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Cultivating Native Intellect and Philosophy: A Community Symposium

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Cultivating Native Intellect and Philosophy: A Community Symposium Recognizing and Discussing the Contributions of Christine Zuni Cruz

Symposium Schedule

Welcoming Remarks
Panel 1: Native Thought and Philosophy in Tribal Courts
Panel 2: Community Lawyering
Performance Art – Narrative Braids
Keynote Speaker

Panel 1: Native Thought and Philosophy in Tribal Courts

This panel will explore:

- The concept of using indigenous traditional law as the foundation for law; and
- the inherent tensions between developing and maintaining tribal court systems to reflect indigenous customary laws and local traditions and the pressure to replicate Western legal tradition.

Moderator: Renée Ashley, *Editor, Tribal Law Journal*

Panel Contributors: Mary Jo Hunter, William Johnson, Aliza Organick, Rebecca Tsosie

Mary Jo Hunter

Professor Mary Jo Hunter discusses the issues involved with incorporating tribal customs and traditions into the tribal court based on her own experiences as a tribal judge. She also emphasizes the importance of learning traditions in order to have the ability to incorporate them. First, Professor Hunter discusses how Professor Christine Zuni Cruz's scholarship speaks to her as a tribal judge, a clinician, and a Native woman. In particular, Zuni Cruz's article, *Strengthening What Remains*, strongly resonates with Professor Hunter because it is a validation of the efforts Professor Hunter has made as a tribal judge.

Professor Hunter goes on to discuss the history and development of the Ho-Chunk Judiciary. She explains how the Tribe has taken steps to culturally identify itself by incorporating traditional and customary law into the Ho-Chunk Judiciary. She explains how the incorporation of traditions and customs can be difficult for trial court judges because all of them have been law-trained and have internalized the Anglo system. Notably, Professor Hunter observes that this is what Professor Zuni Cruz cautions against in her writing. Professor Hunter goes on to suggest that the reason trial tribal court judges lack the ability to incorporate traditions into tribal court is because they have been raised away from the reservation and are lacking daily engagement and experience with customs and traditions.

One of the main points that Professor Hunter makes is that one's ability to incorporate traditions is proportionate to one's own experience with traditions. She analogizes this to how she learned to make frybread from her mother. Professor Hunter's mother passed the knowledge of making frybread onto her during the course of her lifetime and now Professor Hunter is good at making frybread. This is analogous to incorporating tribal customs and traditions because one needs to live and to learn the tribe's customs and traditions in order to be able to incorporate the traditions.

William Johnson

Judge Johnson speaks to being Native American as something that is unique and raw - you belong to a culture, a community, a Nation, Tribe or Pueblo. You are cultured and educated by growing up around family and tribal members while also trained by exposure to ceremonies, rituals and traditions. Living, existing and being active in the tribal world means being exposed to the language, the smells, the beats, the rhythms, and the taste of People.

However, Judge Johnson explains this way of life and existence has been threatened and endangered. The Native American culture is one that has been invaded by outsiders since the primitive beginnings of the United States of America. This infiltration of the explorers and colonialism has led many Native Americans to question their ways of living and beliefs, who they are and where they really come from. It is sad that due to raids on traditional lifestyles, Natives now have to learn to live in two worlds.

The westernized society views scholarly work and experience to come from mainstream educational facilities. In the culture the value of knowledge is not something that can be bought or obtained at fancy schools. It is the value of staying home and learning the stories. Traditional leaders are not sent to colleges and universities to be educated by books on how to lead the tribe. No, they have to stay home and learn the traditions, stories and ways of the tribe by LIVING the life. Tribal leaders can't be distracted by the outside world, they have to stay home and be fully immersed in the tribal world to learn and understand the culture and ways. When tribal individuals do leave their communities it is easy for them to get lost and become disoriented internally. It becomes difficult to live in the two, distinctly separate worlds.

