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REMEMBERING A GIANT—ALEX TALLCHIEF SKIBINE

Elizabeth Kronk Warner*

On February 4, 2023, the world lost a legal giant, as Professor Alex Tallchief Skibine passed away following a battle with an aggressive form of brain cancer. Professor Skibine’s passing was an enormous loss for both our S.J. Quinney College of Law community and the field of Indian Law. Professor Skibine was intellectually curious, funny, and always kind—truly a pillar of our SJQ Law community. I am delighted that this issue of the *Utah Law Review* is dedicated to his memory.

After receiving his B.A. in Political Science and French Literature from Tufts University, he earned his J.D. at the Northwestern University Pritzker School of Law. Professor Skibine began practicing as an attorney at the Institute for the Development of Indian Law, then served as regional representative for the commissioner of Indian Affairs and as deputy counsel for Indian Affairs in the U.S. House of Representatives. While he was in Washington, D.C., Professor Skibine “played a major role in creating the Indian Gaming Regulatory Act of 1988. The law provides the basis for which Indian tribes can run gaming operations to promote tribal economic development, self-sufficiency, and strong tribal governance.”¹ Also while in D.C., the famous sense of humor Professor Skibine brought with him to the College of Law came through to all who worked with him.

Skibine’s sense of humor wasn’t just fun and games, says Eric Eberhard, a University of Washington law professor who worked with him at the House Interior Committee. Skibine patterned himself after committee chair Mo Udall, who similarly used jokes to defuse stressful situations.

“Mo Udall had the ability to walk into a room of people who were at each other over issues of policy, and he’d sit down and tell a couple of jokes and get everybody to laugh,” says Eberhard, who worked with Skibine on a land dispute between the Navajo and Hopi tribes. “Next thing you know, what was a big difference melted away, and everybody was

* © 2023 Elizabeth Kronk Warner. Jefferson and Rita Fordham Presidential Dean and Professor of Law at the S.J. Quinney College of Law, University of Utah. Like Professor Skibine, Dean Kronk Warner researches and writes about Indian law, and is also a citizen of a Tribe – the Sault Ste. Marie Tribe of Chippewa Indians. Dean Kronk Warner was incredibly fortunate to have known and worked with Professor Skibine, as she considered him to be a tremendous mentor. She is very thankful to Valeri Craige who was able to find all of the publications written by Professor Skibine since 1980, as cited to later in this foreword. Dean Kronk Warner is also very thankful to the Utah Law Review staff for honoring Professor Skibine’s memory with this issue of the journal.

¹ Andy Faught, *Honoring an Indian Law Trailblazer: Colleagues Remember Professor Alex Tallchief Skibine*, RES GESTAE (S.J. Quinney College of L., Univ. of Utah), Summer 2023, <https://sjquinney.utah.edu/resgestae-issue/honoring-an-indian-law-trailblazer-colleagues-remember-professor-alex-tallchief-skibine/> [<https://perma.cc/FMC9-9AMF>].

working together to find solutions. Alex was similar. He could take a tense situation and a tough problem and put it into perspective using humor.”²

Professor Skibine was appointed to the faculty at the University of Utah College of Law in 1989, and it was here that he spent his entire academic career.

In addition to his superlative professional career, Professor Skibine was a proud member of the Osage Indian Nation. Professor Skibine also “served on the Osage Nation Foundation Board of Directors since its inception in 2009 and was its first Chairperson.”³

Current chair of the foundation, Monte Boulanger, remembers Alex having a steady hand in leadership during the early days of the foundation. “His mentorship was very valuable to the other board members,” Boulanger said. “He had a booming voice at times, but was also quiet, inquisitive, and always careful to represent the best interests of the nation. He always tried to find a way to help as many people as he could.”⁴

Professor Skibine was a towering figure in the field of Indian Law. When he entered legal academia, very few people taught or produced scholarship focused on Indian Law—and fewer still were Native themselves. “When he arrived at the law school in 1989, there were no more than five Native scholars nationally who taught Indian law By just his very existence, he was a trailblazer”⁵ Professor Skibine was among an early group of Native legal scholars whose efforts were pivotal in establishing the field and teaching it in law school. Being a trailblazer, Professor Skibine helped countless other Native people throughout his career. He famously mentored many Native colleagues and students. For example,

Skibine was an important resource to his peers, including Rebecca Tsosie, a law professor at the University of Arizona. In the mid-1990s, Tsosie worked with tribal communities as they feuded with the state over the contentious Indian Gaming Regulatory Act. A tribal attorney suggested that Tsosie reach out to Skibine to get his take on matters.

