

INDIAN LAW PROFS NEWSLETTER

May 2009

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

In Memoriam

Erik Bluemel, Assistant Professor at the University of Denver Sturm College of Law, died May 6 from injuries sustained in a bicycle accident. Erik joined the DU faculty only last fall, teaching courses in administrative, environmental, and indigenous peoples law. Among his many publications, Erik wrote several on Indian law topics, including *Separating Instrumental from Intrinsic Rights: Toward an Understanding of Indigenous Participation in International Rule-Making*, 30 AM. INDIAN L. REV. 55 (2005-06); *Accommodating Native American Cultural Activities on Federal Public Lands*, 41 IDAHO L. REV. 475 (2005); and *Prioritizing Multiple Uses on Public Lands After Bear Lodge*, 32 B.C. ENVTL. AFF. L. REV. 365 (2005) (awarded 1st place in ABA Environmental Justice Essay Competition).

UPCOMING CONFERENCES

The Native American & Indigenous Studies Association annual meeting was held May 21-23 at the University of Minnesota (Minneapolis, MN).

The Sandra Day O'Connor College of Law's Indian Legal Program at Arizona State University will host a conference on sustainability and renewable energy in Indian Country on April 22-23, 2010 in Tempe, Arizona. **Carl Artman** (Arizona State) is the lead chair for the conference.

The University of Colorado School of Law will be hosting a conference on *The Next Great Generation of Indian Law Judges* in winter 2010. Exact date to be determined very soon. For more information, contact **Sarah Krakoff**.

The University of Kansas School of Law will host the 2009-2010 Tribal Law Conference on Feb 11-12, 2010. Thursday the 11th will be academic lectures at KU Law and the 12th will be a full day CLE at Prairie Band Potawatomi Hotel and Casino north of Topeka. For more information, contact **Stacy Leeds**.

Michigan State University College of Law is pleased to announce the 6th Annual MSU Indigenous Law Conference, *Global Perspectives on Indigenous Rights*, to be held in East Lansing on September 25-26, 2009. Confirmed speakers include Kirsten Carlson (Indian Law Resources Center), Angela Riley (UCLA), Bill Rice (Tulsa), John Borrows (Victoria, soon to be Minnesota), James Sakej Henderson (Saskatchewan) (tentative), Carrie Garrow (Syracuse), Siegfried Wiessner (St. Thomas, Florida), and Angelique Eaglewoman (Idaho). For more information, contact **Wenona Singel, Matthew Fletcher, or Kathryn Fort**.

The University of Washington School of Law will host its 22nd Annual Indian Law Conference in Seattle on September 10 & 11. For further information contact **Robert Anderson** at the UW law school.

BOOKS AND BOOK UPDATES

The 2009 Supplement for **COHEN'S HANDBOOK OF FEDERAL INDIAN LAW** is out and can be ordered from LexisNexis. Working on the supplement were Editor Nell Jessup Newton (Hastings, about to be Notre Dame) and editorial board members Bob Anderson (Washington), Bethany Berger (Connecticut), Carole Goldberg (UCLA), John LaVelle (New Mexico), Judy Royster (Tulsa), Joe Singer (Harvard), and Kevin Washburn (Arizona, about to be New Mexico).

Barb Cosens (Idaho) and **Judith Royster** (Tulsa) are editing the proceedings of the 2008 conference, *The Future of Reserved Water Rights – The Winters Centennial*, along with related papers, for publication by the University of New Mexico Press.

N. Bruce Duthu (Dartmouth/Vermont) recently contracted with Oxford University Press for a new book; the working title is TRIBAL SOVEREIGNTY AND THE LIMITS OF LEGAL PLURALISM IN THE UNITED STATES. The manuscript is due early fall 2010.

Matthew Fletcher, Kathryn Fort, and Wenona Singel (all Michigan State) have turned in the final drafts to Michigan State University Press for their edited collection, "Facing the Future: The Indian Child Welfare Act at 30." Chapter authors include Mary Jo B. Hunter (Hamline), Terry Cross (NICWA) and Bob Miller (Lewis & Clark), Matthew Fletcher (MSU), Lorie Graham (Suffolk), B.J. Jones (UND), Allie Maldonado (Little Traverse Bay Bands of Odawa Indians), Lorinda Mall, Aliza Organick (Washburn), Michael Petoskey (Pokagon Band of Potawatomi Indians and other various tribes), Le Anne Silvey (MSU), Maylinn Smith (Montana), and Carol Tebben (Wisconsin emeritus).

