

INDIAN LAW PROFS NEWSLETTER

November 2008

edited by
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Native American Law Center
University of Tulsa College of Law

UPCOMING CONFERENCES

Association of American Law Schools Annual Meeting, January 6-10, 2009. **Wenona Singel** (Michigan State) is chair of the AALS Section on Indigenous Nations and Indian Peoples, which is hosting the panel “New Directions for International Law and Indigenous Peoples.” Speakers include Tim Coulter, Angelique EagleWoman (Idaho), and Bill Rice (Tulsa). Papers will be published in the Idaho Law Review. **Matthew Fletcher** (Michigan State) is chair of the AALS Section on Law and Anthropology, which is hosting the panel “Origins and Solutions to the Indian Freedmen Disputes.” Speakers include Jeannine Bell (Indiana-Bloomington), Kate Fort (Michigan State), Kevin Maillard (Syracuse), Carla Pratt (Texas Wesleyan), Bill Rice (Tulsa), and Sherri Thomas (New Mexico).

Federal Bar Association Indian Law Conference, April 1-3, 2009, at Buffalo Thunder at the Pojoaque Pueblo. **Matthew Fletcher** (Michigan State) is the lead chair for the conference.

The University of Colorado Law School is hosting the 2009 National NALSA Moot Court competition on February 27-28. In conjunction, CU is also hosting a half-day conference on “Native Americans, Race, and the Law” on Friday, February 27. The conference is co-sponsored by the Colorado Law American Indian Law Program, the University of Denver Sturm College of Law, and the CU and DU NALSA chapters, and in part by the Byron R. White Center for the Study of Constitutional Law. Organizers are **Kristen Carpenter** (Denver) and **Jill Tompkins** (Colorado). Tuition waivers are offered to Indian law teachers and practitioners who serve as NALSA moot court competition judges. If interested in judging, please contact CU NALSA president Jay Harris at 406-208-4838 or gerald.harris@colorado.edu. The conference agenda and registration information can be found at <http://lawweb.colorado.edu/events/details.jsp?id=1923>.

Michigan State University is pleased to announce the 6th Annual MSU Indigenous Law Conference, to be held September 25-26, 2009. The conference will focus on the United Nations Declaration on the rights of Indigenous Peoples. For more information, contact **Matthew Fletcher**, **Wenona Singel**, or **Kathryn Fort**. In addition, the MSU Spring

2009 book series will feature books by Justin Richland (UC-Irvine), Stuart Banner (UCLA), and Robert Dale Parker (Illinois), with commentaries by Meg Noori (Michigan), Patrick LeBeau (Michigan State), Charles TenBrink (Michigan State), and Benjamin Ramirez-Shkwegnaabi (Central Michigan).

The University of Tulsa College of Law's Native American Law Center is hosting a conference on May 15, 2009 in connection with TU's acquisition of management of the Gilcrease Museum. Entitled "Exhibiting Culture: Museums and Indians," the conference will feature keynote addresses from Rennard Strickland and Kevin Gover. Law professor participants include Rebecca Tsoie (Arizona State), Angela Riley (Southwestern), Alex Skibine (Utah), Kristen Carpenter (Denver), and Allison Dussias (New England). For more information, contact **Bill Rice** or **Judy Royster**.

The University of Tulsa College of Law's Native American Law Center will host an Indian Law Works-in-Progress Symposium on May 16-17, 2009. The symposium is open to anyone who wishes to present, or comment, or both. For more information, please contact **Judy Royster**.

BOOKS AND BOOK UPDATES

The editorial board of the **COHEN'S HANDBOOK OF FEDERAL INDIAN LAW** is preparing the 2009 supplement. Editor Nell Jessup Newton (Hastings) and board members Bob Anderson (Washington), Bethany Berger (Connecticut), Carole Goldberg (UCLA), John LaVelle (New Mexico), Judith Royster (Tulsa), Joe Singer (Harvard), and Kevin Washburn (Arizona) expect the supplement to be published this spring.

Bob Anderson (Washington), **Bethany Berger** (Connecticut), **Phil Frickey** (Berkeley), and **Sarah Krakoff** (Colorado) published their new casebook, **AMERICAN INDIAN LAW: CASES AND COMMENTARY** (Thomson-West 2008).