“He was smart and thoughtful, and he understood everything, like what we should do,” Tsosie says. “We ended up hosting a symposium, and he was so good at bringing everybody together. That conference never would have happened without him. Arizona politics eventually settled down, and everybody survived it.”⁶

² *Id.*

³ Osage News Staff, *Osage Nation Pays Tribute to Alexander ‘Alex’ Tallchief Skibine*, OSAGE NEWS (Feb. 7, 2023), <https://osagenews.org/osage-nation-pays-tribute-to-alexander-alex-tallchief-skibine/?fbclid=IwAR19GQsuJEyQXaHl4JxYJGVEzrfu4q99JNNUkfqsvuD iVu9lFj6WYwdDeX0&mibextid=Zxz2cZ> [https://perma.cc/4ZGS-6JUY].

⁴ *Id.*

⁵ Faught, *supra* note 1.

⁶ *Id.*

He was so committed to helping other Natives in the field, because he believed that new world views, new ideas about justice, and non-Western cultural frameworks of law were needed for Indian law to fully develop an inclusive substantive body of law.

Professor Skibine was a brilliant scholar and an amazing teacher. He was very sophisticated in his knowledge of constitutional law and administrative law, as well as federal Indian law. He had a wonderful view of the interface between law and politics, and he was an astute commentator on tribal economic development. But he also cared about Native religions and cultures. He went on to produce a prolific body of work in Indian Law, earning a wide reputation as one of the field's leading scholars. "He . . . was a prolific writer, composing articles on such topics as sacred site protection and religious freedom. Skibine also taught summer programs for Indian law students at the University of New Mexico and Lewis & Clark College."⁷

Osage Nation Principal Chief Geoffrey Standing Bear met Alex while in law school and frequently worked with him throughout their respective careers.

"Alex Tallchief Skibine was a leading scholar of Native American law and all of Indian Country will miss his expertise," Standing Bear said. "The Osage Nation was blessed to have him as part of our new government and blessed by his work with the Osage Nation Foundation."⁸

We at the College of Law were so fortunate to know Professor Skibine personally—as a much-loved teacher, mentor, and pillar of our community. He taught torts, administrative law and federal Indian law for many years, and countless Utah Law alumni were fortunate to have him as a professor.

Professor Skibine was a wonderfully warm presence on the college's faculty. We knew him as someone who was endlessly kind, reliably good-humored, and always ready to offer his insight and wisdom for the benefit of our academic community. Professor "Skibine was self-effacing and he didn't draw attention to himself . . . He never took himself too seriously . . . He respected his students and really enjoyed engaging with them. And he was just brilliant. He had a way of digging in and thinking deeply about topics in new ways."⁹ Many of us looked to him as carrying the spirit of our law school. He was also just a "cool" person.

At Utah Law, Skibine cast himself the "quintessential dapper professor," donning tweed jackets, corduroy pants and a woolen driver cap . . . His passions extended beyond the classroom, and included playing soccer and riding his motorcycle. Skibine once arrived to class sporting a black eye, which he suffered after taking an elbow to the eye on the playing field.

⁷ *Id.*

⁸ Osage News Staff, *supra* note 3.

⁹ Faight, *supra* note 1.

Former student Chris Peterson, now the college's John J. Flynn Endowed Professor of Law, worried that Skibine was in "some trashy bar fight."

