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Indian Law Clinics and Externship Symposium Roundtable Discussion: Lawyering for Indigenous People

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**INDIAN LAW CLINICS AND EXTERNSHIP SYMPOSIUM
ROUNDTABLE* DISCUSSION:
LAWYERING FOR INDIGENOUS PEOPLE**

MODERATORS

Dana Cleveland	Tribal Law Journal
Laura Oropeza	Tribal Law Journal
Rebecca Parish	Tribal Law Journal

DISCUSSANTS

Barbara Creel	University of New Mexico, School of Law
Matthew Fletcher	Michigan State University
James Hopkins	University of Arizona
Mary Jo Hunter	Hamline University
Shin Imai	Osgoode Hall
Aliza Organick	Washburn University

RESPONDENTS

Robert Hershey	University of Arizona
Alfred Mathewson	University of New Mexico, School of Law
Michael Norwood	University of New Mexico, School of Law
Christine Zuni Cruz	University of New Mexico, School of Law

PARTICIPANTS

Patricia A. Ferguson Bohnee	Arizona State University
Margaret Jackson	University of South Dakota
Fred Lomayesva	Hopi Tribal Court
Pat Sekaquaptewa	University of California, Los Angeles
Maylinn Smith	University of Montana
Gloria Valencia-Weber	University of New Mexico, School of Law

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* The Roundtable took place on June 22, 2007 in Albuquerque, New Mexico at the First Annual Indian Law Clinics & Externship Symposium, sponsored by The Southwest Indian Law Clinic, University of New Mexico, School of Law, and The Tribal Law Practice Clinic, Washburn University, School of Law. The Roundtable was sponsored by the Tribal Law Journal.

I. WELCOME AND INTRODUCTION

MR. CLEVELAND: I'd like to welcome everybody and thank everybody for coming out to participate in this discussion. We're going to open up with an opening song from our friends, the Zotigh Singers. (Opening Song.)

MS. ZUNI-CRUZ: I want to welcome you to Albuquerque. We'd like to welcome you this afternoon to the Indian Law Clinic and Externship Symposium. It has been a long time in planning, and we're very happy that all of you are able to join us. We're very excited about the events that we have planned over the next two days. I want to allow Aliza Organick to say a few words of welcome, as well, before I introduce the members of the Tribal Law Journal and say a few words about how we're going to proceed in this roundtable this afternoon. Aliza.

MS. ORGANICK: Thank you, Christine. I can't begin to tell you how exciting it is to look around this table and see so many faces that I am familiar with -- my mentors, my teachers, people who have allowed me to learn how to teach in a clinical setting, as well as colleagues who have supported work that I have done, and to get together and have an opportunity to share in this environment what the collective wisdom is in clinical education and the unique challenges that we have facing us in terms of clinical education for indigenous peoples all over the United States and in Canada.

So I'm very delighted that everybody is here. I'm happy to get to know some of you who I don't know. I'm happy to see many of you who I haven't seen in a long time. I'm very happy to see Barbara Creel at the other end of the table.

MS. CREEL: Thank you.

MS. ORGANICK: And welcome.

MS. ZUNI-CRUZ: Okay, we're going to open the session with the roundtable. The roundtable is sponsored by the Tribal Law Journal. We're going to begin with our first round of discussants. The discussants are seated on this end of the table, and the respondents on the opposite side. Everybody on the sides are participants. So we have a role for everyone to play.

I'd like to introduce our Tribal Law Journal staff, who will be moderating each of the different rounds. We have Laura Oropeza, who will be our first moderator and who is Managing Editor for the 2007-2008 volume of the Journal. Laura is a third-year law student from UNM, and she is also a member of the Navajo Nation. We have a Tribal Law Journal staff member. She is Rebecca Parish. Rebecca is from Ohkay-Owingeh Pueblo, and she also is a third-year law student, and she will be moderating the discussant panel.

Dana Cleveland is from the Colville Confederated Tribes, and he is our Summer Editor and will be moderating the participants' discussion at the end of the session. And so we will take our cues from our three student editors for the Tribal Law Journal.

I am the editor-in-chief of the Tribal Law Journal, and I'm very happy to be able to welcome you to this roundtable on lawyering for indigenous people. It's a very important subject, something that we don't get to talk about a lot in this type of a session, and so we look forward to the discussion and the words that everybody has to share this afternoon. So with that, I'm going to turn it over to Laura.