Judge Johnson emphasizes how Christine Zuni Cruz has shown that this way of life and culture is the true law of the Native people. Yet many Native people do not know where it comes from or how to use it. Zuni Cruz helps both worlds to see and understand this true law of Native communities. Her work is important because Native law it is still under attack by colonialism. Her work helps Natives see that their response should be, "how do we handle it", "how do we keep it alive and well?" She helps close the gap because she knows both worlds. She sees the need and uses her works to create opportunities to educate others by sharing her amazing thoughts and words, which will help the tribal legal systems survive.

Aliza Organick

Aliza Organick has been a Professor at the Washburn University School of Law since 2004. She earned her J.D. from UNM School of Law in 1996. She is a citizen of the Navajo Nation, and created the Tribal and State Court Practice Clinic Section which focuses on representing Native clients in Kansas Tribal Courts. She is a colleague of Professor Zuni Cruz and the cofounder and co-organizer of the Indian Law Clinic and Externship Symposium which is held annually.

Professor Organick begins by explaining that in order to create the best and most positive outcome in the clinical setting that students and clinicians must respect and listen to their communities. Professor Organick believes that she was born a clinician into the institution of UNM School of Law. Margaret Montoya and Professor Norwood were her first clinical professors. Professor Organick became a clinician when she ran into Professor Zuni during Professor Organick's time working as a public defender in Metro Court in Albuquerque, New Mexico.

Professor Christine Zuni Cruz then extended the opportunity to Professor Organick to become a clinician, and by doing so not only instilled confidence in Professor Organick, but also shared the vision for what representing indigenous peoples is all about. Additionally, Christine Zuni Cruz then gave Professor Organick a copy of *Strengthening What Remains*, which operated as a segue to thinking about the larger legal issues Professor Organick would have to consider as a clinician and teacher.

Professor Organick explains that clinics have their own pedagogy and methodology, and that that is something that needs to be remembered in order to successfully represent tribal and Native clients. It is important to understand how to navigate the legal framework while also being mindful of how to incorporate and weave in other universes of thought into the educational process.

Professor Organick tells the story of how she began her journey as a clinician in 2004 in the Midwest. In Kansas, they had never explored practicing in indigenous communities. Here, Professor Organick was able to bring the lessons of the works and teachings of Christine Zuni Cruz to her new institution, which helped to educate others of how to practice in indigenous communities in ways that are respectful and mindful of indigenous world views.

Professor Organick shares with the panel what that first semester was like. She thought she brought many things to the practice, like interviewing, counseling, and negotiation skills as well as insight into criminal law with a focus on criminal defense. Professor Organick believed that she had found a nice job until she received her first faculty evaluations, which stated things like "What is all of this Indian law stuff for anyway?" and "I didn't get anything out of this, she just talked a lot of theory." Professor Organick explains that this feeling of failure was humbling. She found herself asking "What would Christine Zuni Cruz do?" Initially, Professor Organick found it to be especially difficult to try to fix these problems when the entire institution failed to support the things she was trying to do.

It was then that Professor Organick began to reflect on her traditions as a Native American and thought about her mother. She gave a faculty presentation on her scholarship, which was about creating tribal clinical programs. She conducted the faculty meeting in a room where she put her Navajo wedding basket facing east. Professor Organick made sure that everyone entered the room the proper Navajo way. She had the faculty enter and they were naturally deferential to the practice without being instructed to stop talking. Professor Organick explained that the direction from which they entered was the East, where the Sun rises, and that they had to come around from the South to the West. She then explained to the faculty that during their time there that they were to impart their wisdom. Professor Organick did not necessarily want them in there as faculty for the purposes of structuring a paper—instead, she wanted to hear their discomfort and concerns. She wanted them to probe because that was what was going to help her better underscore the principle she was trying to convey.