Bob Miller (Lewis & Clark) submitted the first draft of a new book to his publisher in April. It is tentatively entitled “Reservation ‘Capitalism:’ Economic Development in Indian Country.”

Melissa Tatum (Arizona) has signed a contract with Carolina Academic Press for her textbook *Conflicts of Law: State and Tribal*, with publication expected in late 2010 or early 2011. In addition, she and Irma Russell (Tulsa, about to be Montana) have signed a contract with Carolina Academic Press for their textbook *Law, Culture, and Environment*. The textbook, which explores cultural, religious and environmental issues involved in managing federal public lands, is expected to be published in early 2011.

ARTICLES AND OTHER PUBLICATIONS

Bethany Berger (Connecticut) published *Red: Racism and the American Indian*, 56 UCLA L. Rev. 491 (2009).

Michael Blumm’s (Lewis & Clark) article, *Indian Treaty Fishing Rights and Habitat Protection: The Martinez Decision Supplies a Resounding Judicial Reaffirmation*, will be published in 49 Natural Resources Journal (summer/fall 2009).

Kristen Carpenter (Denver), **Sonia Katyal** (Fordham), and **Angela Riley** (UCLA) have a forthcoming article entitled *In Defense of Property*, 118 Yale Law Journal 1022 (2009).

Kristen Carpenter (Denver) recently published *Interpretive Sovereignty*, 33 American Indian Law Review 111 (2008-2009), as part of the MSU Law and Literature symposium.

Matthew Fletcher (Michigan State) will publish his paper, *Factbound and Splitless: The Certiorari Process as a Barrier to Justice for Indian Tribes*, in the Arizona Law Review. He also published *Red Leaves and the Dirty Ground: The Cannibalism of Law and Economics*, in the American Indian Law Review, and *Addressing the Epidemic of Domestic Violence in Indian Country by Restoring Tribal Sovereignty* as an Issue Brief for the American Constitutional Society.

Patrice Kunesh (South Dakota) published *Tribal Self-Determination in the Age of Scarcity*, 54 S.D. L. Rev. 398 (2009).

Vicki Limas (Tulsa) published entries on *Regulation of Labor and Employment* and *Tribal Employment Rights Ordinances* in *ENCYCLOPEDIA OF UNITED STATES INDIAN POLICY AND LAW* (Paul Finkelman and Tim Alan Garrison, eds., CQ Press (2008)).

Bob Miller (Lewis & Clark) had three articles come out in 2009: *American Indian Entrepreneurs: Unique Challenges, Unlimited Potential*, 40 Ariz. St. L.J. 1297 (2008); *Inter-Tribal and International Treaties for American Indian Economic Development*, 12

Lewis & Clark L. Rev. 1103 (2008); and *An Indigenous Lens into Comparative Law: The Doctrine of Discovery in the United States and New Zealand*, 111 W. Va. L. Rev. – (forthcoming 2009) (co-written with Jacinta Ruru, Otago University).

Judith Royster (Tulsa) published *Practical Sovereignty, Political Sovereignty, and the Indian Tribal Energy Development and Self-Determination Act*, 12 Lewis & Clark Law Review 1065 (2008).

Marren Sanders (Arizona) published *Ecosystem Co-Management Agreements: A Study of Nation Building or a Lesson on Erosion of Tribal Sovereignty?*, 15 Buff. Env'tl. L.J. 97 (2008).

Melissa Tatum's (Arizona) article, *The Day the Universe Changed: Gideon, the Right to Counsel, and Tribal Jurisdiction*, has been accepted for publication in a forthcoming book on the Indian Civil Rights Act; her essay *Vampire Executioners: Trying the System* will be published (likely this fall) in BenBella Books' anthology on the Anita Blake: Vampire Hunter series; and her article *Identity and Authenticity in the Filk Community* has been accepted for publication in the Journal of Transformative Works (a peer reviewed publication).

Rebecca Tsosie (Arizona State) has contributed a paper on “Indigenous Treaty Rights: Sacred Obligations, Intercultural Justice and the Discourse of Treaty Rights,” to a book, *Indigenous Rights*, that was published by Ashgate in April. The book is edited by Anthony J. Connolly, of the Australian National University.

