

# DIGITAL ACTIVISM – TURTLE TALK

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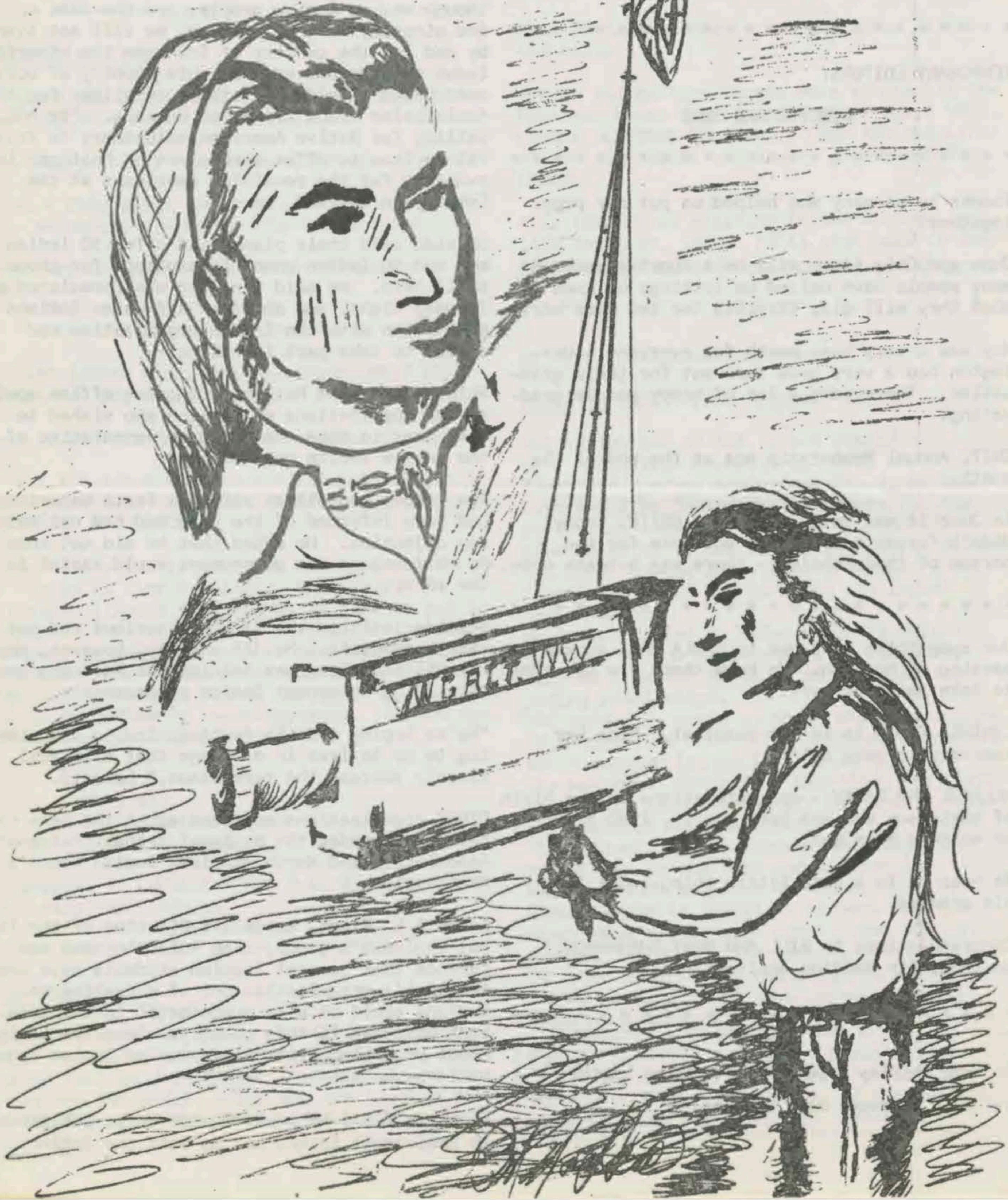
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# TURTLE TALK

JUNE - JULY 1980



\*\*\*\*\* INDIANS OFFER TO BE HOSTAGES IN TEHRAN

TURTLE TALK

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JUNE/JULY 1980

"The representatives, in a news conference at the National Congress of American Indian here, said Iran first made race an issue when it freed black hostages and said it was doing so because blacks have been oppressed in this country." Although we, as Indian people, are the most oppres-

# A Day in the Life of a Tribal Prosecutor

By Tamera Begay<sup>1</sup>



Tamera Begay is Navajo from Crownpoint, New Mexico. She is currently an Assistant Prosecutor for the Puyallup Tribe of Indians. Prior to that position, she was an Attorney-Prosecutor for the Navajo Nation and a Legislative and Government Affairs Associate for the Navajo Nation Washington Office in Washington, D.C.