II. DISCUSSANTS

MS. OROPEZA: Hi. I'd like to introduce our participants. The first, and she already introduced herself, is Professor Aliza Organick from Washburn University. Next to her, we have Professor James Hopkins from the University of Arizona. Then we have Professor Mary Jo Brooks-Hunter from Hamline University, Professor Shin Imai from Osgoode Hall, Professor Matthew Fletcher from Michigan State University Law School, and then we have Professor Barbara Creel with UNM School of Law.

Each of our discussants will have 15 minutes to speak. I will probably give them a little tap when they have about a minute left. We will begin the discussion with Professor Shin Imai.¹

MR. IMAI: Okay. I've been asked to make sure that the mic is recording. So I'm supposed to move this mic around. I want to start by thanking Christine and Aliza and Mitzi Vigil for all their work in organizing this. When Christine told me about this a few months ago, I was very excited.

My name is Shin Imai. I'm from Canada, and I'm not aboriginal, so I'm really out of place here. I'm not even American. Today I understand in this roundtable we're going to be talking about the law practice. Tomorrow we'll talk more about the pedagogy aspects of it. I don't want to overdo this, but really, I just have to say that Christine and the UNM program have been such a fantastic influence for us and for the program that I run. It's been great that we've been able to actually have some recent connection through Canadian law students who are placed in Christine's clinic for seven weeks. So I'll talk more about that tomorrow. But I extend my great appreciation. I use Christine's article² on community lawyering as the first reading for both my courses, and I've used Gloria's article,³ as well, on legal warriors, so it's an honor to be here.

In Canada, I started out as a lawyer, and I practiced for about seven years. The first job I had was in the north. I don't think that you have fly-in communities but in Canada a lot of reserves are located in areas that you can only get to by airplane. They're very, very isolated. Some of them have an ice road, so that in winter, you can get huge trucks driving over the rivers and lakes. I think with global warming, this is being threatened, because the ice isn't holding up now. So that's how they get their supplies, and then in the summer, you have to fly in. So it's a very isolated experience.

I want to tell you about two of my first experiences in native communities, and then talk about what I learned about lawyering from those experiences. The first experience was when I was still a law student, I got a summer job researching land issues in a reserve called Big Trout Lake. It took two days to get there by plane. I had to first fly to a place called Thunder Bay

¹ Shin Imai, Associate Professor, Osgoode Hall Law School, York University. Professor Imai is Director of the Intensive Program in Aboriginal Lands, Resources and Governments and Co-Director of the Latin American Human Rights Research and Education Network. He has also served as Academic Director of the Intensive Program in Poverty Law at Parkdale Community Legal Services, and as Director of Clinical Education for the Law School. His research interests are Aboriginal law in Canada, indigenous rights in Latin America, alternative dispute resolution and clinical legal education. Professor Imai received Osgoode's Excellence in Teaching Award in 2004 and 2007. Prior to his appointment to the Osgoode faculty in 1997, Professor Imai held positions with the Ontario Ministry of the Attorney General as counsel responsible for Alternative Dispute Resolution initiatives and as Coordinator of the Aboriginal Issues Group. He has also worked as a staff lawyer at Keewaytinok Native Legal Services in Moosonee and has had a private practice in Toronto.

² Christine Zuni Cruz, *On The Road Back In: Community Lawyering in Indigenous Communities*, 5 CLIN. L. REV. 557 (1999).

³ Gloria Valencia-Weber, *Law School Training of American Indians as Legal Warriors*, 20 AM. INDIAN L. REV. 5 (1996).

which is on Lake Superior, and then switch over and take two connecting flights. By the time I got on the third plane, I was pretty nervous. It was one of those little prop planes that was all shaky. I get into the community, and I can't figure out what's going on, because you just land on this piece of dirt. There are people coming and going, and there are pickups and trucks, and no one seems to be there waiting for me. I'm looking around waiting, for this great fanfare, like, "Oh, great. A law student from Toronto is going to help us." You know, a big banner: "Thank you for coming." But, nothing. So eventually, as the last pickup truck is leaving, I run up and say, "Help, help." So they drive me into the town. There are only a thousand people on the reserve. I get to the school and I start walking toward the band office. I notice this big trench as I'm going along, with little white crosses kind of scattered in it, and it looks like the project is only half-finished. I can't figure out what it is. I walk a little bit more, and I get into this large field, and I see a church and a little white picket fence with these little white crosses. These were crosses in a cemetery.

