



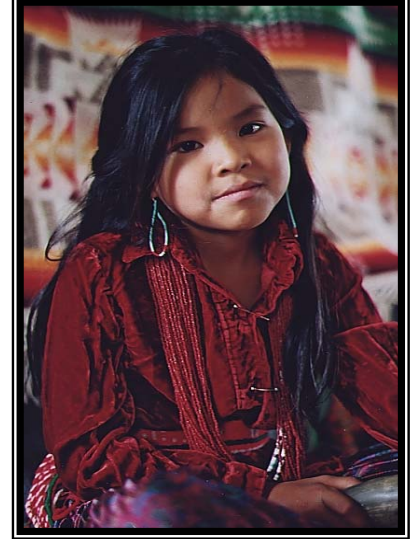
Clinic Hosts First Colorado Indian Law Day

Despite a city-wide electricity outage, the student attorneys of the University of Colorado School of Law's Indian Law Clinic persevered to successfully host the first ever **Colorado Indian Law Day** on November 23, 2002 at the Denver Indian Center. Funded in part by a grant from the Colorado Bar Foundation, a series of community education workshops centering on the theme, "*Legal Issues Affecting Native American Children*" were offered.

ILC Director Jill Tompkins welcomed the attendees, "A few years ago then First Lady, and now Senator, Hillary Rodham Clinton authored a book entitled 'It Takes A Village.' What not every Ameri-

can knows is that she borrowed the phrase 'It Takes A Whole Village to Raise A Child' from the Omaha people. Even though metro Denver is certainly much larger than a village, we do know that the Native American community of this region does come together to help each other in times of need and looks out for each other—much like we would if we were in a village or on our own reservations back home. Today, we are coming together as a village concerned about the welfare and future of our Native American children here in Colorado. The Lakota people also have a saying,

See **Community Law Day** page 9.




"*Legal Issues Affecting Native American Children*" was the theme of the first Colorado Indian Community Law Day.

Wilson Kinship Adoption Granted



Desiree Dawn Wilson (middle) with her grandparents Theodore "Ted" Wilson (left) and Norma Charger Wilson (right) who adopted her as their daughter with the assistance of the Indian Law Clinic.

Thanks to the creation of Colorado's simplified kinship adoption statute, long-time clients of the Indian Law Clinic, Theodore (Ted) and Norma Wilson were successful in petitioning the Adams County District Court to adopt their granddaughter, Desiree Dawn (nee Badten) Wilson. Desiree, 14, has been cared for by her grandparents since she was an infant. The adoption decree, entered by the Court on October 25, 2002 with the consent of both of Desiree's biological parents, will allow Desiree to access Veteran's Administration benefits through her grandfather. Desiree and her grandmother are enrolled members of the Cheyenne River Sioux Tribe and Ted, is a member of the Sisseton-Wahpeton Tribe. The adoption took a circuitous route through the District Court and Cheyenne River Sioux Tribal Court-delayed by the initial contested nature of the proceeding and questions of jurisdiction over the adoption of an Indian child under the Indian Child Welfare Act. A number of ILC student attorneys worked on the adoption with the final successful petition being drafted by Chris King ('02) and the hearing was handled by Pamela Emsden ('03). Desiree and the Wilsons plan to continue to maintain a close relationship with Desiree's birth parents. 



Greetings from the Director



Left: ILC Director Jill Tompkins and Jim Barnes, Administrative Assistant


“The need is so great, yet we are so few,” is the thought that keeps running through my mind as we receive a stream of steady phone calls and e-mails from Native American people in critical need of legal assistance. Our first **Colorado Indian Community Law Day: Legal Issues Affecting Native American Children** was an effort to deliver important legal information to a wide audience at one time. We were so fortunate to have had the support of the Denver Indian Center and the Colorado Bar Foundation in conducting this historic outreach event. Deep appreciation also goes to the Indian Law Clinic Advisory Committee for their guidance and to all our partnering organizations who participated as presenters and in the Service Providers Fair.

Due to the flood of calls we have received since the Community Law Day, the student attorneys are learning the art of distinguishing between a situation involving “an Indian person with a legal problem” and “a person with an Indian law problem.” With only five student attorneys in the Clinic this semester, we must limit our caseload to those situations involving issues of federal or tribal Indian law or legal support for tribes. Our Resource Directory containing information on other legal and community agencies from across the United States continues to grow however. No person is ever turned away empty-handed. If the request does not contain an Indian law component, the Clinic is able to refer the individual to another source of assistance.

By networking with a variety of organizations like the Denver Indian Center, the Denver Indian Family Resource Center, Colorado Legal Services and North American Indian Legal Services, we are becoming an essential resource for Native American tribes and tribal members in Colorado state court cases involving the Indian Child Welfare Act (“ICWA”). This semester students are working on a range of ICWA issues—from representing tribal member grandparents who are seeking custody of their grandchildren where their own children’s parental rights are about to be terminated, to assisting persons needing to open sealed state court adoption records in order that they might apply for tribal enrollment. These are often very difficult cases and the students’ eyes are being opened to the powerful force that the law and the government can have on the lives of Native American families.

On April 11, 2003, we will continue our community outreach and education efforts by hosting the first **Colorado Tribal-State Judicial Seminar: Improving Implementation of Federal Full Faith & Credit Provisions** at the Southern Ute Tribal Court in Ignacio, Colorado. Each of the student attorneys is preparing written materials and an oral presentation for the audience of judges from the Southern Ute, Ute Mountain Ute, La Plata County and Montezuma County courts on the federal mandates requiring recognition and enforcement of tribal and state court orders in the areas of: child custody under the ICWA, child support and protection orders. The seminar is sponsored in part by the Southern Ute Tribe and a grant from the Colorado Bar Foundation.