It's a Tuesday evening, and I lock the door to the prosecutors' office after my staff has left for the day. I just wrapped up a day in court with pre-trial conferences and bail hearings. Much like my federal and state counterparts, my entire day was spent in the balancing act between negotiating with defendants, ensuring justice and safety for victims in my community, and being mindful of the need to preserve judicial resources. When I look out my office window at the end of a long day, instead of skyscrapers and taxis, I see a pack of horses nibbling on the vegetation that grows near the courthouse. This is a routine sight for me now—I moved back to Crownpoint, New Mexico, my hometown, to serve as a tribal prosecutor for the Navajo Nation.

A full day in court has left me mentally exhausted, but the day is not over yet. The Navajo Nation has a three-year statute of limitations on criminal matters,<sup>2</sup> and I need to continue working to address the backlog of police reports. For a time, the Crownpoint office did not have a prosecutor—the remote location makes it hard to fill these positions, and hard to find suitable housing and resources once the position is filled. The backlog of police reports I inherited means my criminal docket has the potential to climb to 800 cases.

The first police report I read is a domestic violence case—a strangulation—which triggers 18 U.S.C. § 1153(a) and § 113(a)(8), the federal statutes governing this crime when it takes place in Indian country. This report was submitted a year-and-a-half ago, but I don't have any records of the FBI stepping in to investigate the case. Before I can determine if I can file charges for this case, the technicalities of criminal law in Indian country cross with the work of a prosecutor and require me to ask a number of pred-

introduce myself and ask for the victim. The woman responds in Navajo, and then says I don't speak English very well. Here is an unexpected—if not uncommon—hurdle in my work: The victim needs a translator. Although I am Navajo, I am not fluent enough in my language to serve as a translator. I do my best to respond and tell the woman I will call back tomorrow. One of my legal secretaries has worked for this office for over 30 years, and in addition to carrying a wealth of institutional knowledge, can serve as an initial translator for the case.

I pull the next report and recognize the alleged perpetrator's name—he's been convicted multiple times for domestic assault in tribal court. Seeing no glaring evidence issues, I do some research, including on the Indian law resource blog "TurtleTalk," for recent cases and scholarly articles about *United States v. Bryant*. *Bryant* held that uncounseled tribal court convictions which complied with the requirements of the Indian Civil Rights Act (ICRA), could be used as predicate offenses for federal prosecution under 18 U.S.C. § 117(a).<sup>4</sup>

However, I have not yet been successful in getting the U.S. attorney general's office to take a *Bryant* case referral from my office. There has been a lot of criticism on the *Bryant* decision: A lack of common understanding of the protections of the ICRA has led to advocates concerned that Indian defendants' basic rights would be ignored.<sup>5</sup>

I am acutely familiar with the pro se defendants common in tribal courts—I negotiated with seven of them today. As a tribal prosecutor who is also a member of my community, I don't take my duties lightly; it is not only my job to ensure justice for victims, it is also my responsibility to ensure that it is done while

FEDERAL LAWYER,  
2022

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# The Turtle Talks

Indian law expert and Turtle Talk blogger Matthew Fletcher gives ICTMN the backstory on his tribal law tome

BY GALE COUREY TOENSING

**T**he first legal casebook dedicated entirely to tribal law is the fruit of seven years of work by Dr. Matthew L.M. Fletcher, an associate professor of law and director of the Indigenous Law and Policy Center at Michigan State University College of Law. *American Indian Tribal Law*, recently published by Aspen, is an 864-page volume that traces the development of tribal justice systems from the pre-contact era, through colonization, and into the modern age of self-government. It describes modern tribal government activities, explores how American Indian nations resolve disputes, and surveys more than 300 tribal courts nationwide. The book examines flashpoints in tribal law, including the Cherokee Freedmen citizenship disputes, same-sex marriage in Indian country and constitutional crises in tribal governments. Fletcher, who is also the keeper of Turtle Talk, the ultimate go-to website for legal documents involving Indian law, spoke about *American Indian Tribal Law* with Indian Country Today Media Network.

**ICTMN: Why did you decide to undertake such a huge project, and how did you go about it?**

**Matthew Fletcher:** Before I started teaching in 2004 it was difficult to find Indian law to begin with and difficult to have the big pictures about what tribes were doing. Once I became a professor in 2004 I started collecting and organizing materials, and I created a couple of filing cabinets full of cases, constitutions, law reviews, articles and commentaries on tribal law. I started going to old stinky bookstores and finding really old anthropological materials, which I look at with a grain of

salt because anthropologists weren't the greatest scholars around. I couldn't really spend a lot of time on it until after I got tenure because I needed to write and publish a lot of stuff. Then once I had all the material selected it sort of wrote itself, which was nice.

**In the chapter on constitutions, you note that the Interior secretary has to approve tribal constitutions. Isn't there a contradiction in having the secretary approve the constitutions of sovereign nations?**



Author and attorney Matthew Fletcher

It's absolutely a contradiction! There's a federal statute that comes from the 1934 Indian Reorganization Act that says a tribe's first constitution must be approved by the Interior secretary. Typically the first constitution will have a provision that says the tribe can come back to the secretary and amend its constitution, so what tribes do is they have a secretarial election and go through the whole rigmarole to remove just one provision from their constitution that says the amendment must be approved by the secretary. Once they do that, they have their own

process, and the tribal constitution becomes more indigenous, more Indian.

