jurisdictional fallout from the McGirt decision. Only in this way, with all of these parties working together, can public safety be ensured across jurisdictional boundaries in the historic reservation lands of eastern Oklahoma.

Judge Lumpkin, also in a concurrence, noted that the court was relying on an application of "legal policy, acknowledging that:

... both the Supreme Court and the Tenth Circuit have shown us by their precedents that courts have an option other than the legal one in cases of this type and that is the application of legal policy … we now adopt the federal policy and established precedent of selective retroactive application in these type of cases due to the ramifications retroactive application would have on the criminal justice system and victims. This is hard to explain in an objective legal context but provides a just and pragmatic resolution to the McGirt dilemma.

The Oklahoma Attorney General issued a statement concerning the outcome:

This is a significant victory of the people of Oklahoma … There are thousands of cases that would have to be retried if the State had lost this case … I appreciate the judges who stood up for the rule of law and protecting victims that would have been revictimized by another trial, and possibly revictimized if their abuser is set free …. This is a day where justice for some of the victims was restored. We are all safer because a significant number of perpetrators will remain behind bars. Make no mistake, McGirt will continue to have disastrous effects throughout the State even despite this latest ruling.

A statement from the Choctaw Nation also acknowledged the importance of the McGirt ruling, stating that the McGirt decision "was an important defense of tribal sovereignty and a reminder the federal government must honor its treaties." The Choctaw Nation statement also noted the decision was consistent with the previous arguments that the McGirt ruling did not mean a transition into lawlessness.

As we have said from the start - and as today's ruling confirms - it did not mean convicted criminals would immediately be released, as some have claimed ... we are pleased by the ruling. Most importantly, this is a positive result for the victims of crimes and their families, because in many cases it means they will avoid being re-victimized by new trials. We remain committed to prosecuting people who commit crimes on Indian land.

And Chickasaw Nation senior counsel Stephen Greetham issued a statement saying that "McGirt remains the law of the land, but it will apply going forward, not backward." Greetham also indicated that the decision rendered the current Bosse case litigation, in which Oklahoma is seeking Supreme Court review of a death-penalty case in hopes of overturning or limiting the scope of the McGirt decision, moot.

Just over a month prior to the OCCA ruling, in July 2021, the Governor Stitt's Office scheduled the McGirt v. Oklahoma Community Impact Forum. The Forum was promoted as an event to allow crime victims to voice concerns. Tribal leaders expressed some dismay that they had not been invited as speaking participants on the forum panel. And Cherokee Nation Principal Chief Chuck Hoskin characterized the event as "an anti-McGirt rally for political reasons," while noting that tribal nations had a common interest with the state in protecting the public. The forum ended early and it was reported afterwards that Stitt suggested that his goal was to overturn McGirt.

Governor Stitt’s comments should not be surprising given his continued emphasis on the aftermath of McGirt. In his 2021 State of the State Address, Stitt noted that the most pressing issues for Oklahoma’s future include questions arising from the McGirt decision. While he prioritized criminal jurisdiction issues, he added that there are other issues beyond the criminal cases.

“Do tribal members living in eastern Oklahoma pay income tax and sales tax? If not, the Oklahoma Tax Commission estimates...
a potential loss of $200 million every year,” Stitt said. “Another potential issue is who regulates agriculture? Water? The energy industry?”

Regulation of energy industries is of particular importance. In 2018, when the issue reached the U.S. Supreme Court in Royal v. Murphy, the Oklahoma Independent Petroleum Association filed a brief that urged the justices to reject the tribal sovereignty claims, citing the likelihood of “chaos” and cause bankruptcy and business disruptions for producers and small operators. Governor Stitt named Larry Nichols, co-founder of Oklahoma City-based Devon Energy, as chair of the Commission formed to advise the State Following the McGirt ruling.

On July 16, the State of Oklahoma, Governor Kevin Stitt, the Oklahoma Department of Mines, and the Oklahoma Conservation Commission filed suit in the U.S. District Court for the Western District of Oklahoma seeking relief from the Department of the Interior’s Notice of Decision through which Federal entities “purport[s] to unlawfully strip Oklahoma of its jurisdiction to regulate surface coal mining and reclamation operations under Titles IV and V of the Surface Mining Control and Reclamation Act … and to impose a Federal program in its place within the historic lands of the Muscogee (Creek) Nation.” In a press release regarding the lawsuit, Governor Stitt stated,

They are attempting to unlawfully federalize mines that have been regulated by Oklahoma for almost 40 years by ignoring the clear limitations in the McGirt decision. Despite multiple attempts at dialogue, the Biden Interior Department has refused to adequately explain their legal position. The state of Oklahoma has no choice but to pursue legal action.

But press on the lawsuit notes that few surface coal mines are licensed within the Muscogee Nation boundaries, and it is believed that none of the mines within the boundaries are still operating. The real issue is not the surface mining; the real issue is “to what lengths McGirt might extend - and whether the state and the Stitt administration are able to clarify or even overturn the decision.”

