



# AMERICAN INDIAN LAW PROGRAM

University of Colorado Law School

Fall 2014 Newsletter



## *Welcome to the AILP at Colorado Law!*

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Greetings! This fall, we welcome a new class of students to the American Indian Law Program. Our students have the opportunity to select from a full slate of Indian Law classes, as well as to develop their tribal lawyering skills through the American Indian Law Clinic. Additionally, we continue our long-standing tradition of serving as a convening institution for discussion of the cutting-edge issues in Indian Country, with a conference on *Tribal Sovereign Immunity Following Bay Mills* and our inaugural *Tribal Energy Summit*. Many thanks to all of our constituents for their support of our mission to educate the next generation of tribal lawyers and to advance research and service in Indian law.

*Kristen Carpenter & Carla Fredericks, Co-Directors*



## *Annual Conference 2013*



### *“Free, Prior, and Informed Consent: Pathways for a New Millennium” Conference*

In November 2013, the AILP and the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment hosted the first conference to implementation of international human rights norms, including provisions of the United Nations Declaration on the Rights of Indigenous Peoples requiring states to obtain the consent of indigenous peoples to natural resources development, property takings, and lawmaking that affects them.

The conference included panel discussions of “consent” in theory and practice, natural resources, climate change, cultural property, and emerging “hot topics” in the field. Highlights included keynote speakers, Assistant Secretary Kevin Washburn and Walter Echo-Hawk who discussed the challenges of implementing human rights law in the U.S.

Thanks to presenters Richard Collins, Tim Coulter, Matthew Fletcher, Calvin Lee, Rebecca Tsosie, Carla Fredericks, Rebecca Adamson, Dan Morrison, Shelley Alpern, Danika Billie Littlechild, Nicholas Cotts, Charles Wilkinson, Suzanne Benally, Kim Gottschalk, Ryan Seelau, Jennifer Weddle, Kristen Carpenter, Susan Anthony, Preston Hardison, Angela Riley, Brad Udall, Amelia Peterson, and Roger Pulwarty. The conference sparked many great ideas, toward implementing the concept of FPIC in federal law and tribal governance going forward.

## *AILP Speaker Series 2013-2014*

### **Aboriginal Rights and the Duty of Consultation in Canadian Law**

In January, the Native American Law Students Association (NALSA) hosted Cherie Metcalf, Associate Professor of Law at Queen's University in Kingston, Ontario, Canada and Scholar-in-Residence at the University of Colorado Law School, to give a lunchtime lecture on Aboriginal Rights and the Duty of Consultation in Canadian Law. In 1982, Canada's repatriated Constitution protected Aboriginal rights in their repatriated Constitution, including establishing a duty of consultation and accommodation. In her lecture, Professor Metcalf explained how this duty affects resource development projects in Canada and the impact the duty has had on government decision-making processes. She highlighted some of the challenges this legal duty presents, and its application in various circumstances.

### **Tribal Whaling: A Perspective from the Makah Indian Nation Micah McCarty**

In October, Micah McCarty, former Chairman of the Makah Tribal Council and past President of the Makah Whaling Commission presented a lunchtime talk on tribal whaling to a group of students and faculty. Mr. McCarty discussed the legal issues surrounding tribal whaling. He described the cultural importance of whaling to the Makah people and the legal framework through which they assert their treaty right to whale. Discussing the challenges and opportunities in facilitating dialogue between native communities and non-native governments, he challenged students to understand whaling from a tribal perspective. The talk was sponsored by the Dean's Committee for Inclusiveness and Diversity, following NALSA Vice-President Courtney Cole's invitation as pursuant to her position of Chair of the Dean's Committee.

### **"Ho'ina: Repatriation in the Native Hawaiian Context" by Edward Halealoha Ayau**

Also in October, the AILP and NALSA hosted Edward Halealoha Ayau ('89) to lecture on repatriation in Hawai'i. His talk, titled "Ho'ina: Repatriation in the Native Hawaiian Context" focused on NAGPRA, repatriation of cultural items, and the importance of consultation when Native Hawaiian remains and other cultural items are discovered. As the first Director of the State Burial Sites Program for the State Historic Preservation Division State of Hawai'i, he was the principal author of the state burials regulations. He is the Executive Director of Hui Mālama I Nā Kūpuna O Hawai'i Nei (Group Caring for the Ancestors of Hawai'i), a group that repatriates and reburies ancestral Hawaiian remains.