With each semester, the American Indian Law Clinic seminar course continues to develop to provide the best possible learning experience for the Clinic students, providing them with the legal background, ethical guidance and practical information to enable them to handle their cases with competence and cultural sensitivity. We are grateful to our guest lecturers who have brought their experience into the classroom for us and given so generously of their time and wisdom: **Jonny Bearcub Stiffarm, Phyllis Bigpond, Robert “Bob” Gough, John Echohawk, Don Wharton, Karen Wilde-Rogers and Dr. Deward Walker.** We are looking forward to hearing from Judge Mary Wynne, Legal Counsel for the Yankton Sioux Tribe in class on April 23, 2003 on the Tribe’s legal battle to compel the Army Corps of Engineers to respect tribal burial grounds and the remains of their ancestors. Thank you so much to **Elizabeth Rohrbough** and **Elisabeth Arenales** for their generous financial donations to the Indian Law Clinic. Your support of the Clinic’s work is gratifying and encouraging.

As always, I want to hear from our community. If you have any questions or comments about the Indian Law Clinic, please do not hesitate to get in touch with me. Happy Spring! 



One of my clients at the Indian Law Clinic was adopted twenty-two years ago by a non-Native family in Boulder County. He believes that his birth parents are Native American and he would like to access his adoption records in order to find out.

Twenty-four years ago, the Indian Child Welfare Act (ICWA) was passed based on the premise that the best interests of Indian children are served when they have access to their native identity and culture. In part, ICWA was enacted in response to the alarming number of Indian children who were removed from their Indian homes and placed into foster or adoptive homes. Studies show that between 1969 and 1974, approximately 25-35 percent of *all* Indian children were removed from their Indian families, and 85 percent or more of those children were placed in non-Indian homes. It is now clear that the separation of Indian children from their Indian families and heritage was due in large part, to a misperception of Indian culture. Social workers were quick to find neglect or

abandonment when a child was looked after by extended family. They did so by imposing their white middle-class values of child rearing, wholly unaware that in Indian culture extended family is indistinguishable from immediate family and responsible for helping raise the children.

Like my client, many of these Indian children adopted out to non-Native families have now reached adulthood and would like to learn about their native culture and establish membership in their tribe as enrolled members of an Indian tribe are entitled to various educational scholarships, medical care, and financial benefits arising out of federal treaty provisions and statutory laws. However, enrollment can only be established by tracing parental ancestry requiring documented proof of birth parents. Because adoption records are generally sealed to protect the privacy of birth parents, the quarter to a third of Indian children adopted out to non-Native families three decades ago have difficulty accessing their native heritage and establishing membership with their tribe.

The clear directive of ICWA is in sharp contrast to Colorado state law governing adoption record access

In recognition of this problem, ICWA includes a provision which states in part that the court that entered the adoptee's final adoption decree "shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may


be necessary to protect any rights flowing from the tribal relationship."

This clear directive of ICWA is in sharp contrast to Colorado state law governing adoption record access. Colorado law maintains that adoption records are confidential and shall only be opened by the court for "good cause shown." There is an additional requirement for all adoptions finalized prior to September 1, 1999. Those adoption records are accessible only through the appointment of "a confidential intermediary" who must first obtain consent to open the records from the parties including the birth parents.

So while the federal law under ICWA requires that the court simply release adoption records to an

individual who believes he or she is eligible for enrollment in an Indian tribe, Colorado law is much more rigorous requiring the appointment of the intermediary which may take a great deal of time and where consent may never be obtained if the birth parents refuse or are never tracked down. The Colorado courts have not ruled on this discrepancy between state and federal law.

The Clinic has just filed a petition to open my client's adoption records in Boulder District Court. We have asked the Court to order that his adoption records be opened under ICWA as federal law preempts state law where federal and state law conflict or where Congress has expressed clear intent to preempt state law under the Supremacy Clause of the United States Constitution. Alternatively, we have asked the Court to order the adoption records be opened directly to our client under state law as the mandate contained in the ICWA constitutes good cause and that it is in his best interest to open his adoption records in order to establish his eligibility for enrollment in an Indian tribe.

I am eagerly awaiting the Court's order. Either way, I hope that the Court recognizes the important objectives of ICWA in ensuring that Indian children have access to their heritage and order that the records be released directly to my client in order to facilitate these objectives. 



Standing Rock Sioux Explore Alternative Dispute Forums

— By Pamela Emsden, 3L (Fall 2002 Indian Law Clinic Award Recipient)

In the year 2001, the Standing Rock Sioux Tribal Court received over 300 civil filings for temporary restraining orders (“TROs”). With over 4000 annual criminal and civil claims annually, these TRO filings consume a significant part of the docket of the two tribal judges. To help the Court alleviate its docket, Chief Judge Miner is hoping to create, with the assistance of the Indian Law Clinic at the University of Colorado Law School, an alternative dispute forum to specifically address some of the TRO filings.

Alternative Forums

There are several types of alternative dispute forums, which can take a dispute out of a conventional court system, and many of these methods are gaining popularity. Some of the more common types of alternative forums include mediation and arbitration. Mediation typically involves a neutral third party who assists the parties in reaching their own agreement as to how best to resolve their dispute. Unlike a judge, the mediator does not have any power to impose a settlement, but rather the parties voluntarily enter into an agreement. Arbitration is a procedure in which the parties agree to submit their dispute to an arbitrator, or to a tribunal of several arbitrators, who then makes a decision that is binding on the parties. Arbitration is perhaps more like a traditional court system but it avoids many of the costs and time delays involved with courts and attorneys. Neither mediation or arbitration require an attorney.

Native American Forums

Native Americans have historically had

their own traditional method for resolving disputes, namely peacemaking. When used, current day peacemaking differs amongst tribal groups, but generally involves well-respected elders who are known for their listening and advice-giving skills and who guide the parties to a resolution. Depending on the tribal code, peacemakers may have the authority to require one party in the dispute to apologize to the other or make restitution to the other party or may simply act as a facilitator to help the parties come to a mutual agreement. Because disputing tribal members may know each other and live near each other or share common friends and families, the emphasis in peacemaking is to restore relationships.

the Creation of the Elders Council, the Powers and Duties of the Council, the Peacemaking Process, Appeals, and the Tribal Court’s role.