Taxation of energy-related resources has also been an issue. According to one source, the Seminole Nation developed an eight percent tax on oil and gas collected from lands held in trust for the tribe or its restricted lands. The tribe did not attempt to collect on the tax until 2019, when a round of notices was sent to oil and gas companies operating in those areas. In early November 2020, the Seminole Nation sent a second round of letters to operators regarding the tax. The tribe estimates the total tax due is roughly $2.4 million between the different companies operating on tribal grounds. The Seminoles “raised alarms among the energy industry and some state officials” when it sent out the second round of notices. In mid-January 2021, Seminole Nation Chief Greg P. Chilcoat attempted to clarify that the Seminole Nation’s inherent authority included the right to levy severance taxes on nonmember oil and gas producers operating on the Seminole Nation’s trust and restricted lands But, he added, “At this time, the Seminole Nation has not exerted taxation authority over nonmember oil and gas producers operating on fee simple land ….”

Oneta Power, which owns an electricity generation plant on property within the boundaries of the Muscogee Nation reservation, also has filed a lawsuit challenging the valuation of its property and requesting issuance of a declaratory judgement on the issue of whether “Wagoner County Assessor has lawful jurisdiction to levy and assess ad valorem tax on personal property within the territorial boundaries of the Creek Reservation ….” Attorney General Hunter, before stepping down from the position, filed a motion to intervene in the action.

Authority to tax not only energy related activities but individuals and sales have also been a subject of concern regarding the potential implications of McGirt. As pointed out in an article on the topic:

Oklahoma’s … brief filed in McGirt assumes that reaffirmation of the expanded territorial boundaries of the reservations of the Five Tribes could mean that a significant number of tribal citizens might become exempt from State income taxes. This exemption would result from the reaffirmation of a reservation because the “State generally lacks the authority to tax Indians in Indian country, Okla. Tax Comm’n v. Sac & Fox Nation, 508 U.S. 114 (1993), so turning half the State into Indian country would decimate state and local budgets” and the revenue impact on the state could be compounded by tribal members seeking millions in tax refunds…. [citation omitted]

The Oklahoma Tax Commission issued a report, in September 2020, detailing the expected fiscal impact of the decision. The report estimated that “[If] McGirt is expanded to apply to all Five Civilized Tribes, there is a potential per-year revenue impact of $72.7 million, with an additional $218.1 million estimated impact for potential refund claims for the 2017–2019 tax years resulting from the increased use of the tribal income exclusion available. However, the number of potential tax protest has reportedly been exaggerated. Further, the executive summary portion of the report indicated:
2021 in Oklahoma Indian Country con’t.

Although the State generally lacks authority to expand its state taxing jurisdiction within Indian country through state legislation, there are other potential avenues to mitigate the impact of McGirt. Congress may explicitly authorize a state to exercise its power of taxation within the boundaries of Indian country. In addition, the State has the ability to enter into compacts with the tribes which would benefit both the State and tribal governments. Historically, tribal compacts have been a powerful tool for facilitating cooperation and revenue-sharing between tribal and state governments, allowing the State to avoid the otherwise difficult task of administering and enforcing state taxes on tribal lands. [emphasis added]

Compacts have been used to address a variety of civil issues, including, as noted above, tax issues as well as responsibilities under the Indian Child Welfare Act. Since the McGirt case, the use of cross-deputization agreements and compacts to address law enforcement and criminal jurisdiction issues has been discussed by state representatives and tribal leadership. Tom Cole, a Republican member of the Oklahoma delegation in the U.S. House of Representatives and an enrolled member of the Chickasaw Nation, introduced the Cherokee Nation and the Chickasaw Nation Criminal Jurisdiction Compacting Act. As noted by those familiar with the act, nothing in the bill waives the sovereign immunity of either tribe, and neither does it affect tribal authority. But for tribal nations and the State of Oklahoma to come to a criminal justice agreement/compact, it will take Congressional action. Speaking about the current bill, Cherokee Principal Chief Hoskins indicated that all the tribe is asking is “that the barrier be lifted so that we can even explore the idea of how to get an intergovernmental agreement on certain aspects of jurisdiction.” Hoskin further noted “…the bill making its way through Congress to give the Cherokees and Governor Stitt the authorization to compact is in its very early stages.”

Should Congress, the tribes and Oklahoma agree, Oklahoma could exercise criminal jurisdiction over offenses committed by or against Natives within the reservations. Additionally, the act stipulates any compact between the tribes and the state could be revoked by either party, given a one-year notice. But with division between the tribes, and Governor Stitt’s “deep concerns” about the bill, it may be difficult to obtain passage.

While continued disputes has been the focus of much of the media coverage, tribal contributions to the efforts to respond to COVID-19 has also received recognition. The availability of tribal vaccine programs to non-tribal members has been a positive note in otherwise challenging time of tribal-state relations. And despite continued safety limitations on gaming operations, tribal gaming operations made an unanticipated quick recovery from pandemic-related setbacks in the early months of the 2021 Fiscal Year. Further, tribes continued with a concerted effort to raise awareness of their support for financial, health care, and physical infrastructure for local communities.