Professor Organick explained that after the meeting people stated that they had never experienced anything like that. Professor Organick believes that this is what students need to feel; that there is a wisdom that is being imparted that is not just the words that we think about in regards to a legal framework, but that there is much to be gained from the community.

As a result of these experiences, Professor Organick has been able to teach in many of her colleague's classrooms and has been able to help students understand why best practices in Indian communities differ from those under the Western construct.

Finally, the true lesson for a clinician is that while you can have this conversation institutionally, it takes more of an assertion and constant energy.

Rebecca Tsosie

Professor Tsosie has been the Executive Director of the Indian Legal Program at the Sandra Day O'Connor College of Law in Tuscon, Arizona since 1996. She serves as Supreme Court Justice on the Fort McDowell Yavapai Nation. Professor Tsosie has been widely published on doctrinal and theoretical issues related to tribal sovereignty, environmental policies, and cultural rights. Her newest research has dealt with Native Rights to genetic resources. Additionally, Professor Tsosie teaches at the Pre-Law Summer Institute.

In her talk, Professor Tsosie remarks that both of the courts she sits on have a substantial Western structure in spite of the cultural uniqueness of the tribes they belong to. Not only is this true of the tribal courts themselves, but also of the tribal codes. In considering why tribal courts face pressure to adopt Western jurisprudential models, Professor Tsosie, by virtue of the work of Christine Zuni Cruz, examines the question by viewing the tribal court system as a tribal justice system, even though those two things do not necessarily always co-exist.

When viewing the issue through this framework, three main functions of the tribal court system emerge. First, the system must protect the tribal sovereignty that

exists. Second, the court must encourage the development of the tribe's sovereignty, which naturally encompasses major economic development issues. Third, the court must maintain inter-sovereign relationships—those between tribes, states, and the federal government and its agencies.

On the first issue, the tribal court, though having to be aware of the “deficit” or “diminishment” model of tribal sovereignty that comes from the federal level, must attempt to not suffer under it, but realize that tribes flourish as cultural sovereigns and that tribal sovereignty must be maintained in light of and because of that fact.

Secondly, as the tribal court promotes the sovereignty of the tribe, it must make sure that its policies are consistent with those of other sovereigns, often as a matter of jurisprudence to ensure that judgments can and will be validated by other courts, especially when the state court is a court of comity as opposed to a full faith and credit state. Not only must courts make policies that are consistent with those of other sovereigns, but they must attempt to make rulings that expand their own sovereignty, and abide by their own customs at the same time, even when the customs conflict with their own tribe-made laws. Professor Tsosie mentions that this is an especially challenging area where a lot of litigation occurs.

Turning to the third issue, Professor Tsosie remarks on the enormous tension that exists for tribes and tribal courts as they try to maintain relationships in charged political climates with state sovereigns like Arizona that have traveled far backwards in terms of their thinking about other sovereigns and cultures external to their own. Professor Tsosie reminds us that these relationships need to be maintained regardless, and that these deficits in understanding must not be allowed to extend to the educational system. Children need to learn and be aware that that multiple sovereigns exist.

Finally, Professor Tsosie compliments the work of Christine Zuni Cruz because her work has facilitated practitioners and tribal courts in furthering these primary objectives of tribal court systems as tribal justice systems.

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Panel 1: Native Thought and Philosophy in Tribal Courts

Panel 2: Community Lawyering

Performance Art - Narrative Braids

Keynote Speaker

Panel 2: Community Lawyering

This panel will discuss the role of community lawyering as a means to create harmony between the culture of the legal profession and academy and the cultures of clients, communities, and law students.

Moderator: Veronique Richardson, *Editor, Tribal Law Journal*

Panel Contributors: Javier Martinez, Alfred Mathewson, Adriana Ramírez de Arellano, Antoinette Sedillo Lopez, Gloria Valencia-Weber

Javier Martinez

Javier Martinez graduated from the University of New Mexico School of Law in 2010 and was a former student of Professor Zuni Cruz. He serves as the Associate Director of Partnership for Community Action, which is a non-profit community-based organization.