## *AILP Course Offerings*

Each year the Colorado Indian Law Faculty adds new classes to the Indian Law curriculum, making Colorado Law one of the top American Indian Law programs in the country.



American Indian Law Clinical Students at the Pine Ridge Indian Reservation

### Fall 2014

#### American Indian Law I –LAWS 7725 – Professor Charles Wilkinson

This is the foundational course in our American Indian Law curriculum, focusing on the federal statutory, decisional, and constitutional law that shapes the relationship among the tribal, state, and federal governments.

#### American Indian Law Clinic I – LAWS 7309—Professor Carla Fredericks

This course teaches the practice of federal and tribal Indian law. Students will represent individuals and Indian tribes in matters involving: the Indian Child Welfare Act, enforcement of federal and tribal rights, code development, and other topics in federal Indian law. This is the first segment of a two-semester course.

#### Cultural Property Law –LAWS 6602—Professor Kristen Carpenter

The course will examine the development of cultural property law as a general matter and with particular attention to indigenous peoples, whose claims have pushed the law to afford protections for subnational group rights. Topics cover both real and intangible cultural property, ranging from traditional lands and religious sites, to ethnobotany to genetic information.

### Spring 2015

#### American Indian Law II - LAWS 7735 – Professor Sarah Krakoff

The follow-up to American Indian Law I, this course investigates the legal history and current legal status of Alaska Natives and Native Hawaiians. It also covers current topics such as tribal water rights, tribal fishing and hunting rights, tribal justice systems, religious freedom, and tribal natural resource and environmental management. Prerequisite: LAWS 7725.

#### Advanced Topics in American Indian Law - LAWS 8725-001 – Professor Richard Collins

The topic for the spring 2015 offering is **American Indian Religious Freedom**. It will provide students with an overview of constitutional and statutory religious protections through the lens of American Indian religious freedoms. Topics covered will include sacred sites, ceremonial protections, eagle feathers, and the Native American Church.

#### American Indian Law Clinic II– LAWS 7309—Professor Carla Fredericks

This course teaches the practice of federal and tribal Indian law. Students will represent individuals and Indian tribes in matters involving: the Indian Child Welfare Act, enforcement of federal and tribal rights, code development, and other topics in federal Indian law. This is the second segment of a two-semester course.

## *Native American Law Student Profiles*

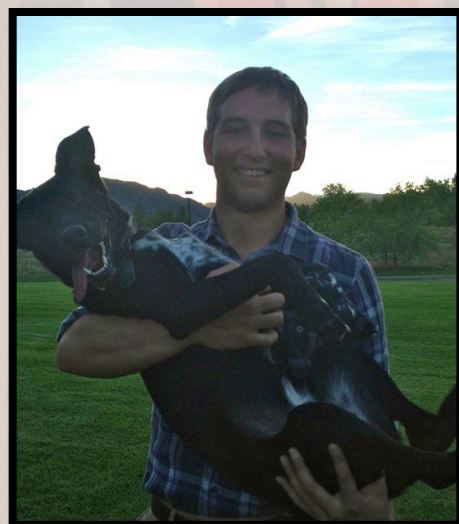


### **Lauren Goschke ('16) (Pechanga)**

Lauren Goschke has a Bachelors of Science in Conservation and Resources Studies and Bachelor's of Arts in Anthropology from the University of California, Berkeley—as well as two Masters degrees from Oregon State in Forestry and Political Science. She came to Colorado Law after working for the Forest Service in Coeur d'Alene Idaho. Lauren will serve as the vice-president of the Native American Law Student Association for the 2014-2015 school year and is interning at the Department of Interior in Washington D.C this summer.

