

INDIAN LAW PROFS NEWSLETTER

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This is the inaugural “issue” of the Indian Law Profs Newsletter. The intent is to do a newsletter twice a year, generally toward the end of each semester, to update us all on what our colleagues are doing and accomplishing. This issue covers activities and publications since January 2007, more or less.

UPCOMING CONFERENCES

Matthew L.M. Fletcher and **Wenona T. Singel (both Michigan State)** have organized a conference on *American Indian Law and Literature*, at the Michigan State University College of Law, to be held October 19-20, 2007. Confirmed participants include Larry Cata Backer (Penn State), Kirsten Matoy Carlson (Michigan PhD), Kristen Carpenter (Denver), Jo Carrillo (Hastings), Richard Delgado (Pitt), Bruce Duthu (Vermont), Margaret Montoya (New Mexico), Jean Stefancic (Pitt), Melissa Tatum (Tulsa), and Christine Zuni Cruz (New Mexico); call for papers at www.law.msu.edu/indigenous/conf/

BOOKS AND BOOK UPDATES

Michael Blumm (Lewis & Clark) and **Judith Royster (Tulsa)** will have a new edition of their casebook, *Native American Natural Resources Law*, available for use in Spring 2008 from Carolina Academic Press.

Matthew L.M. Fletcher (Michigan State) will join **David H. Getches**, **Charles Wilkinson (both Colorado)** and **Robert A. Williams, Jr. (Arizona)** as an author of *CASES AND MATERIALS ON FEDERAL INDIAN LAW* (West, 6th ed. forthcoming 2008). In addition, Matthew has a contract with Routledge to produce *Indian Education in America: Lake Matchimanitou Indian School*. He and **Wenona T. Singel (Michigan State)** have a contract with the Michigan State University Press to produce *The Indian*

Child Welfare Act at 30: Looking to the Future. Contributors include Mary Jo Brooks Hunter (Hamline), Lorie Graham (Suffolk), B.J. Jones (North Dakota), Robert Miller (Lewis & Clark), Aliza Organick (Washburn), Maylinn Smith (Montana), and Jill Tompkins (Colorado).

Nell Jessup Newton (Hastings) and the other editors of the Cohen's Handbook of Federal Indian Law announce that the 2007 Supplement to the Handbook is now available from Lexis/Nexis.

Bill Rice's (Tulsa) casebook, Tribal Governmental Gaming Law: Cases and Materials, was published by Carolina Academic Press in January 2007.

ARTICLES AND OTHER PUBLICATIONS

Michael Blumm's (Lewis & Clark) recent articles include '*Not Much Less Necessary Than the Atmosphere They Breathed: Salmon, Indian Treaties, and the Supreme Court--A Centennial Remembrance of United States v. Winans and Its Enduring Significance*, 46 Natural Resources Law Journal 489 (2006), <http://ssrn.com/abstract=809804>; and *The Mirage of Indian Reserved Water Rights and Western Streamflow Restoration in the McCarran Amendment Era: A Promise Unfulfilled*, 36 Environmental Law 1157 (2006), <http://ssrn.com/abstract=922865>.

Matthew L.M. Fletcher (Michigan State) has several articles forthcoming. These include: *Preconstitutional Federal Power*, 82 Tulane Law Review __ (forthcoming), draft available at <http://ssrn.com/abstract=968750>; *The Original Understanding of the Political Status of Indian Tribes*, 82 St. John's Law Review __ (forthcoming), draft available at <http://ssrn.com/abstract=969451>; *Rethinking the Role of Custom in Tribal Court Jurisprudence*, 13 Michigan Journal of Race & Law __ (forthcoming), draft available at <http://ssrn.com/abstract=944227>; and *ICWA and the Commerce Clause*, in *The Indian Child Welfare Act at 30: Facing the Future* (forthcoming), draft available at <http://ssrn.com/abstract=977325>. In addition, he has published the following articles: *Bringing Balance to Indian Gaming*, 44 Harvard Journal on Legislation 39 (2007); *Toward a Theory of Intertribal and Intratribal Common Law*, 43 Houston Law Review 701 (2006); and *Looking to the East: The Stories of Modern Indian People and the Development of Tribal Law*, 5 Seattle Journal of Social Justice 1 (2006).