Javier Martinez shares his reflection on the title of this conference, “Cultivating Native Intellect and Philosophy.” He also shares the insight he gained from his grandfather. Mr. Martinez recounts how he comes from an immigrant family of laborers and how he never thought he could be considered an intellectual. Intellectuals, he thought, were different than he and the people of his family—philosophers and thinkers were not people that he felt he could relate to. Now, Mr. Martinez realizes that he’s a laborer of mind, a laborer of ideas. Instead of working with his hands, he works with his mind, and considers himself a philosopher and thinker because his intellect has been cultivated.

Mr. Martinez reflects on the question of who cultivates our intellects, who encourages us to think? The obvious answer is our teachers, our parents, grandparents, tios, tias—our communities. But things change when you leave the home environment. The education system was designed without Native peoples in mind. The walls were built for a ruling class. Mr. Martinez notes that after more than sixty years of the

founding this law school, people struggle to create a more just society not only outside of the walls of the law school, but within them as well.

Professors like Professor Zuni Cruz help cultivate intellect. She also reminds us that effective lawyering takes one beyond the legally relevant facts of the case and that racial, class, and gender issues do matter.

Alfred Mathewson

Professor Mathewson begins by emphasizing how Christine Zuni Cruz's work has greatly influenced the Business and Tax Clinic. The Business and Tax Clinic has helped underserved communities with respect to corporate and commercial lawyering using several of the methods discussed in *[On the] Road Back In*. Corporate lawyers have traditionally helped the wealthy to acquire assets, while draining assets from the disadvantaged. However, Professor Mathewson demonstrates how the Business and Tax Clinic trains law students not only for providing service as a clinical law student in that current semester, but also how to serve underrepresented communities once they are out in practice. This is especially important in a state with high levels of poverty, such as New Mexico.

Professor Mathewson also discusses the collaboration between the Southwest Indian Law Clinic and the Business and Tax Law Clinic. Typically, the Southwest Indian Law Clinic asks for help from the Business and Tax Clinic when a tribal government or native client has needed assistance with a tax issue, and the Business and Tax Clinic will consult with the Southwest Indian Law Clinic to learn more about the community from which a Native client comes, and how to explain the American legal system to the client.

Antoinette Sedillo Lopez

During the second panel discussion, Professor Antoinette Sedillo Lopez discusses the influence Professor Zuni Cruz's pieces have had on the UNM School of Law Clinic and the Tribal Law Journal. As influenced by *[On the] Road Back In*, the Southwest Indian Law Clinic has focused on not just serving its clients, but has encouraged students to think about a client's culture, community, and family. The goal of the Clinic has been to encourage student clinicians to have a sense of cultural competence to understand the motivations of the client, and what actions would be most beneficial to the client. The emphasis on cultural understanding is also what led to the creation of the Tribal Law Journal. The Tribal Law Journal was created to strengthen and build existing tribal law, and has given scholars like Professor Sedillo Lopez an avenue to study and memorialize historic tribal law. Professor Zuni Cruz's pieces have also taught many scholars about what it means to live as a native woman in the academy and in culture.

Gloria Valencia-Weber

Gloria Valencia-Weber discusses the fact that historically, academic or scholarly work and community lawyering lack Indigenous perspective because each lacks a *direct* voice for Indigenous peoples. She demonstrates the lack of a direct voice by

reminding us that historically, anthropologists spoke for Indigenous peoples. She refers to the anthropologist view as the legal tradition we have inherited because Indigenous views were channeled through *other* people. Though some studies of anthropologists have included interviews with Indigenous people, it was still the anthropologists who decided was worthy of talking to. Professor Gloria Valencia-Weber refers to the study of Indigenous people as a “long-established intellectual playground”. However, Gloria Valencia-Weber strongly believes that it has truly been enriched by the scholarship of Professor Zuni Cruz.