### **Johnathon Intolubbe-Chmil ('15) (Choctaw)**

Johnathon graduated with a Bachelor's of Arts from the University of Colorado, Boulder with a major in sociology. Johnathon served as the Native American Law Student Association secretary for the 2013-2014 year. He continues to pursue a broad range of legal interests with a firm anchor in American Indian Law, and is currently serving as a clerk to the Colorado Supreme Court Justice Gregory Hobbs, after being recruited through the Native American Clerks project.



### **Courtney Cole ('15) (Cherokee)**

Courtney graduated from the University of California, San Diego with a Bachelors of Arts in American Indian and Indigenous Studies. At Colorado Law, Courtney is pursuing the AILP Certificate and will serve as NALSA president for the 2014-2015. Last summer Courtney clerked for the San Diego Coast Keepers and she is currently working as a summer extern at the Native American Rights Fund.

## *AILP Alumni Recognition*

### George Norlin Award for Outstanding Alumni

*Thomas Fredericks, Class of 1972*

Please join Colorado Law in celebrating our distinguished alumni Thomas W. Fredericks ('72), Partner, Fredericks Peebles & Morgan LLP, for Distinguished Achievement in Private Practice.

The CU-Boulder Alumni Association could not be prouder to present the George Norlin Award to Thomas Fredericks for his unequaled work of bringing justice to Native American tribes and for playing a central role in the development of Indian law during the past four decades. The George Norlin Award is the University of Colorado's most prestigious alumni award. It recognizes outstanding alumni who have demonstrated a commitment to excellence in their chosen field of endeavor and a devotion to the betterment of society and their community.

Fredericks has spent his career undoing the damage of past injustices and preventing future injustices. An enrolled member of the Three Affiliated Tribes the Mandan, Hidatsa and Arikara Nation, Fredericks is one of the leading experts in tribal law. Fredericks has served as director of the Native American Rights Fund, Associate Solicitor for Indian Affairs and Assistant Secretary for Indian Affairs under President Jimmy Carter, the highest policy position for Indian affairs in the U.S. government.

His achievements include authoring the first compact for the Indian Gaming Regulatory Act, the first Solicitor's opinion dealing with tribal gaming, and formulating the Indian Water Settlement Policy related to securing tribal reserved water rights for Indian tribal nations. He was instrumental in getting Congress to pass the Indian Mineral Development Act. Fredericks has mentored many attorneys during his career, as he continues to do. Today, he heads the nation's largest Indian law firm, Fredericks Peebles & Morgan, based in Boulder County.

Fredericks' legacy is as a pioneer in the field of Indian law. Martha King, a partner with Fredericks, Peebles & Morgan observed, "His commitment to the practice of federal Indian law brings forth justice and fairness to Indian country. He has not only advanced Indian communities, but has created a multiplier effect through his mentorship of new attorneys who also advance justice and fairness for Indian Country and for the betterment of society and to the community as a whole".

## *AILP Upcoming Events*

*Save the Dates!!!*



**September 12, 2014 Wittemyer Courtroom**

**Topic: *Tribal Sovereign Immunity After Bay Mills***

**This event is free and open to the public**

Organized for law practitioners, tribal leaders, students, faculty, and community members with an interest in American Indian law, this conference will address the Supreme Court's recent landmark holding in the much-watched case of *Michigan v. Bay Mills* (May 27, 2014).

In *Bay Mills*, the Supreme Court upheld tribal sovereign immunity against state government claims growing out of an Indian tribe's decision to locate a casino in a disputed location. The Court reaffirmed sovereign immunity as an inherent attribute of tribal self-government, such that lawsuits against tribes can only be authorized by Congress or by the tribes themselves.

Yet, the Court also left open the possibility of lawsuits for prospective relief against tribal officials, raising a number of questions for lawyers who advise tribes and those interacting with them in commercial law, civil rights, and other contexts. This Conference aims to explore the *Bay Mills* holding and ramifications for the future.

**Spring, TBA  
Wittemyer Courtroom  
Annual American Indian Law Conference:  
*Tribal Energy Summit***



***We hope you will join us!***