Sarah Krakoff (Colorado) and **Kristen Carpenter (Denver)** have co-authored *An American Indian Reparations Strategy: Repairing Federal Indian Law*, in REPARATIONS FOR INDIGENOUS PEOPLES IN INTERNATIONAL AND COMPARATIVE LAW (forthcoming Oxford University Press 2007).

Patrice H. Kunesh (South Dakota) will have two articles published this spring. The first, entitled *Banishment as Cultural Justice in Contemporary Tribal Legal Systems*, will

be published in Volume 37 of the University of New Mexico Law Review. The other, entitled *A Call for an Assessment of the Welfare of Indian Children in South Dakota*, based on her presentation at the University of South Dakota School of Law Bi-Annual Indian Law Symposium in March 2006, will be published in the spring 2007 issue of the University of South Dakota Law Review. In addition, she authored a book review in the University of Nebraska Great Plains Quarterly on Edward Valandra's book, *Not Without Out Consent, Lakota Resistance to Termination, 1950-59*; and contributed to the *Encyclopedia of United States – American Indian Policy, Relations, and Law*.

Bill Rice (Tulsa) published *Teaching Decolonization: Reacquisition of Indian Lands Within and Without the Box – an Essay*, 82 N.D. L. Rev. 811 (2006). He and **Angelique Eaglewoman (Hamline)** completed a chapter on *American Indian Children* for a forthcoming book tentatively entitled, *Building an International World for Indigenous Children and Youth* (Cynthia Price Cohen and Philip Cook, eds.).

Angela R. Riley (Southwestern) has a forthcoming article, *(Tribal) Sovereignty and Illiberalism*, 95 Cal. L. Rev. __ (2007). In addition, she published *Good (Native) Governance*, 107 Colum. L. Rev. 1049 (2007); *Indigenous Peoples and Emerging Protections for Traditional Knowledge in Intellectual Property and Information Wealth* (Ed. Peter Yu, Praeger Press 2007); and *Tribal Sovereignty in a Post-9/11 World*, 82 N.D. L. Rev. 953 (2007).

Ezra Rosser (American) published *Caution, Cooperative Agreements, and the Actual State of Things: A Reply to Professor Fletcher*, 42 Tulsa L. Rev. 57 (2006). He also had published a Letter to the Editor, *The Navajo Times*, Feb. 8, 2007 (on options of tribal council following bribes and ineffectiveness of contractors and Navajo Housing Authority).

Judith Royster (Tulsa) published *Indian Water and the Federal Trust: Some Proposals for Federal Action*, 46 Natural Resources Journal 375 (2006). Her article, *Indian Tribal Rights to Groundwater* is forthcoming in the *Kansas Journal of Law and Public Policy*.

Wenona T. Singel (Michigan State) has published *Cultural Sovereignty and Transplanted Law: Tensions in Indigenous Self-Rule*, 15 Kansas Journal of Law & Public Policy 357-367 (2006). Her forthcoming articles include *Evaluating Harms to Tribal Sovereignty in Non-Indian Courts: Divergent Applications of the Coeur d'Alene Rule*, 2008 Mich. St. L. Rev. __ (forthcoming); and *Walking Blind: Barriers to Measuring and Enforcing State Compliance with the Indian Child Welfare Act*, in *The Indian Child Welfare Act at 30: Facing the Future* (forthcoming). In addition, she and **Matthew L.M. Fletcher (Michigan State)** have co-authored *Indian Treaties and the Survival of the Great Lakes*, 2007 Michigan State Law Review __ (forthcoming), draft available at <http://ssrn.com/abstract=955715>.