"It didn't faze him a bit, and he wasn't the least bit concerned or embarrassed," Peterson recounted at the March remembrance event. "At the beginning, when he came in, I was embarrassed for him. But at the end, I was jealous that he had a black eye. The Alex that I knew was cool."¹⁰

It should not be surprising that Professor Skibine became a leading figure in Indian law, as he came from a family of exceptional people.

Alex and his twin brother, George Tallchief Skibine, were born in France in 1952 while his parents, Marjorie Tallchief and George Skibine, Sr., were performing with the Grand Ballet du Marquis de Cuevas, formerly the Ballet Russe de Monte Carlo. Marjorie was the sister of Osage prima ballerina Maria Tallchief

As children, Alex and George toured with their parents until Marjorie and "Youra," as Skibine, Sr. was known, landed roles as *danseurs étoilés* at the Paris Opera Ballet in 1958. For the next four years, the couple commuted daily from their home located outside of Paris to the spectacular *Opera Garnier*, an immense opera house completed in 1875, where Alex recalled playing in the theater seats with his brother during rehearsals.

In 1964, when the twins were 14, Marjorie and Youra were invited to move to New York to direct the Harkness Ballet.¹¹

"When a student once asked Skibine why he didn't follow the family's path to the stage, he drolly responded: 'I guess I wasn't very good.'"¹²

Professor Skibine's impact on the College of Law—and on the field of Indian Law as a whole—cannot be overstated. He was truly one of a kind, and he will be sorely missed. But his spirit lives on in all he mentored, taught, and inspired. I am delighted to see that his legacy lives on, as evidenced by the articles in this issue of the *Utah Law Review*. He blazed the trail for future scholars, such as those highlighted in this issue. As Professor Robert Miller explained at Professor Skibine's Celebration of Life in March 2023, scholars are never truly forgotten as long as they continue to be cited. In that vein, I smile to see Professor Skibine cited by one of the last students he taught at the S.J. Quinney College of Law, Alex McFarlin, in this issue of the *Utah Law Review*.¹³ In fact, Mr. McFarlin's work shows the continuing value of Professor Skibine's scholarship, as an entire section of the note "recognizes

¹⁰ *Id.*

¹¹ Osage News Staff, *supra* note 3.

¹² Faught, *supra* note 1.

¹³ See generally Alex McFarlin, Note, *Religious Freedom (for most) Restoration Act: A Critical Review of the Ninth Circuit's Analysis in Apache Stronghold*, 2023 UTAH L. REV. 1163 (2023).

Professor Alex Skibine's scholarship on the issue of sacred site protection—specifically, Skibine's critique of *Lyng* and his forewarning of the issue in *Apache Stronghold*.¹⁴ Given his phenomenal contributions to the field, Professor Skibine will never be forgotten as his extensive body of work is certain to impact generations of lawyers to come.¹⁵

¹⁴ *Id.* at 1187–88.