N. Bruce Duthu (Dartmouth) has a paperback edition of his book, **AMERICAN INDIANS & THE LAW** (Penguin), due out in January 2009.

James Grijalva (North Dakota) published **CLOSING THE CIRCLE: ENVIRONMENTAL JUSTICE IN INDIAN COUNTRY** (Carolina Academic Press 2008).

Bob Miller (Lewis & Clark) had his book, **NATIVE AMERICA, DISCOVERED AND CONQUERED: THOMAS JEFFERSON, LEWIS AND CLARK, AND MANIFEST DESTINY**, released in paperback in April from the University of Nebraska Press.

ARTICLES AND OTHER PUBLICATIONS

Gavin Clarkson (Houston) has two articles forthcoming: *Wall Street Indians: Information Asymmetry and Barriers to Tribal Capital Market Access*, 12 Lewis and Clark Law Review (forthcoming 2009), and *Accredited Indians: Increasing the Flow of Private Equity into Indian Country as a Domestic Emerging Market*, 80 Colorado L Rev. (forthcoming 2008).

N. Bruce Duthu (Dartmouth) had an op-ed, *Broken Justice*, published in the New York Times on August 11, 2008.

Angelique EagleWoman (Idaho) has had two articles published: *The Philosophy of Colonization Underlying the Taxation Imposed on Tribal Nations in the U.S.*, 43 Tulsa Law Review 43 (Fall 2007), and *Fencing off the Eagle and the Condor, Border Politics and Indigenous Peoples*, 23 ABA Natural Resources & Environment Journal 33 (Fall 2008).

Matthew Fletcher (Michigan State) will publish his article, *Indian Tribal Businesses and the Off-Reservation Market*, in the Lewis & Clark Law Review Indian Business Law symposium issue.

Kathryn Fort (Michigan State) has accepted an offer to publish her article, *The New Laches: Creating Title Where None Existed*, in the George Mason Law Review.

Sarah Krakoff (Colorado) published two articles: *American Indian Tribes: Climate Change and Ethics for a Warming World*, 85 Denver University Law Review 865-897 (2008), and *Afterthoughts from a "Buzz Killer,"* 32 American Indian Law Review 151 (2008). She was also a participant in *Conference Transcript: The New Realism: The Next Generation of Scholarship in Federal Indian Law*, 32 American Indian Law Review 1, 97-104 (2008).

Vicki Limas (Tulsa) published *The Tuscarorganization of the Tribal Workforce*, 2008 Mich. St. L. Rev. 467.

G. William Rice (Tulsa) has scheduled for publication an article entitled *Some Thoughts on the Future of Indian Gaming* in a publication of the National Museum of the American Indian, a part of the Smithsonian Institution.

Judith Royster (Tulsa) published two book chapters: *Indian Land Claims* in HANDBOOK OF NORTH AMERICAN INDIANS, VOL. 2: INDIANS IN CONTEMPORARY SOCIETY (Garrick A. Bailey, vol. ed., Smithsonian Institution 2008); and *Native American Law* in the LAW OF ENVIRONMENTAL JUSTICE: THEORIES AND PROCEDURES TO ADDRESS DISPROPORTIONATE RISKS 199 (American Bar Association, 2d ed. 2008). In addition, she served as associate editor and contributing author of over a dozen entries for the ENCYCLOPEDIA OF UNITED STATES INDIAN POLICY AND LAW (Paul Finkelman and Tim Alan Garrison, eds., CQ

Press 2008). Her article *Practical Sovereignty, Political Sovereignty, and the Indian Tribal Energy Development and Self-Determination Act* is forthcoming in the Lewis & Clark Law Review.

Wenona Singel (Michigan State) is publishing her article, *The Institutional Economics of Tribal Labor Relations*, in the Michigan State Law Review tribal labor law symposium.

Alex Tallchief Skibine (Utah) published *Formalism and Judicial Supremacy in Federal Indian Law*, 32 American Indian Law Review 391 (2008).

Melissa Tatum (Tulsa) wrote a book review of Laurence French's *Legislating Indian Country: Significant Milestones in Transforming Tribalism* (2007) for the Canadian Journal of Criminology and Criminal Justice. The review will appear in the April 2009 issue. (Sneak preview: Don't rush out and buy the book).