Gloria Valencia-Weber also talks about introducing Indigenous views into the curriculum. When introducing Indigenous views into the curriculum, Valencia-Weber emphasizes “we have to do more thoughtful listening in the situation even in the narrative.” In the scholarly literature, Indigenous voice opens the opportunity to learn about critically different ways to perceive the world and operate in the world; and it’s not just an intellectual exercise. Narrative and story-telling have become more important in this way. This is because the indigenous voice is distinct. The indigenous or internal voice very sharply moves away from individualism because the core is the community. This is not necessarily over-looking the individual, but what rights the individual has arises from those relationships within the community. The indigenous literature such as Zuni Cruz’s provides, displays how looking at individual rights in this way cannot explain or comprehend the concerns of Native people in legal type situations.

Professor Valencia-Weber also touches issues surrounding community lawyering. Valencia-Weber believes when an attorney represents an individual, awareness and sensitivity are key, especially when an attorney represents a tribe itself as a governmental entity in those external state and federal courts. There must be full consideration of the culture as well as the racial elements involved.

Valencia-Weber ends her discussion with a brief insight into the insider-outsider aspect that developed out of Professor Zuni Cruz’s work. Being an outsider is really about critical listening, and though we may read lots of things, we really need to be able to listen. We have a lot to do whether we are the insider or the outsider; and it’s a powerful idea.

Adriana Ramírez de Arellano

Professor Adriana Ramírez de Arellano considers the writings and concepts of Professor Zuni-Cruz which include: voice in cross cultural translation; insider v. outsider, and individual v. community. These are concepts that directly have Native American implications but are also presumed applicable to all cultures. An example given by Professor Adriana Ramírez de Arellano is observing a trial where the Native American defendant would not look the lawyer in the eye and there was the assumption, by the lawyer, of guilt. However, it is evidence of difference of culture and ideals. These are problems and issues that are based on presumptions of culture and ideals, which individuals place on each other. Professor Adriana Ramírez de Arellano tries to denounce these misconceptions by illustrating these are faulty projected assumptions.

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Keynote Speaker, Frank Valdes

In this keynote talk, Professor Francisco Valdes addressed the points of continuity and discontinuity between LatCrit theory and indigenous legal studies in the United States to explore how these points may be relevant to the cultivation of Native American intellect and philosophy. Beginning with a review of LatCrit commitments and practices, Professor Valdes focused on the programmatic innovations that Latcrit and allied scholars have developed since 1995, when LatCrit theory emerged. Professor Valdes then turned to substantive issues regarding subordination and the rule of law that affect outsider groups, including Native Americans. Noting that LatCrit theory prioritizes the advancement of social transformation both within and outside the United States, Professor Valdes expressed the importance of coalitional theory and method to the development of anti-subordination struggles and the incremental creation of a post-subordination society under the rule law.

In explaining LatCrit principles and practices, Professor Valdes, drew on the substantive points that other featured speakers expressed throughout this Symposium, honoring the work of Professor Zuni Cruz and her ongoing efforts to cultivate Native American philosophy and intellect. He noted the intellectual environment of indifference or hostility to critical outsider jurisprudence that the “culture wars” within the United Sates have produced over the past several decades. He then noted how the reactionary imperatives of domestic cultural warfare dovetail with the intensification of corporate globalization and late capitalism in mutually-reinforcing ways. Specifically, he emphasized that the challenges of cultivating a critical Native intellect within the United States legal academy under present circumstances is very much connected to broader efforts to produce socially relevant legal knowledge that blunts the force of this “neocolonial” reaction to social justice claims both domestically and transnationally. Professor Valdes concluded with the observation that “indigenous knowledge may yet prove to be a key element in saving the globe from the exploitative, extractive and unsustainable abuses of the West, and from the scorched-earth agenda of globalized corporate capitalism being proclaimed these days by elites all around the world as the apex of achievement and hope for our species.”