Ann Tweedy's (California Western) article, *Connecting the Dots Between the Constitution, the Marshall Trilogy, and United States v. Lara: Notes Toward a Blueprint for the Next Legislative Restoration of Tribal Sovereignty*, came out this month in 42 U. Mich. J.L. Reform 651 (2009).

Kevin Washburn (Arizona) has an article forthcoming in the American Indian Law Review, entitled *Felix Cohen, Anti-Semitism, and American Indian Law*.

SPEECHES AND PRESENTATIONS

Bethany Berger (Connecticut) delivered the following talks: *Frickeyfest*, Festschrift for Professor Philip Frickey, UC Berkeley School of Law (April 2009); *Tribal Justice: The Supreme Court and the Future of Indian Law*, Harvard Law School (April 2009); and *Indian Nations and Institution Building*, American University-Washington College of Law (February 2009).

N. Bruce Duthu (Dartmouth/Vermont) was a panelist at the Harvard Law School conference, Tribal Justice: The Supreme Court & the Future of Federal Indian Law, April

6. He was also elected by the graduating class of Dartmouth College (2009) to deliver the Faculty Address at the annual Class Day program on June 13.

Angelique EagleWoman (Idaho) organized the Idaho Law 2009 Native American Law conference, “Soothing Waters: Tribal Protection & Stewardship,” offering CLE credits for area practitioners and an overview of water jurisdictional issues, the previous century of the *Winters* doctrine, creative enforcement of tribal environmental actions, and the on-going tribal management of Lake Coeur D’Alene among other topics. In addition, she spoke on the panel, “New Directions for International Law and Indigenous Peoples” at the January 2009 AALS Section on Indian Nations & Indigenous Peoples. Her topic was *The Eagle and the Condor of the Western Hemisphere: Application of International Indigenous Principles to Halt the United States Border Wall*.

Matthew Fletcher (Michigan State) presented a paper at Colorado (*The Ethics of Pushing the Envelope in Indian Law Cases*) and two papers at Michigan: *Addressing the Epidemic of Domestic Violence in Indian Country by Restoring Tribal Sovereignty* and *Origins of the Indian Child Welfare Act: A Survey of the Legislative History*.

Stacy Leeds (Kansas) is completing her term as a non-resident fellow at Harvard’s W.E.B. Du Bois Institute and will give the Inaugural Alphonse Fletcher, Sr. Lecture at the Institute, entitled *Sovereignty and Consequences: Cherokee Legal History and Freedmen Citizenship*, May 11, 2009. The talk is associated with the Fletcher Fellowship, under which she will be completing a book by that same title in the fall. In addition, she has given the following talks: *Supporting Victims from an Indigenous Perspective*, Keynote Plenary Address to the 2008 Office of Victims of Crime National Conference, sponsored by the United States Department of Justice, Palm Springs, CA, December 17, 2008; a guest lecture to Carole Goldberg’s Indian law class at UCLA, *Proposals for Reduction in Fractionation Ownership*, Guest Lecture, University of California-Los Angeles School of Law, March, 19, 2009; and *Tribal Citizenship Determinations: The Cherokee Freedmen Cases in Tribal and Federal Court*, Conference on “Native Americans, Race and the Constitution” hosted by the American Indian Law Program and the Byron R. White Center for the Study of Constitutional Law at the University of Colorado Law School, February 27, 2009.

Bob Miller (Lewis & Clark) spoke at the Pacific Northwest History conference, the 3rd Annual Native American Studies conference in Minneapolis, the Bush Foundation, the Oregon Council on Social Studies conference, the George Wright Society bi-annual conference, in Oklahoma City at a conference on George Washington’s Indian policies put on by the Mount Vernon Association and the Oklahoma History Center, at the World Affairs Council of Oregon on “The Arctic Age” at Portland State University, at Blue Mountain Community College, and at Eastern Oregon University. He also delivered 8 hour training sessions on Indian law and history to several hundred U.S. Fish & Wildlife headquarters staff in Washington D.C. and to staff in San Diego.