Rebecca Tsosie (Arizona State) published two articles: *Cultural Challenges to Biotechnology: Native American Genetic Resources and the Concept of Cultural Harm*, 35 J. L., Med. & Ethics 396 (2007), and *Indigenous People and Environmental Justice: The Impact of Climate Change, the Climate of Environmental Justice: Taking Stock*, 78 U. COLO L. REV. 1625 (2007).

Mary Wood (Oregon) has published two articles: *Tribes as Trustees Again (Part I): The Emerging Tribal Role in the Conservation Trust Movement*, 32 Harvard Environmental Law Review 373 (with Zach Welker) (Spring 2008), and *Tribes as Trustees Again (Part II): Evaluating Four Models of Tribal Participation in the Conservation Trust Movement*, 27 Stan. Envtl. L.J. 477 (with Matt O'Brien) (2008). In addition, she has an entry on *American Indian Law and Forestry* in the ENCYCLOPEDIA OF U.S. INDIAN POLICY AND LAW, Paul Finkleman and Tim Garrison, eds., CQ Press 2008.

SPEECHES AND PRESENTATIONS

Kristen Carpenter (Denver) and **Sarah Krakoff** (Colorado) were the co-hosts of the DU-CU Indian Law Works-in-Progress Symposium on July 31-August 1 in Boulder. Both presented papers and served as commenters.

Robert N. Clinton (Arizona State) spoke on a panel, "One Country, Separate Sovereigns: Emerging Issues in Indian Law," at the Appellate Judges Education Institute in Scottsdale on Nov. 13-16. He will be presenting "The Return of Indian Treaty Making" at the University of Kansas on Friday, February 13, 2009; the 2008-2009 Tribal Law and Government Conference will focus on "Innovations in Tribal Governance."

Robert N. Clinton and **Kevin Gover** (both Arizona State) were the conference chairs for "Indian Country's Winning Hand: 20 Years of IGRA," held at the Fort McDowell Indian Reservation.

Angelique EagleWoman (Idaho) delivered two keynote addresses: for the Idaho Indian Education Summit on October 1, 2008, speaking on the topic *Native Education and U.S. Indian Law & Policy*, and the 9th Annual Distinguished American Indian Speaker's Series, University of Idaho American Indian Studies program, on November 18th, 2008 on *The Eagle and the Condor - Border Politics and Indigenous Peoples*.

Matthew Fletcher (Michigan State) presented papers at Colorado (*Factbound and Splitless*), Indiana-Bloomington (*Factbound and Splitless*), Law and Society (*The Cherokee Freedmen: Orphans of Federal Indian Law*) with Kate Fort, LatCrit XIII (*(Dis)Enfranchising the Cherokee Freedmen*) with Kate Fort, the Library of Michigan (*Laughing Whitefish: A Tale of Justice and Anishinaabe Custom*), SMU (*Race and American Indian Tribal Nationhood*), Michigan (*De Facto Tribal Sovereignty: Inside Tribal Politics*), the University of Leiden (*The Ottawa First Book: Tribal Law's Migration through Space and Time*), and UC-Irvine (*Tribal Sovereignty as Property*).

Kathryn Fort (Michigan State) presented papers at Michigan State (*Whose Using ICWA? Identity Issues and the Indian Child Welfare Act*) and at Law and Society (*The New Laches: Creating Title Where None Existed*).