Once established, one of the most important responsibilities of the Elders Council will be to educate the parties about traditions and values and how to resolve the dispute in a way that reflects the Tribe’s traditions. Although more research into the traditional practices of the Standing Rock Sioux needs to be done, the Indian Law Clinic has created an initial framework for the creation of the Elders Council and how the Council will work within the established tribal court system.

Roadmap to Peace

Here is a brief roadmap as to how a TRO filed in the Standing Rock Sioux Tribal Court might work. Once a clear standard has been set as to what constitutes “abuse” or “harassment” in order to issue a TRO, a party seeking the TRO will file a petition with the Tribal Court. Whether the Court determines that there is an immediate need to issue a TRO (because of irreparable harm) or whether a hearing should be set for a future date, the parties will be referred to the Elders Council for peacemaking. The Elders Council will meet (which might be one or three Elders depending on the circumstances) and work with the parties to help them enter into an agreement. The parties must participate in good faith and the Council may request that their extended families participate as well. Once

See **Standing Rock** page 10.



Elders Council

At Standing Rock Sioux, Chief Judge Miner liked the idea of establishing a peacemaking Elders Council to hear the disputes involved in a TRO filing. The framework the Indian Law Clinic has created to establish the Elders Council will hopefully be enacted as a tribal code by the Standing Rock Sioux in the near future. To date, the draft of the code has several sections, including a Declaration of Policy, Definitions,



Holmes and Gibson Receive Indian Law Clinic Award

Each semester the Indian Law Clinic Award is bestowed on “students who excel in client service and classroom participation, and therefore embody the Clinic’s goals of providing the highest quality representation in a rigorous educational environment.” Due to the year-long closure of the Indian Law Clinic, the student attorneys selected two co-winners of the 2001-2002 ILC award from the Spring 2002 class. All eight student attorneys worked very hard during the semester so the choice was a difficult one. Nominated by their peers, third-year students Karen Holmes and Alicia Gibson were selected to receive the award.

“Karen is 100% dedicated to her clients. She is conscientious and caring in regard to her cases. Karen is also a wonderful co-worker. She has enthusiasm and keeps projects on tasks. I am constantly amazed by how Karen juggles her tasks and completes them so well,” offered a fellow student attorney who nominated Karen for the award. Another student stated, “I believe that Alicia deserves this award because she has been very dedicated to her clients as well as the welfare of those we are all working for. She takes time to listen to all of us talk about our cases and gives advice and direction. She makes the Clinic a true experience by her willingness to voice her opinions and speak freely about difficult issues.”

The *Tatanka Times* recently caught up with Karen and Alicia and ask them the following questions:

Q. Why did you go to Law School?

Karen: I believed through a legal education I could help others and protect the earth. I wanted to find the balance between humans and our environment.

Alicia: Maybe I watched one too many L.A. Law episodes, but from a very young age I wanted to be an attorney. It seemed as though lawyers had the power to make people listen to people who were ignored, falsely accused, or who had been hurt by some aspect of society.

Q. What do you plan to do now?

Karen: I am currently working for a small firm that does water law. I want to learn all I can about actually practicing Western Water law, as opposed to studying it, as I



Left: 2001-2002 Indian Law Clinic Award Co-Winners Alicia Gibson ('02) and Karen Holmes ('02).

can in my first years out. I also want to find time to assist those who need legal representation but cannot afford it.

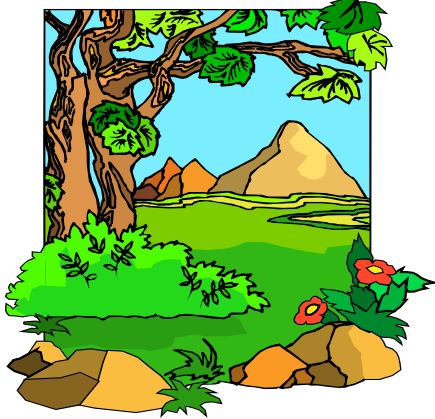
Alicia: I am not entirely certain that I will practice as an attorney. Currently, I am awaiting admission to a comparative literature doctorate program. I envision my dissertation in this field as combining social and cultural theory with critical legal theory, and maybe someday I will be a professor of literature or perhaps the law. If I don't go back to school, I will most likely look for a profession in a non-profit organization either domestically or abroad.

Q. What was it like working in the clinic?

Karen: It was busy! It was a balancing act between serving real clients, learning more about how to manage cases and staying on top of your other law school courses.

Alicia: Working in the clinic was challenging and frustrating, but productive and enlightening as well. It was interesting to get a feel for how a small firm would work, and it felt good to be actually *doing* something, rather than talking about it. Learning all the details and getting a handle on all the necessary organization and paperwork was a large part of the frustration, but also the most realistic aspect of the Clinic.

See **Award Winners** page 10.



Clinic Assists Pokagon Band Realize Land Use Vision

— By Jessica M. Johnson, 3L

*“We know that the land is everlasting, and the few goods
we receive for it are soon worn out and gone.”*

— **Canassatego**

Land and natural resources have always and continue to play a central role in the life of Native Americans. It is critical to their spiritual and cultural life and can be the key to economic development. These are just some of the goals that the Pokagon Band of Potawatomi Indians have for their land. After sixty years of effort, the Pokagon Band was federally recognized as a restored band in 1994. They have possessed their ancestral lands in Michigan and Northern Indiana for over five hundred years. The Pokagon Band resisted relocation and, for a time, the Band was the only group of Potawatomi Indians that remained in Michigan. Although their lands have been greatly diminished, the Pokagon possess a land base of beautiful, lush forests and rich agricultural lands. These are the resources that the Band sought to preserve and develop when they contacted the Clinic for assistance with the development of a land use and conservation code.

Since their federal recognition, the Band has fortified their tribal infrastructure and has drafted a tribal constitution. They have also entered into a gaming agreement with the state of Michigan. The tribe is actively seeking to develop and acquire land. But, this process has been made more difficult because the Band does not have a land use plan or land use code to guide development.