On August 6, 2021, the Oklahoma Attorney General filed a Petition for Writ of Certiorari in the Bosse case. The third question presented in Bosse is "Whether McGirt v. Oklahoma … should be overruled." In response to the filing, Cherokee Nation Principal Chief Chuck Hoskin Jr. said Oklahoma Attorney General O'Connor and Gov. Kevin Stitt:

… were trying to undermine cooperation among tribes, the state and federal prosecutors in the wake of the McGirt decision … With today's filing in Bosse v. Oklahoma, they have made clear this was never about protecting victims or stopping crime, but simply advancing an anti-Indian political agenda … The governor has never attempted to cooperate with the tribes to protect all Oklahomans. It is perfectly clear that it has always been his intent to destroy Oklahoma’s reservations and the sovereignty of Oklahoma tribes …

In fact, the Petition filed with the Supreme Court argues that the "…tribes do not agree among themselves, much less with the State, on the … path forward, and Congress is unlikely to adopt any proposal not supported by all of the parties …"

Similarly, petitions in additional cases were filed by Oklahoma with the Supreme Court on August 16. According to CertPool Oklahoma filed eight such petitions on that date. In each case, unlike Bosse, only a single question is presented. The question presented is "Whether McGirt v. Oklahoma, 140 S. Ct. 2452 (2020), should be overruled." Some scholars have expressed the view that the U.S. Supreme Court could clarify the McGirt ruling but doubt that it will overturn the ruling.

Despite significant gains for tribes in the last few years, 2021 has been a challenging year for cooperative efforts between the State of Oklahoma and the tribes. The Sovereignty Symposium, which was postponed from its usual date in June to October 2021, may facilitate further discussion among Oklahoma’s leaders and tribal leadership. Given the current path, even limited progress would be viewed as positive.
1. Darla Jackson is a reference librarian at the University of Oklahoma College of Law. She earned an LL.M. in Indigenous Peoples Law in 2020. Any views expressed in this piece are her own and do not express the views of the University of Oklahoma or the University of Oklahoma College of Law.


5. Molly Young, Tribes, State at Odds Over McGirt SCOTUS Ruling Leaves Chasm Between Them, Oklahoman (July 18, 2021), 2021 WLNR 23217610


7. Id.; Chris Casteel, Committee OKs $80 Million for McGirt Costs as Caseloads Soar, FBI Anticipates 7,500 Cases In State Next Year In Wake Of Ruling, Oklahoman (July 16, 2021), 2021 WLNR 23002710.


10. Id.

11. Chuck Hoskin Jr., Chief Chat: Celebrating the One-Year Anniversary of McGirt, Muskogee Phoenix (July 9, 2021), 2021 WLNR 22463593.


13. Amy Howe and James Romoser, Court Puts Relief for Oklahoma Inmate on Hold Amid Uncertainty About Scope of McGirt, SCOTUSblog.com (May 26, 2021),


15. Chickasaw Nation's Brief as Amicus Curiae in Response to the Court's April 8 Invitation to File at 8-9, Bosse v. Oklahoma, No. PCD-2019-124 (Okla. Crim. App., Apr. 12, 2021),

16. Id.
2021 in Oklahoma Indian Country con’t.

18. Id.
22. Id. at 4-5.
24. Id. at ¶6.
25. Id. at ¶15.
26. Id. (Hudson, J., concurring at ¶2).
27. Id. (Lumpkin, J., concurring at ¶5-6).
30. Id.
31. Id.
32. Id.
33. Randy Krehbiel, 'McGirt v. Oklahoma Community Impact Forum' Set for Tuesday; Tribal Leaders Irked, TulsaWorld.com (July 8, 2021), 2021 WLNR 22252823


37. Id.


45. Chris Casteel, Seminole Tribe Clarifies Position on Taxing Oil and Gas Production, Oklahoman (Jan. 21, 2021), 2021 WLNR 2455245.

46. Id.

47. Id.


2021 in Oklahoma Indian Country con’t.

51. Leeds & Beard, supra note 50 at 456.
56. Additionally, the U.S. Supreme Court has affirmed the inherent authority of tribal police to temporarily detain non-natives traveling on a public right-of-way running through a reservation. Elizabeth Reese, Affirmation of Inherent Tribal Power to Police Blurs Civil and Criminal Indian Law Tests, SCOTUSblog.com (June 7, 2021), https://www.scotusblog.com/2021/06/affirmation-of-inherent-tribal-power-to-police-blurs-civil-and-criminal-indian-law-tests/
60. Id.
61. Crawford, supra note 58.


Above: Screen shot from the Stockbridge Munsee code on the NILL website. 

Right: Caucus Chair Darla Jackson meets now-Secretary of the Interior Deb Haaland at AALS. Sec. Haaland is the first Native American Secretary of the Interior.

Workers help make masks at a Cherokee Nation PPE facility. The tribe built PPE facilities in Hulbert and Stillwell as part the tribe’s Respond, Recover and Rebuild federal CARES Act funding. The tribe is now donating PPE masks to public schools within in reservation.