Bob Miller (Lewis & Clark) presented a number of papers that will be published in law reviews and symposium proceedings. These include *American Indian Entrepreneurs: Unique Challenges, Unlimited Potential*, at the Searle Center Conference on Entrepreneurs and the Law at Northwestern University School of Law in June (the paper is being published in the Arizona State Law Journal); *Christianity, American Indians, and the Doctrine of Discovery* at a conference in Virginia hosted by the Virginia Council of Churches (to be published in a book from the conference); *An Indigenous Lens into Comparative Law: The Doctrine of Discovery in the United States and New Zealand* at the 3rd Annual Vine Deloria, Jr. conference at the Northwest Indian College on the Lummi Reservation (the article, co-authored with a New Zealand lecturer-in-law at the University of Otago, Jacinta Ruru, will be published in the West Virginia Law Review); and on Indian religious issues at a conference at Albany Law School in October (the paper will be published in the symposium issue by the Albany Government Law Review). In addition, he served as the keynote speaker at the New Worlds, New Sovereignties conference in June at Melbourne University, and in September at a Lewis & Clark conference in Lancaster, Pennsylvania. He also delivered the following speeches and presentations: at a CLE in Anchorage on Alaska Native issues and on the topic of Discovery and Alaska Natives; in November at Nebraska Law School on legal issues in Indian Country and a talk at the Nebraska Indian Community College in South Sioux City; about Discovery at the National Museum of the American Indian; about Indian law along with Richard Monette (Wisconsin), Jerilyn DeCoteau, and Kristin Carpenter (Denver) at Denver University's Western Professors of Color conference; in Athens, Georgia at the Second Annual Native American Studies conference; about Discovery at Carleton University in Ottawa and Dartmouth College in New Hampshire in October; at the National Indian Education Association annual conference in Seattle,

Washington; on a panel about Discovery and Manifest Destiny at the American Society for Ethnohistory annual conference at University of Oregon; at Haskell Indian Nations University and as a keynote speaker at the Diplomacy Symposium in the Bob Dole Center at the University of Kansas; and in Las Vegas on Indian gaming issues at the International Municipal Lawyers' Association annual conference. He also conducted three hour trainings for U.S. Fish & Wildlife personnel in Boise, Idaho, Portland, Oregon, and Lacey, Washington. He will conduct a day long training session for USF&W headquarters personnel in D.C. in December.

Bob Miller (Lewis & Clark) planned a conference at Lewis & Clark Law School on Indian economic development, held in April. Nine Indian law professors presented works in progress, including Miller, who presented a paper entitled *Inter-tribal and International Treaties for American Indian Economic Development*. The conference papers will be published by Lewis & Clark Law Review.

Bob Miller (Lewis & Clark) and **Alex Skibine** (Utah) hosted the third Indian Law Scholar's Working Papers Roundtable at Lewis & Clark Law School.

G. William Rice (Tulsa) presented his paper entitled *Some Thoughts on the Future of Indian Gaming* at the conference Indian Country's Winning Hand: 20 Years of IGRA (Indian Gaming Regulatory Act) held Oct 16 & 17, at Fort McDowell Radisson Resort & Casino. The conference was sponsored by the Indian Legal Program of the Arizona State University Sandra Day O'Connor College of Law. In March 2009, he will present a perspective on the Osage Nation's treaty making era as a part of Osage Sovereignty Day celebrating the ratification of the new Constitution of the Osage Nation. In addition, he will make two presentations at the 2009 AALS Annual Meeting. He will speak on land and territorial issues at the meeting of the Indian Nations and Indigenous Peoples Section; the meeting will focus on "New Directions in International Law and Indigenous Peoples." And he will speak on finding reasonable responses to tribal disenrollment of various groups of people at the Law and Anthropology Section. That meeting will focus on Black Indians, Cherokee Freedmen, and disenrollment issues generally.

Judith Royster (Tulsa) delivered presentations on Indian tribal water rights at the Oklahoma Tribal Water Summit, sponsored by the Native American Rights Fund and the Sac & Fox Nation, July 28-29, 2008, and Sovereignty Symposium 2008, sponsored by the Oklahoma Supreme Court, June 5, 2008. She also served as a panelist on the trust responsibility at The Winters Centennial: Will its Commitment to Justice Endure?, sponsored by the University of New Mexico School of Law Utton Transboundary Resources Center and the American Indian Law Center, June 9-12, 2008. In addition, she participated as a presenter and commenter at the DU-CU Indian Law Works-in-Progress Symposium on July 30-Aug. 1, 2008.

Wenona Singel (Michigan State) presented papers at the Federal Bar Association Indian Law Conference (*Cultural Sovereignty and Transplanted Law*), Law and Society (*The*

Political Economy of Tribal Legal Development), and Michigan State (*Comparative Property Rights Jurisprudence: Takings Law under ICRA and the Supreme Court*).