Eventually I get to the band office and get the whole story. The reserve is on an island. It's a two hour flight from the most northern place with a road. Of course, the people get their water from the lake. What happened is that the government sent in school teachers and the Ministry of Natural Resources and other government personnel. These people, of course, didn't want to live like the Indians, and so they had houses and they started having running water and sewage. Well, of course, their sewage polluted the lake that Native people were drawing their water from, so the community members started getting sick because of the lake. The government was upset that it was responsible for getting people sick so it decided to build a wastewater treatment plant. This plant was from down south and they were going to connect it to Big Trout Lake. They needed a big trench for the pipes so they just drew a straight line on a map and started digging. Well, the trench went right through a graveyard. That's what those little crosses were, the trench-grave markers. The community stopped them eventually from building the trench. They said, "You can't do this anymore."

So the summer that I went up there, they were discussing what kind of water system to put in. The community was saying, "It's stupid to bring up a water system from down south. In Toronto, you have the technology to run it and in winter it doesn't get to 40 below." The Band and the government was trying to figure out where to go.

So that's when I realized that people who may think that they're doing good can really, really do a lot of harm. And it applies to lawyers, as well; that lawyers going in and thinking that they're helping people can really do a lot of harm. Lawyering is not a neutral thing. All the skills you've been given to help people in communities can hurt people if you don't think about what you're doing.

The second lesson I learned was when I eventually got a job after many years of education. The job I got was in Moosonee, another fly-in reserve located on the southern tip of Hudson's Bay in Northern Ontario. The government had just set up a legal clinic there, my spouse and I were going to be the first lawyers at this clinic.

So, of course, I asked around, before I went up there about the problems faced by Native people. I heard that a lot of people who get charged in the North just plead guilty, because there is no sense of not telling the truth. A guy would say "Yeah, I borrowed the Ski-Doo and crashed into a tree. Yeah, I did that."

And so this was, to my mind as a young, enthusiastic, civil-liberties-minded, trained lawyer from Toronto, a matter of "They need to know that they have a right to remain silent," and if the police come to them, they just say, "I don't have to talk to you." They don't have to say

anything up on the stand and it's all got to be proven by the court or by the prosecutor. This is basic. Everyone learns this in criminal law, right?

So I had identified this big civil liberties problem up there and I thought I had found a little contribution I could make. I went up there to the First Nation clinic. Everybody on the board was a First Nation person. So we were the only non-aboriginals. They ran the clinic. It was great-this is the system you need.

One of the first thing they said to me was, "We don't want you to do any criminal law. That's not we're interested in. We have treaty rights issues, and we want you to argue for sovereignty." Holy mackerel! How about all these people who are pleading guilty? Although it was a big issue in the law school setting, it wasn't a big issue in Moosonee. If everybody began pleading not guilty you were going to start having to get witnesses and family members testifying against each other; all of this in front of a fly-in judge who came in once a month with this whole – it was like a circus: the judge, the prosecutor, the duty counsel, the clerk. It turns out the judge and the clerk were having an affair.

And so they would fly in, stay in the big provincial building, which is a two-story brick building, the only two-story brick building in the whole of Moosonee and dispense justice. For the leaders of the community, then, the criminal justice system was not something they respected. The real issues faced by First Nation people related to fishing rights and control over natural resources. That's what the board of the clinic wanted to focus on. The lesson I learned is that our legal system is imperialist. Not just in the sense of imposing the American or the Canadian law. It's imperialist in the way that people frame the reality.

What you're taught in law school is to separate out the legally relevant facts from the other stuff. I don't know if you've had all this theory, but in client-centered interviewing, you are supposed to use a spiral. You begin wide and eventually you narrow the relevant facts until you can focus on a sharp legal point.

This is imperialist because this is what frames reality; if something is legally relevant, then it's a fact that's worth knowing about. If it's not legally relevant well, we're not social workers or we don't bring that kind of stuff into play. Christine writes about the problem with this approach.