My task this semester was to help the Band draft a land use and conservation code. I traveled to southern Michigan in September to meet with members of the Band and get the project underway. The staff of the Band were gracious hosts and we toured many of their lands, and I sampled some of their apples. I also was given a brief introduction to the Pokagon Band and learned their vision for their land use and conservation code. They desired a code that promoted both economic and governmental development, built their community, and created a sense of cultural cohesion. The Band is small, with less than 3000 members, and they needed a code that would promote development in this small community.

This vision and the insights I gained in Michigan guided the project when I returned to Colorado. I learned more than I ever thought I would while drafting the code. I had a crash course in land use planning law and in land use planning on tribal lands. Using my newfound knowledge, I tried to draft a code that would meet the various needs of the Pokagon Band. I included public meetings in the draft code to facilitate community involvement and the Planning Commission members come from various constituencies of the tribe. I tried to integrate what I learned in Michigan about the tribe and their goals with accepted land use planning procedures.

I greatly enjoyed this project this semester and I learned a tremendous amount about the Pokagon Band and about land use law. The Clinic afforded me a great learning opportunity this semester. My skills as an almost lawyer and my understanding of how the law can work for communities were greatly improved. I feel very privileged to have had this opportunity to create law for a tribal community. This story is not finished yet. Hopefully, I will continue to work with the Pokagon Band next semester and will help them to revise and pass their land use and conservation code.





Cultural Resources Protection Codes: Exercising and Expanding Tribal Sovereignty

—By Monte Mills, 3L

This semester, the Indian Law Clinic assisted many tribes on various tribal code drafting projects. These projects ranged from giving a tribe advice on how to formulate a domestic violence code to working with and revising draft codes that were already on the road to approval and implementation. Of these code projects, the Clinic's work with the Yankton Sioux Tribe of South Dakota in developing a code to protect their threatened cultural resources showed the critical support that these types of codes give to tribes in the exercise of their sovereignty.

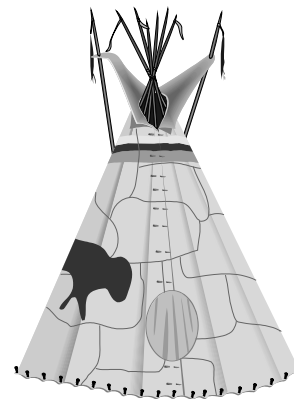
Like tribes throughout Indian Country, the lands of the Yankton Sioux Tribe are full of culturally and historically important resources. Recently, the U.S. Army Corp of Engineers uncovered some of these resources, including some skeletal materials, while expanding a campground near the banks of the Missouri River. This discovery has resulted in litigation as the Tribe seeks to protect its cultural heritage under the Native American Graves Protection and Repatriation Act

("NAGPRA"). Although NAGPRA and other federal laws such as the Antiquities Act and the National Historic Preservation Act ("NHPA") provide a legal framework for protection at the federal level, tribes are now seeking to utilize their sovereignty to protect these critical resources.


As part of the Yankton Sioux project, the Clinic researched how other tribes protected their cultural resources through tribal legislation. The cultural protection codes of the Umatilla, Warm Springs, and Navajo nations all provided insight regarding how tribes could approach such protection. Though each code reflected the particular influences and values of the tribe that developed it, each of them formed a department or network for surveying, cataloging, maintaining, and protecting cultural and/or historical resources. Many of these codes also required that any activity that would or potentially could have an effect on such resources be analyzed and permitted by the tribal council or a subsidiary department. The NHPA also

gives tribes the option of certifying their Historical Preservation Officer according to the requirements of that act in order to operate as the recognized officer, to the exclusion of state or federal personnel, for the reservation. Ultimately, each tribal cultural resources protection code stems from the particular beliefs and values of the tribal members that create it and from those roots, seeks to develop an adequate legal framework to protect them.

Tribal code work, drafting, development, passage, and implementation, is an extensive process that may take years. Although this semester was the first for the Clinic in working on the Yankton Sioux project, by semester's end, the Clinic had not only provided the tribe with a number of other codes for ideas and assistance but also developed substantial possible revisions for the draft code that existed before the Clinic became involved. The tribe's NAGPRA litigation also continues along what could be a long and winding path.



“The Tribe’s code can become an important statement of tribal values as well as a powerful exercise of the tribe’s inherent sovereignty.”

The Clinic looks forward to continuing to assist the process of protecting the Yankton Sioux tribal resources and cultural history. In time, the tribe's code can become an important statement of tribal values as well as a powerful exercise of the tribe's inherent sovereignty. 



Tribal Legislative Drafting: The White Earth Band of Chippewa Domestic Violence Code

— By Reagyn Germer, 3L

When drafting tribal legislation, the drafting process cannot be one-sided. Donald Wharton, an attorney with the Native American Rights Fund (“NARF”), advised the students of the Indian Law Clinic to initially ask several questions of the community and people from which you are drafting a code to determine their goals and values for the proposed legislation. Since law enforcement relies foremost on voluntary compliance, Wharton emphasized that without this framework a drafter will be wasting his or her time and be aimlessly striving for his or her individual goal rather than a collaborative goal with the tribal community and people.

My experience this semester was with drafting a Domestic Violence Code for the White Earth Band of the Chippewa in Minnesota. Through my research, I discovered that while each tribe’s traditional values and beliefs may

differ, the cultural principles of Native American Tribes generally do not promote or approve the abuse of women, but provide for an overall respect for the “physical integrity of women.” (Valencia-Weber & Zuni 1995). This universal respect however does not preclude domestic violence from occurring within indigenous communities.

In contrast to non-Indian individualistic values, I have learned that indigenous peoples rely upon communal values to direct how individuals function within the community structure. Recently, tribal nations have begun to develop tribal codes, tribal law, and intervention programs to protect the rights and provide services to victims, abusers, and their families. Thus, while women are primarily the victims of domestic violence and the focus of protection, I found that tribal codes generally define domestic violence to encompass a wider protected class extending to all members in tribal society and reflecting the cultural perspectives unique to tribal societies.