Bryan H. Wildenthal's (Thomas Jefferson) article on *Federal Labor Law, Tribal Sovereignty, and the Indian Law Canons of Construction* is forthcoming in the *Oregon*

Law Review (Vol. 86, Dec. 2007). The working draft is available at <http://ssrn.com/abstract=970590>.

The Tulsa Law Review Indian law symposium issue for 2006, Native American Natural Resources, is now available. Contributing authors are Debra Donahue (Wyoming), Bob Anderson (Washington), Kristen Carpenter (Denver), Ezra Rosser (American), Alex Skibine (Utah), and Lorie Graham (Suffolk).

SPEECHES AND PRESENTATIONS

Michael Blumm (Lewis & Clark) spoke at the Columbia River Inter-Tribal Fish Commission's conference in March commemorating the 50th anniversary of the drowning of Celilo Falls, the most important Indian fishing site on the Columbia River.

Kristen Carpenter (Denver) presented *Expanding and Realizing Indigenous Property Rights*, Federal Bar Association Annual Indian Law Conference, Albuquerque, NM, April 20, 2007.

Matthew L.M. Fletcher (Michigan State) made the following recent presentations: *Indians Teaching Indian Law* at the American Indian Law Center, Inc. – 40th Anniversary of the Pre-Law Summer Institute (April 21, 2007); *The U.S. Constitution and Federal Indian Law – Cases and Principles* at the University of Montana School of Law, Native American Law Students Association: Indian Law Week, (April 10, 2007); *ICWA and the Constitution* at the Michigan State University College of Law – 3rd Annual Indigenous Law Conference, The Indian Child Welfare Act at 30: Facing the Future (March 16-17, 2007); and *Looking to the East: The Stories of Modern Indian People and the Development of Tribal Law* at the Seattle University School of Law, Looking to a New Horizon: Redefining Modern American Indian Identity, Seattle Journal for Social Justice Symposium (Feb. 12, 2007). In addition, he was the moderator for three panels at the Federal Bar Association – 32nd Annual Indian Law Conference: *Expanding and Realizing Indigenous Property Rights*, *Conflicted Out: Federal, Tribal, and Private Lawyers in the Real World of Indian Law*, and *The Freedmen Cases: Tribal Sovereignty at the Tipping Point* (April 19-20, 2007).

Patrice H. Kunesh (South Dakota) presented two papers, one at Michigan State University College of Law's conference on the Indian Child Welfare Act, entitled *Protecting Indian Children Beyond Reservation Borders – Wards of Tribal Court*, and another at the 2007 South Dakota Indian Business Conference on the role of tribal law and tribal courts in tribal economic development.

Bill Rice (Tulsa) presented a faculty enrichment program at the University of Arkansas (Fayetteville) on *New Developments in Indian Law in Oklahoma* on Feb. 14, 2007; spoke on Trust Land Acquisitions by Chartered Tribes Pursuant to the Indian Reorganization Act at the 5th Annual Doing Business in Indian Country CLE, sponsored by the

Muscogee (Creek) Nation on March 9, 2007; and spoke at the University of Montana's Indian Law Conference on April 13, 2007, on the topic of integrating Indian law issues (sovereign immunity and gaming contracts) into the required contracts course.

Angela R. Riley (Southwestern) presented *Indigenous Women and Good (Native) Governance*, at the Gender and the Law Conference, Santa Clara University School of Law, Santa Clara, California, April 20, 2007. In addition, she spoke this spring at the New Voices in Legal Scholarship Speaker's Series, University of Utah, S.J. Quinney College of Law, and on the AALS Panel, Cultural Properties and Commodification: Perspectives on Social Justice.

Ezra Rosser (American) organized the Navajo Nation Supreme Court Oral Arguments at Washington College of Law, March 2007. He also spoke on *Cooperation in the Shadow of Conquest* at Cornell University Law School in March 2007.