¹⁵ Professor Skibine's scholarly contributions to the field were as impactful as they were diverse. His body of work is prolific, as he started publishing in 1980. Some of his articles included (in alphabetical order): *Applicability of Federal Laws of General Application to Indian Tribes and Reservation Indians*, 25 U.C. DAVIS L. REV. 85 (1991); *Braid of Feathers: Pluralism, Legitimacy, Sovereignty, and the Importance of Tribal Court Jurisprudence*, 96 COLUM. L. REV. 557 (1996) (book review); *Cabazon and Its Implications for Indian Gaming*, in INDIAN GAMING: WHO WINS (Angela Mullis & David Kamper eds., 2000); *Chevron Doctrine in Federal Indian Law and the Agencies' Duty to Interpret Legislation in Favor of Indians: Did the EPA Reconcile the Two in Interpreting the Tribes as States Section of the Clean Water Act*, 11 ST. THOMAS L. REV. 15 (1998); *Chief Justice John Marshall and the Doctrine of Discovery: Friend or Foe to the Indians*, 42 TULSA L. REV. 125 (2006) (book review); *Colonial Entanglement: Constituting a Twenty-First-Century Osage Nation*. By Jean Dennison, 38 AM. INDIAN CULTURE & RSCH. J. 209 (2014) (book review); *Constitutionalism, Federal Common Law, and the Inherent Powers of Indian Tribes*, 39 AM. INDIAN L. REV. 77 (2014); *Culture Talk or Culture War in Federal Indian Law*, 45 TULSA L. REV. 89 (2009); *Deference Owed Tribal Courts' Jurisdictional Determinations: Towards Co-Existence, Understanding, and Respect Between Different Cultural and Judicial*, 24 N.M. L. REV. 191 (1994); *Dualism and the Dialogic of Incorporation in Federal Indian Law*, 119 HARV. L. REV. F. 28 (2005–2006); *Duro v. Reina and the Legislation that Overturned It: A Power Play of Constitutional Dimensions*, 66 S. CAL. L. REV. 767 (1993); *Formalism and Judicial Supremacy in Federal Indian Law*, 32 AM. INDIAN L. REV. 391 (2007); *From Foundational Law to Limiting Principles in Federal Indian Law*, 80 MONT. L. REV. 67 (2019); *Gaming on Indian Reservations: Defining the Trustee's Duty in the Wake of Seminole Tribe v. Florida*, 29 ARIZ. ST. L.J. 121 (1997); *High Court Blows Political Smoke in Cigarette Tax Cases*, 6 AM. INDIAN J. 23 (1980); *High Level Nuclear Waste on Indian Reservations: Pushing the Tribal Sovereignty Envelope to the Edge*, 21 J. LAND RESOURCES & ENVTL. L. 287 (2001); *Hot Pursuit into Indian Country: What Are the Limits?*, University of Utah College of Law Research Paper No. 8, (2013), <https://ssrn.com/abstract=2200475> [<https://perma.cc/4CAA-K8JR>]; *Incorporation Without Assimilation: Legislating Tribal Jurisdiction over Nonmembers*, 67 UCLA L. REV. DISCOURSE 165 (2019); *Indian Gaming and Cooperative Federalism*, 42 ARIZ. ST. L.J. 253 (2010); *Indian Gaming Regulatory Act at 25: Success, Shortcomings, and Dilemmas*, 60 FED. LAW. 35 (2013); *Indians in the Courts*, 6 AM. INDIAN J. 10 (1980); *Indians, Race, and Criminal Jurisdiction in Indian Country*, 10 ALB. GOV'T L. REV. 49 (2017); *Integrating the Indian Trust Doctrine into the Constitution*, 39 TULSA L. REV. 247 (2003); *Is a Decision to Stop Funding a Federal Program Reviewable by a Court of Law—Is It a Rule Subject to Notice and Comment Requirement (91-1833)*, 1992 PREVIEW U.S. SUP. CT. CAS. 195 (5); *Is the Exhaustion of Administrative Remedies' Doctrine Applicable to Actions for Judicial Review Under the APA (91-2045)*, 1992 PREVIEW U.S. SUP. CT. CAS. 265 (9); *Law Enforcement on Indian Reservation After Oliphant v Suquamish Indian Tribe – An Identification of the Problem, and Recommendations for Remedies – Executive Summary*, NAT'L INST. OF JUST., U.S. DEP'T OF JUST. (1980) (co-authored with Melanie Beth Oliviero), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/law->

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To know Professor Skibine was to love him, and he leaves a tremendous legacy at the S.J. Quinney College of Law. This issue of the *Utah Law Review* is a fitting tribute to that legacy as several articles in the edition focus on legal developments impacting Indian law. May his memory continue to bring a smile to all who were privileged to know him, and may his scholarship be drawn upon well into the future. As a giant at the S.J. Quinney College of Law and among Indian scholars, he will never be replaced and will always be loved by those of us that had the privilege to know him.

Tallchief Skibine, S.J. Quinney Professor of Law, University of Utah); *United States v. Lara, Indian Tribes, and the Dialectic of Incorporation*, 40 TULSA L. REV. 47 (2004); *Using the New Equal Protection to Challenge Federal Control over Tribal Lands*, 36 PUB. LAND & RESOURCES L. REV. 3 (2015).