The White Earth Tribe, exemplifying this recent development, has begun to develop the institutional and legal infrastructure to address domestic violence issues on its reservation. The opportunity to work on drafting the tribe’s

domestic violence code showed me that tribal leadership and involvement are crucial pieces in this process.

I was very fortunate to work with Lori Thompson, a legal technician with the tribal court and my liaison for the project. Our working relationship was paramount to achieve our common goal—drafting legislation that would adequately serve the needs of the tribal community and people. Thompson addressed my questions promptly and efficiently. I was therefore able to determine the scope and goals of my work and the direction that the tribe was going to take in revising and implementing the components of the legislation.

The cultural principles of Native American Tribes generally do not promote or approve the abuse of women, but provide for an overall respect for the “physical integrity of women.”

The White Earth Tribal Court was recently awarded a grant from the Victims Against Women Act (“VAWA”) fund to establish the institutional and legal infrastructure to adequately deal with domestic violence on the reservation. This movement was in response

to the request from different service providers which were concerned about addressing domestic violence in the community. Although the Clinic was initially concerned about the tribal court writing legislation that it would be interpreting, Thompson assured me that it was not a problem with the tribe. Through this grant, the tribe plans to establish programmatic and institutional support with law enforcement, victim services, Anishinabe Legal Services, and any other organizations, agency or people that have an interest in the development of the code. Thompson assured me that she was going to present the code to “legal services, the court (both tribal and state), victim services, and other agencies.” She also plans on holding a community meeting after the code had been drafted. The tribe also has funds for training tribal court officials, attorneys, law enforcement, and advocates about the procedures to deal with domestic violence in general and domestic violence victims and perpetrators.

With this code drafting project, I learned a great deal about domestic violence and tribal communities. My experience with White Earth made me understand not only the inextricable interplay that their culture and history played in drafting their domestic violence code but also the importance of having an energetic, appreciative, and knowledgeable supervisor like Lori Thompson to advise and guide me during the process.






Community Law Day

(From page 1)

'The ones that matter most are the children.' For those of us who are responsible for caring for these young people who are the future of Native America, it is a tremendous responsibility. Through the workshops and the fair today, we hope to share with you some legal tools and paths that are available in federal, Colorado and tribal law to protect these children and to secure a healthy and happy future for them." Approximately 50 people attended the free sessions which were taped by Denver Community Television and later broadcast in January 2003. Continuing legal education credit for attorneys attending the workshops was awarded.

Each student attorney was required to not only prepare an oral presentation but also to draft written information for those attending. "So much of what we do as attorneys requires us to be able explain the law in plain language to our clients, Tribal Councils and to our communities," explained Director Tompkins. Copies of the informational brochures and other materials are available by contacting the Clinic.

In addition to the workshops a **Service Providers Fair** featuring a range of organizations providing legal and other services to Native Americans in Colorado was held. An Indian Taco Sale to benefit the Clinic's partnering organization, the Denver Indian Center, was also held. 

Community Law Day Workshops

The Indian Child Welfare Act: What Do I Need to Know?

Monte Mills (Student Attorney) & Deborah Hunt (Denver Indian Family Resource Center)

Temporary Care Issues: Powers of Attorney & Guardianship

Pamela Emsden (Student Attorney)

Tribal Issues in Colorado Domestic Relations Cases

Jessica Johnson (Student Attorney)

Protecting Children From Domestic Violence

Reagyn Germer (Student Attorney)

What Can You Realistically Expect An Attorney To Do?

Jonny Bearcub Stiffarm, Esq.

Ensuring a Quality Education for Your Child

Rose McGuire (Title VII Indian Education Program, Denver Public Schools)

Opening Sealed Adoption Records

Jenny Young (Student Attorney)

Getting Your Child Enrolled in a Tribe

Quanah Spencer (Student Attorney) & Sasha Hoskie (Denver Indian Family Resource Center)

Legal Issues in Juvenile Proceedings

Brenda Bellonger, Esq. (North American Indian Legal Services)

Service Provider Fair Participating Organizations

Denver Indian Center

Colorado Indian Bar Association

Native American Rights Fund

National Indian Law Library

Denver Indian Family Resource Center

Voices for Children (CASA)

North American Indian Legal Services

Colorado Legal Services

Title VII Indian Education Program

Colorado Commission on Indian Affairs

Boulder County Legal Services

Colorado Access

Indian Law Clinic, Univ. of Colorado

Mayor of Denver's Indian Advisory Council




“The goal of the Council will be to preserve and restore ongoing relations in the community and re-establish peace between families and tribal members.”

Standing Rock: Alternative Forums

from page 4

the parties mutually agree as to how to settle their dispute, their agreement will be sent to the Court for an Order. If the parties are unable to reach an agreement, the Court will eventually hear their dispute and determine whether or not to issue a TRO. The peacemaking forum is not intended for any case that involves the potential for violence.

It is the intent of the peacemaking system that once the parties enter into an agreement, they will not resort to the Court to settle their dispute and that the parties will not repeatedly seek TROs. Therefore, the goal of the Council will be to preserve and

restore ongoing relations in the community and re-establish peace between families and tribal members. By allowing the parties to go in front of the Elders Council, instead of the overtaxed Tribal Court, the parties will be given more time to share their disagreements and have a more efficient means of resolving their disputes. Using this cooperative peacemaking process will hopefully allow disputing parties, while learning and recognizing tribal values, to successfully resolve their disagreements. Instead of a win-lose situation, which is commonly what results in a conventional court system, all parties involved will have benefited. 

Award Winners

from page 5

Q. Would you recommend the Clinic to prospective students?

Karen: Definitely! The skills I learned in the clinic are invaluable for me as I begin practicing, and are not taught in other courses.

Alicia: I would definitely recommend the Clinic to prospective students. Being in a clinic is a great way to gain experience with clients and with the real work of legal writing (memos, motions, letters to opposing counsel, etc ...).