Judith Royster (Tulsa) spoke on *Rights-of-Way on Indian Lands* at the 5th Annual Doing Business in Indian Country CLE, sponsored by the Muscogee (Creek) Nation on March 9, 2007. She was also the co-moderator of the Joint Program of the Sections on Indian Nations and Indigenous Peoples and Natural Resources Law, entitled *Cooperation in Management of Tribal Natural Resources*, at the AALS Annual Meeting in Washington DC, on January 4, 2007.

Wenona T. Singel's (Michigan State) recent presentations include *Tribal Law and Same-Sex Marriage* at the Nokomis Learning Center 2006-2007 Lecture Series on Gender Diversity in East Lansing, MI (June 5, 2007); *Walking Blind: Barriers to Measuring and Enforcing State Compliance with the Indian Child Welfare Act* at the Michigan State University College of Law, 3rd Annual Indigenous Law Conference, The Indian Child Welfare Act at 30: Facing the Future (March 16-17, 2007); and *Tribal Law and Same-Sex Marriage* at Michigan Indian Judicial Association Annual Meeting (June 5, 2007).

UNIQUE COURSES

Angela R. Riley (Southwestern) teaches two seminar of interest: Illiberal Groups in the Liberal State, and Cultural Property.

UNIQUE LITIGATION

Bill Rice (Tulsa) obtained a final judgment in *Sac and Fox Nation v. Kempthorne*, No. CIV-05-1234-R (W.D. Okla. Mar. 7, 2007), declaring that section 16 of the IRA applied to the Sac and Fox Nation. Prior to this ruling, the BIA and "common wisdom" believed

that Oklahoma tribes were precluded by section 13 of the IRA from the benefits of sections 2, 4, 7, 16, and 17.

LEGISLATIVE AND REGULATORY ACTIVITIES

Matthew L.M. Fletcher (Michigan State) testified on the topic of *Applicability of the Michigan Civil Rights Initiative on State Laws and Programs Relating to Indians and Indian Tribes* before the Michigan Law Revision Commission (Dec. 18, 2006).

Bill Rice (Tulsa) completed extensive amendments to the Sac and Fox Nation Property Laws (Sac and Fox Public Law #SF-07-88). He is working on revisions to the Sac and Fox Gaming Ordinances.

Wenona T. Singel (Michigan State) made a presentation on *Michigan's Emerging Tribal Economies* to the Michigan House of Representatives (Apr. 17, 2007).

PERSONAL NOTES

Angela R. Riley (Southwestern) was promoted to Professor of Law with tenure, awarded the Irving D. and Florence Rosenberg Professor for 2007-08, and voted Professor of the Year for 2006-2007. She also notes that her little girl, Avah, recently turned two, and her second baby is due July 2d!

OTHER ITEMS OF INTEREST

Kristen Carpenter (Denver) is pleased to announce DU's new American Indian Law website at <http://law.du.edu/indianLaw/index.cfm>.

Patrice H. Kunesch (South Dakota) drafted the outline and lecture material for the South Dakota bar review course on federal Indian law, which will be tested for the first time on the South Dakota Bar Exam in July 2007.

Ezra Rosser (American) served as the faculty supervisor for a Student Alternative Spring Break Service trip to the Navajo Nation (where they volunteered with DNA-People's Legal Services), March 2007. In addition, he is now an editor for the Poverty Law Professor Blog, <http://lawprofessors.typepad.com/poverty/>, and would welcome ideas/suggestions of Indian related material for the blog.

Wenona T. Singel and Matthew L.M. Fletcher (both Michigan State) served as moot court judges for the Michigan Indian Education Council, 2007 Native American Critical Issues Conference (March 1-3, 2007).

The University of Tulsa Native American Law Center hosted a Native American Pre-Law Day in February, funded by the Law School Admission Council. In conjunction with the pre-law event, NALC and TU's NALSA held their second annual Native Justice Powwow.