Melissa Tatum (Tulsa) presented her paper, *The Day the Universe Changed: Gideon, the Right to Counsel, and Tribal Jurisdiction*, at Michigan State University's Fifth Annual Indian Law Conference: 40 Years of the Indian Civil Rights Act in October 2008. She served as a commentator at the Indian Law Works in Progress Symposium, co-sponsored by University of Colorado and University of Denver this summer. She also served as a faculty member for the course *Handling Domestic Violence Cases for Tribal Court Judges*, at the National Tribal Judicial Center in August 2008.

Melissa Tatum (Tulsa) and **Stacy Leeds** (Kansas) will present their paper *Julia Martinez, Catharine MacKinnon, and Third-Wave Feminism: Practical Consequences for the Intersection of Politics, Race and Gender* at the University of Baltimore's conference on Applied Feminism: How Feminist Legal Theory is Changing the Law in March 2009.

Rebecca Tsosie (Arizona State) gave a presentation on tribal interests in forest management at the 32nd Annual Public Land Law Conference at University of Montana on Sept. 22-25; spoke at the "Convening on Transformative Justice in Communities of Color" at the University of California, Berkeley, School of Law on Sept. 11-13; joined a panel discussion on "Tribal Sacred Places and Cultural Resources on Public Lands" at the ABA Environment, Energy, and Resources Law Summit: 16th Section Fall Meeting, on Sept. 17-20 at the Arizona Biltmore Resort & Spa in Phoenix; presented at the Cultural Heritage and Living Culture Conference in Washington DC on Cultural Heritage and Living Culture: Defining the U.S. Library Position on Access and Protection of Traditional Cultural Expression; and presented at the Inter Tribal Council of Arizona's conference "Future Directions of Tribal Health Research in Arizona" on Intellectual Property and Cultural Property. In addition, she was the principal investigator of the National Science Foundation grant that funded the workshop, "Genomics, Governance, and Indigenous Peoples." Tsosie worked with fellow organizers, Kim TallBear, Assistant Professor of Science, Technology, and Environmental Policy at the University of California, Berkeley, and Jenny Reardon, Assistant Professor of Sociology and Faculty Affiliate in the Center for Biomolecular Science and Engineering at the University of California, Santa Cruz to plan the two-day workshop.

Mary Wood (Oregon) delivered a keynote address on *United States v. Oregon: A Forty Year Retrospective*, Portland, OR (May 28-29, 2008). She also prepared *Federal Indian Law and Policy*, 3-hour instructional video produced for the U.S. Forest Service, August, 2008.

UNIQUE COURSES

N. Bruce Duthu (Dartmouth) will be teaching Native American Law & Literature (with Professor Mishuana Goeman) during Winter Term 2009.

Kathryn Fort (Michigan State) will teach Advanced Topics in Indian Law: Indian Child Welfare Act in the Spring 2009 semester.

LEGISLATIVE AND REGULATORY ACTIVITIES

Patty Ferguson-Bohnee (Arizona State) testified before the Senate committee during a hearing on recommendations for improving the Federal Acknowledgment Process. She traveled to Washington, D.C., with five Indian Legal Clinic students.

G. William Rice (Tulsa) is working with a small group of tribal leaders and Interior Department officials to provide appropriate language and efficient up-to-date implementation of the purposes and authorities of the federally chartered corporations available to Indian Tribes, Bands, and Nations organized under the IRA and OIWA.

PERSONAL NOTES

Gavin Clarkson (Houston) passed the Texas Bar Exam, despite only studying for 11 days.

Robert N. Clinton (Arizona State) is now an Associate Justice for the Hualapai Tribe Court of Appeals.

Patty Ferguson Bohnee (Arizona State), director of the Indian Legal Clinic, has been named to the permanent faculty.

Wenona Singel (Michigan State) accepted an appointment to serve as Chief Appellate Justice for the Grand Traverse Band of Ottawa and Chippewa Indians.

Wenona Singel and **Matthew Fletcher** (both Michigan State, fortunately!) are expecting their second child in the spring.

Melissa Tatum will leave the University of Tulsa at the end of December. She joins the University of Arizona in January 2009 as Research Professor of Law and Associate Director of the Indigenous Peoples Law and Policy Program.

SABBATICALS

Rebecca Tsosie (Arizona State) will be on Sabbatical during the Spring semester of 2009.

OTHER ITEMS OF INTEREST

As usual, the watermark has chosen to appear only on random pages. Your editor has decided to let it do what it wants.