Q. What was the best thing about the Clinic?

Karen: The clients and the other students.

Alicia: The best thing about the Clinic was the team mentality we created as the course of the Clinic went on. Other students in the Clinic were an invaluable source of ideas and a place to vent various frustrations. It was also fun to help my friends out with their cases and learn a little bit about a lot of different areas of Indian Law by listening and giving my opinions. It seemed as though the Indian Law Clinic, in particular, created an atmosphere of cooperation because we all had a sense of doing something important politically and socially.

Q. What was the most challenging aspect of the Clinic?


Karen: To learn the limits of the help you can offer to a cli-

ent and accept that often there are no legal solutions (yet!) to heartbreaking problems.

Alicia: The most challenging aspect of the Clinic was the amount of paperwork that had to be done, and the bureaucracy that has to be dealt with among the various organizations Clinic students must work with. Looking back on it, these challenges were an extremely realistic portrayal of what being a lawyer is like. Although, in practice you are in your office much more often so communication with the outside world is much easier without all the phone tag.

Q. What do you see as the clinics' role in the Law School?

Karen: The clinics are an essential part of a legal education. These teach students the fundamentals of case management, client management and peer interaction. The clinics at C.U. also reinforce the legal professions ethical responsibility to serve the entire community especially those who are without financial or other resources

Alicia: The clinics are really an invaluable resource for the law school. There is no other experience like being an actual attorney for someone and being responsible for their cases. For many students, life in law school would be unbearable without the ability to be reminded why they are there to begin with. Starting out practice under supervision is also very helpful, and provides some direction for practice in the real world. Moreover, many of the clinics service members of the community that need representation the most. In this way, the clinics enable the law school to serve the larger community and offer students the opportunity to practice social justice. 



Where Are They Now? ILC Alumni News

We love to hear what former Indian Law Clinic Student Attorneys are doing now! Give us a call at (303) 735-2194 or drop us a line at: indlaw@colorado.edu and give us the scoop on the latest in your life and career. Here's an update on some Indian Law Clinic veterans:

The Indian Law Clinic Advisory Committee is already feeling the loss of **Eve Woods '95** who served on the Committee in her capacity as President of the Colorado Indian Bar Association. At the close of her CIBA term, Eve was replaced by incoming President Lorna Babby of the Native American Rights Fund. Eve taught Indian Law at the University of Denver College of Law while working as a sole practitioner in Boulder. She is currently employed at the firm of Whiteing & Smith. Just as Eve was leaving the Committee, **Anetra Parks '01** joined it. After completing a judicial clerkship with the Ho-Chunk Nation Supreme Court, Anetra returned to Boulder and joined the firm of Green, Meyer & McElroy.

Laranne Arbaugh '00 finally received the Indian Law Clinic Award for the year 2000-2001 in May 2002. The announcement of her win was delayed by the Clinic's temporary closure in 2001. Laranne has continued to put her excellent practice skills to use in her position at the Durango, CO law firm of Maynes Bradford Shipp & Sheftel which provides legal representation to the Southern Ute Tribe.

Even after graduation, **Justin Bogan '01** stayed involved with an Indian Law Clinic case as he remained as counsel of record for Joselius Saenz ([In the Matter of Joselius Saenz](#), D.N.M. NO Misc 99-21-M) and succeeded in having seized sacred eagle feathers returned to his Chiricahua Apache client by the 10th Circuit Court of Appeals. After working for several years as a Staff Attorney at California Indian Legal Services, Justin returned to Colorado and is serving as Deputy Public Defender for Arapahoe County.

Gwen Broeren '01 is working in a small personal injury firm in Illinois that also does a bit of criminal, real estate, probate, class actions, but mostly medical malpractice work. She says that one of the attractions of the firm was Gary Forrester, a part-time attorney, who has practiced a little Indian Law and teaches the Federal Indian Law course at the University of Illinois. Once Gary comes on board full-time, she is hopeful that they will begin to work on some Indian Law cases. "[I'm] glad that the clinic is going strong again – that was such a valuable experience for me," she writes.

Primarily representing battered women in both tribal and state courts under a Violence Against Women Act grant, **Sarah Stahelin's '01**, work for Ashininabe Legal Services in Northern Minnesota allows her to assist low-income residents of the three Ojibwe reservations: Red Lake, Leech Lake and White Earth. She does miss Colorado though!

Class of 2002 Alumni **Chris King '02**, **Alicia Gibson '02** and **Karen Holmes '02** came to support the ILC's Community Law Day in November at the Denver Indian Center. Happily pursuing her first love, water law, **Karen Holmes** is working as an associate in the firm of Timothy R. Buchanan, PC in Arvada, CO. The firm also does real estate, environmental and estate planning work.

At work only one week after the bar exam, **Heather Corson '02** began her legal career at the U.S. Department of Housing and Urban Development in their Office of Counsel. On March 31, 2003, Heather started working at Decker & Desjarlais, a small Indian law firm on the Salish and Kootenai Reservation in St. Ignatius, MT. She writes, "I'm glad to be in Montana ... [but] I don't look forward to another bar exam."





Enrolling Your Child in A Tribe

— By Quanah Spencer , 3L

On November 23, 2002, at the Denver Indian Center, the Indian Law Clinic along with a host of other organizations presented information related to Native American children's issues. As one of the presenters, I was able to present information regarding tribal enrollment as it relates to getting a child enrolled in an Indian tribe. One question that predominated discussion was whether the one-quarter blood quantum requirement was standard for each and every Indian tribe. The brief answer to this question is not always. Many tribes have a variety of enrollment procedures and options that determine eligibility in their tribe, but the federal government through the Bureau of Indian Affairs has adopted the "one-quarter" blood degree requirement to determine eligibility for federal benefits. The discussion that follows is a brief explanation of the tribal enrollment process and how a child may become a member of an Indian tribe.