Judith Royster (Tulsa) delivered the following presentations: *The Story of Winters*, Indigenous Peoples Law and Policy Colloquium Series, University of Arizona College of Law, Tucson, April 17, 2009; *Tribal Water Rights: Basics*, Oklahoma Water Law CLE, Oklahoma City, March 31, 2009; *The Second Century of Winters*, Keynote address at Soothing Waters: Tribal Protection & Stewardship, University of Idaho College of Law, Moscow ID, March 27, 2009; *The Indian Tribal Energy Development and Self-Determination Act*, 7th Annual Doing Business in Indian Country CLE Seminar, Muscogee (Creek) Nation District Court, Okmulgee OK, March 12, 2009; and *The Story of Winters*, Indian Law Stories Conference, UCLA School of Law, Los Angeles, March 6, 2009.

Judith Royster, Bill Rice, and Vicki Limas (all Tulsa) hosted a conference on Exhibiting Culture: Museums and Indians on May 15. Held at the Gilcrease Museum in Tulsa, panelists included Rebecca Tsosie (Arizona State), Kristen Carpenter (Denver), Angela Riley (Southwestern), Allison Dussias (New England), and Alex Tallchief Skibine (Utah). Other panelists included Dr. Duane King (Gilcrease Museum), Karen Kramer Russell (Peabody Essex Museum), Dr. Marilyn Phelan (Texas Tech), and Dr. Garrick Bailey (Tulsa anthropology). The luncheon speaker was Rennard Strickland (Oklahoma), and the evening keynote address was delivered by Kevin Gover (National Museum of the American Indian, formerly of Arizona State).

Marren Sanders (Arizona) served as a panelist on the *Rights of Indigenous Peoples* at the SE/SW People of Color Legal Scholarship Conference sponsored by Phoenix School of Law, March 2009.

Melissa Tatum (Arizona) helped organize a conference held at the University of Arizona in February. The conference, co-sponsored by the Indigenous Peoples Law and Policy Program, the Native Nations Institute and the Harvard Project on American Indian Economic Development, kicked off a new joint project to prepare guidebooks for tribal leaders on the legal, economic, and policy aspects of Native Nation Building. She also spoke at the University of Wisconsin's 23rd Annual Coming Together of Peoples Conference, co-presenting a work-in-progress on *Inter-tribal Disputes: Who Has Jurisdiction* (with Skip Durocher); at American University's Sixth Conference on IP/Gender: Mapping the Connections, presenting a paper entitled *Does Gender Influence Attitudes Toward Copyright in the Filk Community?* (co-authored with Dr. Robert Spoo (Tulsa) and Benjamin Pope (graduate student in statistics at Arizona)); she also presented the same paper at the 43rd Annual Baltimore Science Fiction Convention.

Rebecca Tsosie (Arizona State) participated in a panel on Museums and Indians at the May 15th symposium on "Exhibiting Culture: Museums and Indians," organized by the Native American Law Center at the University of Tulsa College of Law; discussed "Indigenous Women and International Human Rights Law: Challenges of Colonialism, Cultural Survival and Self-Determination" at a conference on "Indigenous Women's Rights: Conflicts and Challenges for Today's Indigenous Women," put on by the *Asian-Pacific Law & Policy Journal* and Ka Huli Ao Center for Excellence in Native Hawaiian

Law at the University of Hawaii on March 12; spoke on “Transitions: Building Stronger Tribal Governance,” at the Second Annual Tribal Leaders Conference, Feb. 23-24 at Isleta Pueblo; spoke on “Judicial Reasoning in Cases of Cultural Conflict” at the University of Nebraska College of Law on Feb. 27 as part of the Indian Legal Education Initiative; and spoke about energy development and its effects on Native Americans during a Feb. 6 symposium, “Sustainability: Moving from Theory to Practical Application,” sponsored by the University of Houston’s Law Center and the *Environmental & Energy Law & Policy Journal*.

UNIQUE COURSES

Deb Donahue (Wyoming) taught Federal Indian Law to undergraduates at the University of Wyoming during the semester just ended. Students from several departments and majors enrolled in the course, which was a first for both the university and for Prof. Donahue.

Marren Sanders (Arizona) taught *Who Owns Native Culture?* based on the book by Michael F. Brown during the Spring 2009 semester.

Melissa Tatum (Arizona) will teach a new course, *Conflicts of Law: State and Tribal*, this Fall.