**What kind of impact will the Tribal Law and Order Act have on tribal judicial systems?**

I think you'll see tribes that want to expand their ability to prosecute and sentence people looking more like federal courts because there will be more federal court review of their convictions. It's a good thing in terms of tribes' trying to take a bit more control over their reservations, especially in the context of how much crime is going on there and the whole appalling issue of violent crimes against women. This is a very small first step toward an ultimate solution which would be the tribes' having total jurisdiction over such crimes.

**What do you see happening in the future in terms of how tribal government reform will be accomplished?**

The issues are, well, just everything. I have another book coming out in a month or so (*Cases and Materials in Federal Indian Law*, sixth edition, by David H. Getches, Charles F. Wilkinson, Robert A. Williams and Matthew Fletcher, published by West) that focuses on nation building. So much federal Indian law over the past 50 years delineates the contours of what tribes can and cannot do, and to some extent people forget that now that tribes have the ability to do things, they actually have to do those things. So as tribes begin to develop their nations and ability to govern, I think the *American Indian Tribal Law* book is important so that people can find out what other tribes are doing and get a sense of what the trends are in terms of constitutional civil rights, constitutional structure and administrative procedures, which is absolutely critical. ☪

**DIRECT IMPACT**

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHINOOK INDIAN NATION, et al.,

Plaintiffs,

v.

RYAN K. ZINKE, et al.,

Defendants.

CASE NO. C17-5668 RBL

ORDER ON MOTION TO  
INTERVENE

recognition.” *Id.* In support of this contention, the Siletz Tribe includes a screenshot from an August 28, 2017 website<sup>3</sup> post that tracks developments in Indian law cases around the country:

**Turtle Talk**

*Indigenous Law and Policy Center Blog*  
Michigan State University College of  
Law

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**Chinook Indian Nation Sues for Federal Recognition**

Posted on August 28, 2017 by Matthew L.M. Fletcher

Here is the complaint in Chinook Indian Nation v. Zinke (W.D. Wash.):

[1. Complaint](#)

Dkt. 74-8 at 2. Immediately below the caption is a link to CIN’s Complaint in its entirety. *Id.*

Had the Siletz Tribe or its attorney made the effort to read beyond the first line and actually click the link to read Plaintiffs’ Complaint, they would have plainly seen CIN’s three claims related to the ICC judgment. Far from bolstering its lack of notice argument, the Siletz Tribe’s exhibit is

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<sup>2</sup> The Siletz Tribe concedes that Plaintiff Anthony Johnson met with and discussed the lawsuit with the Tribe’s leadership in March 2018. Dkt. 73 at 10. The Tribe’s contention that information

# TurtleTalk

A Monthly Publication by the Grand Rapids Inter-Tribal Council

Easter  
Greetings

March 1991



## Simon Otto's StoryTelling Captures Audience



A reception for Simon Otto and Kayle Crampton was held by The Michigan Indian Press on January 25, 1991. More than 50 distinguished people attended to meet both the author and the illustrator of *Walk In Peace*.

For close to an hour, Simon captivated the audience as he summarized how his book, *Walk In Peace*, came into being. Simon was an avid listener as a child and was also taught to listen without interruption. He remembered the countless stories told in his household by various family members and friends who visited. So as the years passed and as he grew into adulthood, all these stories and legends were stored away in his head. Later with the encouragement of his wife, Mary, he began sharing these stories to the public. Over the years, he has written numerous stories while employed at separate times for Mount Pleasant and Traverse City newspapers.

It is not without much thought that the title *Walk In Peace* evolved. Earlier in his years, he encountered and befriended in Utah and Apache medicine man while attending school there. The Apache medicine man being from the south was totally unaccustomed to this new environment so Simon, being well acclimated to the cold weather, suggested he'd buy a warm coat. Subsequently, the Apache bought a jacket, but the jacket's hood lining was composed of wolf's hide. The Apache expressed being very uncomfortable having this wolf's hide as a part of this jacket. Simon recommended they take this hide and give it a proper burial. Soon after, both Simon and the Apache hiked up into the mountains and gave the wolf hide a decent burial and this gave the Apache peace. Eventually it came time for the two good friends to part. It was at this time the Apache bid Simon "Walk In Peace". And it was in memory of this warm relationship between the two men that the title of his book, *Walk In Peace*, was conceived.

Other stories were told by Simon. The goal in telling his stories, as Simon stressed, is to inform and educate. His main purpose behind these writings is to inform and educate - not only the general public but more importantly his own people who have veered away from Indian culture and heritage.

Simon is expected back down in southern Michigan (Lansing) in May - once the snow has cleared. For those of you who missed him in January, take the time to see Simon at Schulers Bookstore.

Indian Prayer for Peace  
  
Oh Great Spirit...  
Lead us to the path of peace  
and understanding.  
Our lives are so short here...  
Let our eyes be opened  
to all of the blessings  
you have given us  
Please hear our prayers.  
Oh Great Spirit.