Many times the process of tribal enrollment is confusing and difficult to understand. In order to successfully complete the enrollment process, a parent or guardian of a child must have patience and perseverance. According to the inherent sovereignty that tribes possess regarding membership issues, the federal government has adopted a policy of allowing each individual tribe the ability to determine membership requirements and procedures. Therefore, it is necessary for a specific tribe to be identified before undertaking enrollment procedures generally. In order to determine which tribe a person is eligible to be a member of, one will need to consult birth certificates, ancestry records, genealogy charts, places of residence, and the location of tribes relevant to trace ancestry.

All tribes have adopted constitutions, statutes, resolutions, and tribal codes that specifically govern the enrollment procedure that will be utilized in order to determine membership in a tribe. A majority of tribes also employ enrollment officers that are responsible for maintaining, correcting, and adding to the official



Clip art courtesy of the National Indian Child Welfare Association.

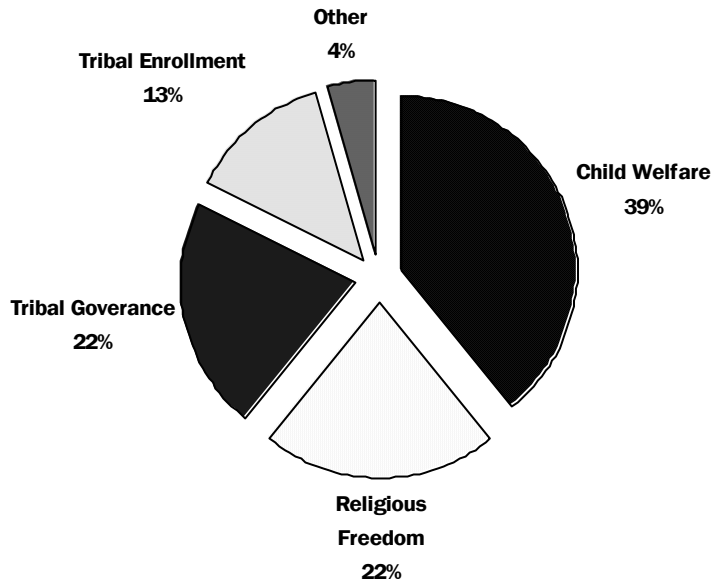
tribal membership list. In order to obtain a copy of the official tribal enrollment requirements and procedures, an individual should contact the tribal enrollment officer or main office for the specific tribe that one seeks membership with.

Each individual tribe will have basic requirements that will need to be shown in order for an individual to become a member. Typical examples of information that would need to be shown include: genealogy showing tribal ancestry, places of residence for tribal ancestors, paternity, and government documentation such as Bureau of Indian Affairs forms. This is not an exhaustive list of what could be required by each individual tribe. Rather, this is intended to act as a list of types of information that would likely be required by a tribe when a person seeks membership within that tribe.

Finally, if a person is in disagreement with a tribal decision regarding tribal membership, there are courses for an appeal. It is necessary for one that disagrees with a tribal membership decision to exhaust all tribal remedies provided under many of the tribal codes. The tribal codes provide a procedure for an individual to appeal a membership decision within the tribal governmental system. Prior to instituting an appeal, it is recommended that an individual consider the assistance of an experienced and licensed attorney in order to navigate the procedure of appealing a tribal membership decision.



Overview: ILC Caseload



American Indian Law Clinic Seminar

Each student enrolled in the American Indian Law Clinic course is required to take a weekly three-credit seminar class in addition to performing a minimum of 100 hours of client case or project work. The seminar is designed to teach the students lawyering skills and substantive Indian law in a practice setting. The text for the course is: [Red Power: The American Indians' Fight for Freedom](#) (second edition), edited by Alvin M. Josephy Jr., Joane Nagel and Troy Johnson. Other relevant reading materials and cases are assigned depending on each class topic. Individual class topics include:

- ❖ **Undertaking Legal Representation**
- ❖ **Using a Native American Client-Centered Approach**
- ❖ **Interviewing and Counseling Native American Clients**
- ❖ **The Art of Attorney Letter Writing**
- ❖ **Planning & Drafting Effective Tribal Codes**
- ❖ **Returning Native America's Future: The Indian Child Welfare Act**
- ❖ **Protecting Native American Religious Freedom**
- ❖ **Introduction to Tribal Justice Systems**

Seminar assignments include: developing a written Tribal Governance Action Plan (for drafting a tribal code, constitution or rules of tribal court), preparing a written motion and memorandum of law on the "Existing Indian Family Exception" theory currently developing in state court ICWA cases, and authoring an article for the *Tatanka Times*.

Upcoming Events

April 7, 2003: Center of the American West Conference "Native American Languages in the West: A Prognosis for the Future" (Chautauqua Community House, Boulder, CO)

April 11, 2003: Colorado Tribal-State Judicial Seminar: "Improving Implementation of Federal Full Faith & Credit Provisions" (Southern Ute reservation, Ignacio, CO)

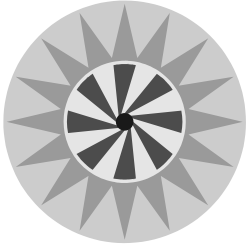
April 10-11, 2003: 28th Annual Federal Bar Association Indian Law Conference (Albuquerque, NM)

May 9, 2003: University of Colorado School of Law Commencement (Boulder, CO)

June 11-13, 2003: Natural Resources Law Center Conference "Water, Climate and Uncertainty: Managing Western Resources in a Period of Climate Variability and Change" (University of Colorado School of Law, Boulder, CO)

August 25, 2003: University of Colorado School of Law classes start (Boulder, CO)

January 5, 2004: 12th Anniversary Celebration University of Colorado School of Law Indian Law Clinic (Boulder, CO)



Why Study Indian Law in Boulder, Colorado? The Hub of Indian Country

— Reprinted with permission of Darius A. Smith

The Indian Law Clinic staff often encounters the question:

“With only two Indian reservations in the State of Colorado, located hundreds of miles from Boulder, why would a person study Indian Law at the University of Colorado School of Law?”