UNIQUE LITIGATION

Matthew Fletcher and Kathryn Fort (both Michigan State) helped to draft an Amicus Brief for the Michigan State Bar’s American Indian Law Section in an Indian Child Welfare Act case captioned *In re Lee* before the Michigan Supreme Court.

LEGISLATIVE AND REGULATORY ACTIVITIES

Patty Ferguson Bohnee (Arizona State) testified before the Congressional Subcommittee on Elections, on March 26, 2009, at the hearing on “The 2008 Election: A look back on what went right and wrong.” Her testimony was regarding the Native Vote Election Protection efforts.

Melissa Tatum (Arizona) is wrapping up a two year consulting project for the New Mexico Attorney General’s Office Task Force on Enhancing Enforcement of Protection Orders. She was part of the team that authored a Best Practices Guide for issuing and enforcing protection orders in New Mexico and created training materials for judges, prosecutors, attorneys, victim services and law enforcement based on the best practices

guide. The final stage of the project is co-teaching training sessions around the state of New Mexico.

PERSONAL NOTES

Carl Artman (Arizona State) will join the Sandra Day O'Connor College of Law as a Distinguished Professor of Practice and will lead the Indian Legal Program's new initiative on Economic Development in Indian Country.

Patty Ferguson Bohnee (Arizona State), Director of the ASU Indian Legal Clinic, received the 2009 President's Medal for Social Embeddedness for the Arizona Native Vote – Election Protection Project.

Kristen Carpenter (Denver) will join the University of Colorado School of Law faculty on June 1, 2009. In addition, she and her husband recently welcomed baby Jasmine to their family, and big brother Cedar will turn 3 in May.

Robert N. Clinton (Arizona State) testified as a defense witness for the University of Colorado on March 20, at a civil trial in Denver about the discharge of Ward Churchill, a former professor of ethnic studies. Clinton served as a member of a Special Investigatory Committee that looked into allegations of research misconduct involving Churchill.

N. Bruce Duthu (Dartmouth/Vermont) will become Chair of Native American Studies at Dartmouth College, effective July 1. His new contact information is N. Bruce Duthu, Professor of Native American Studies, 37 North Main Street Sherman House, Dartmouth College, Hanover, NH 03755; 603-646-9028; bruce.duthu@dartmouth.edu.

Matthew Fletcher (Michigan State) has been appointed by the Poarch Band of Creek Indians to serve as Chief Judge of the Band's Supreme Court.

Patrice Kunesh (South Dakota) will be on a leave of absence from USD Law during 2009-2010 to pursue an MPA at Harvard University's Kennedy School of Government on a Bush Foundation Leadership Fellowship.

Stacy Leeds (Kansas) joined the Executive Board of the National American Indian Court Judges Association. And she'll be directing KU's study abroad in Limerick, Ireland in July.

Vicki Limas (Tulsa) is stepping down after ten years as Associate Dean for Students to rejoin the faculty full time. She will be adding a course in Tribal Economic Development to the TU curriculum.

Bob Miller (Lewis & Clark) scored his 100th goal for his men's indoor soccer team.

Nell Jessup Newton (Hastings) has been appointed Dean of the University of Notre Dame Law School.

Judith Royster (Tulsa) was named the Chapman Chair in Law at the University of Tulsa.

Wenona Singel and Matthew Fletcher (both Michigan State) wish to introduce Emmett W. Singel-Fletcher, born April 24, 2009.

Melissa Tatum (Arizona) was the honoree at the University of Tulsa NALSA's 4th Annual Native Justice Powwow, May 16, 2009.

Rebecca Tsosie (Arizona State) was voted the Outstanding Teacher by the Class of 2009 at the Sandra Day O'Connor College of Law. She has been named Reporter for the Uniform Law Commission Study Committee on Model Tribal Legislation on Collateralization of Interest in Real Property. In addition, she has been appointed to a three-year term on the Association of American Law Schools' Committee on Recruitment and Retention of Minority Law Teachers and Students.

Kevin Washburn (Arizona) is joining the University of New Mexico law faculty on July 1, as its dean.

OTHER ITEMS OF INTEREST

On the June 16-17, 2009 the **Indian Legal Program** (Arizona State) is partnering with the State Bar of Arizona to host a summer law camp for underrepresented groups in the legal profession. The program is for seniors in high school and early college age students. For more information contact Kate Rosier at (480) 965-6204.

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