Darius Smith recently authored an article entitled, “DENVER: The Hub of Indian Country” that describes the large, active metro-Denver Indian Community that the Clinic is privileged to serve. He graciously agreed to allow the *Tatanka Times* to reprint his article here.

A few years ago, a New York Times news article proclaimed, “Indian Country Finds A Capital in Denver.” This is true in many ways. In the 1950’s, Native Americans were “encouraged” to leave their reservations to pursue jobs in urban centers. Denver was attractive to many, especially the Navajo of the southwest, and the Lakota of the South Dakota plains. Since then, Denver’s Indian population has grown to over 42,000, a figure which includes those of racial combinations, a new option included in the 2000 Census. Approximately 100 tribes are represented here. Thousands of these “urban Indians” still return to their Tribal communities or reservations throughout the year to participate in familial and tribal ceremonies.

Denver has the nation’s largest concentration of national Indian organizations including the leading Indian health services advocate, the National Indian Health Board, and the Council of Energy Resource Tribes, which assists tribes with energy resource management. The beautiful mile-high city is also home to many community-based organizations serving the needs of the local “urban” Indians. These agencies receive federal, state, city, and private funding to provide health and economic services, continuing education and numerous other resources. To learn more about these impressive organizations please see the Colorado Commission of Indian Affairs website at www.state.co.us/indian/. The Rocky Mountain Indian Chamber, one of the largest Indian Chambers of Commerce in the United States, has over 260 members, 80% of which are Indian owned businesses. The nation’s largest Indian bank, the Native American National Bank, is also located in Denver. This relatively new banking institution will provide financing to Indian-owned businesses, in addition to investing in non- Indian companies.

The Denver Indian community has many professionals and emerging leaders making important decisions affecting local and national policy in the areas of education, health, environment, law and athletics. The University of Denver offers an American Indian studies certificate program, and the University of Colorado- Boulder Law School has one of the best Indian Law clinics in the country. Together with the other great higher education institutions, Denver is producing countless degreed Indians. In addition, there are just as many Indian individuals mentoring and assisting others with their own experiential knowledge.

The Native American Rights Fund, also located in Boulder, is leading the struggle to enforce tribal land and water rights in federal courts. The American Indian College Fund provides 30,000 privately funded scholarships per year to Indian and non-Indian students to attend the thirty-two Tribally controlled colleges across the nation. Locally, the Indian community is working with the Colorado State Legislature’s transportation committee to gain the necessary signatures to allow the creation of a Colorado American Indian license plate, which would raise funds for Colorado’s Native students to attend Colorado colleges, and universities.

See **Hub of Indian Country** page **11**.



The Mission of the Indian Law Clinic


The Indian Law Clinic's purposes and priorities are:

- ◆ to provide rigorous, practical and educational experience to law students in the context of delivering timely and quality legal assistance to Native Americans on Indian law issues;
- ◆ to promote the well-being of Native American people and the sovereignty of tribal governments by providing quality legal representation on Indian law issues;
- ◆ to provide a training ground for emerging Indian leadership by attracting outstanding Native American law students to the University of Colorado School of Law; and
- ◆ to assist Native Americans in securing legal representation in non-Indian law matters, for example, by working with local Indian organizations and other legal service organizations and providers to furnish such representation.

Hub of Indian Country *(From page 10)*

Denver is also home to many Native artists who are recognized for their music, writings, and graphic works. Our artists are multidimensional and not confined only to traditional drumming and fluting. Contemporary artists are as diverse as traditional performers and include country singers, hip-hop rappers and other popular music style entertainers. Setting the standard for Native academia was Vine Deloria, Jr. (Standing Rock Sioux), author of *Custer Died for Your Sins*. He was professor of history, law, religious studies and political science at CU-Boulder. He offers a direct, no-nonsense Indian perspective that truly explains the Native American privilege of being a distinct ethnic group that also has something shared by no other ethnic group: a political relationship as sovereign nations with the U.S. government that is detailed in legal treaties.

A showcase for Native American culture is the annual Denver March Powwow, which usually attracts over 55,000 visitors to the Denver Coliseum. This event is one of America's largest gatherings honoring American Indian tribes as well as the First Nations from Canada. Throughout the year, the Indian population gathers at Tall Bull Memorial Park, located in Douglas County's Daniel's Park. With the support of Mayor Wellington Webb, this pristine wilderness area has been the site for multiple uses including concerts, pow-wows, and races mainly for the benefit of Indian youth.

With this strong cultural foundation, and the numerous human and organizational resources available in Denver, the Indian leaders of tomorrow are developing and thriving, thus guaranteeing that tribal perspectives will continue to shape the American mainstream for centuries to come. To gain a greater insight into Native American contemporary and traditional culture, see Rick William's (Lakota/Northern Cheyenne) columns in the Denver Post, and read the works of Vine Deloria and Sherman Alexie (Spokane/Coeur d'Alene) and Colorado resident, Linda Hogan (Chickasaw). For information on Indian issues and events in the Denver-metro area see the *Indian Voices* newsletter, see www.kanu.org/indianvoices/. 

Darius Lee Smith (Navajo/Black) grew up in the Montbello area, and is proud of his Denver roots. He is the former Director of Habitat for Humanity International Native Peoples' Initiative, which strives to create affordable housing on tribal lands. Currently, he serves as Specialist for The Alma Project, Curriculum and Instruction, for Denver Public Schools.

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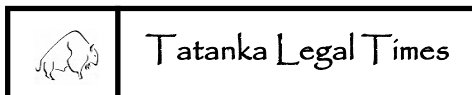
INDIAN LAW CLINIC

This newsletter is published by the Indian Law Clinic, a clinical program of the University of Colorado School of Law. The Clinic provides law students the opportunity to represent clients in cases involving Native American issues in various Colorado, federal and tribal courts. Students also work with selected tribes on tribal governance enhancement projects.

Opinions, interpretations, suggestions or conclusions in this publication are solely those of the authors and should not be attributed to the Clinic, the University of Colorado, the State of Colorado or any of the organizations that support the Indian Law Clinic.

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