So after years of practicing, I ended up teaching at the law school. I tried to figure out how to teach students this, so that they wouldn't screw up when they went out, like I did. I think the main thing is to begin with the reality of the community that you're dealing with. Don't bring the law into it. What is it that worries them? How do things hook up? Try to appreciate the reality of clients.

The law comes in later when you have to articulate that reality in terms that the court or the judges or the mainstream system can understand. In other words, everything you've learned in the conventional law school about how one goes around analyzing a situation and identifying what the problems are, you have to turn upside down. You have to let reality define the law, not let law define the reality.⁴ So anyway, that was my experience with lawyering. I'd be very interested in learning about the pedagogy and what everybody's experiences are and seeing if I've been doing something wrong for the last years that now I can correct. Thanks very much.

MS. OROPEZA: Our next speaker is Professor Aliza Organick.⁵

⁴ This approach is explained more fully in Shin Amai, *A Counter-Pedagogy for Social Justice*, 9 CLIN. L. REV. 195 (2002).

⁵ Associate Professor of Law, Washburn University, B.U.S. University of New Mexico, 1992, J.D. University of New Mexico, 1996. Professor Organick is an enrolled member of the Dine Nation and born to the Tsenijikini Clan.

MS. ORGANICK: Thank you, Shin, for starting. I've been struggling with how to approach this talk today for a couple of reasons. Since I started the Tribal Court Practice Clinic (TCPC) at Washburn, I have been in a yearly cycle of reevaluating and reassessing institutional and pedagogical goals when lawyering for Indigenous people in a clinical setting. Part of the reevaluation process has to do with how Kansas deals with the Indian Child Welfare Act (ICWA)⁶ and my attempt, along with others, to reframe that debate. Over the last three years, that work has been done outside of the clinical setting by working with local attorneys, Kansas tribes,⁷ and as part of a non-profit organization called the Kansas Association of Counsel for Children (KACC)⁸. The challenge for me personally has been how to balance the needs of students actively representing individual clients in the clinical setting with the needs of the larger Native community in Kansas. It has been very difficult to find this balance without losing the original vision for the TCPC. It is enormously challenging trying to meet the requirements of being in an academic environment and allocating additional time to the many different issues that arise in Indigenous communities.

Last night, I spoke with a good friend and colleague from Kansas, Sarah Sargent.⁹ Ms. Sargent is an attorney and child advocate and one of the first people I met when I moved from New Mexico to Kansas. As it happens, she is also an expert on ICWA and the impact of the Existing Indian Family Exception¹⁰ to ICWA on Indian children and Indian tribes. She and I have worked together on a number of issues that impact children and juveniles in the state of Kansas and ICWA is always on our minds.¹¹ When we spoke last night, we were trying to come up with a strategy for abolishing the Existing Indian Family Exception to ICWA in Kansas.

But let me back up. For those of you who don't know me, I have been teaching at Washburn University School of Law in the clinical program since 2004. I will begin my fourth year this coming fall. It was my goal when I started clinical teaching at Washburn to develop a tribal law practice clinic section with a focus on individual client representation in tribal court settings. After three years the TCPC¹² is no longer in its infancy, but rather, in its early toddlerhood. Toddlers, as you know, stumble and fall a lot when they are learning to walk and that analogy is also true of TCPC. That is why having an opportunity to be part of founding and

She has bar membership in New Mexico and Kansas and has been admitted to practice in the Prairie Band Potawatomi Tribal Court, District Court of the Kickapoo Nation of Kansas, and the Iowa Nations Tribal Court. In addition to teaching clinic at Washburn, Professor Organick also teaches courses in Law of Indigenous Peoples, Comparative Law and a Tribal Court Practice Seminar. She serves on the board of the Kansas Association of Counsel for Children and for the last two years has been president of that board.

⁶ 25 U.S.C. §§ 1901-63 (2000).

⁷ Kansas is home to The Prairie Band Potawatomi Nation, the Kickapoo Tribe of Kansas, The Sac and Fox Nation of Missouri in Kansas and Nebraska, and the Iowa Tribes of Kansas and Nebraska.

⁸ The Kansas Association of Counsel for Children is a non-profit child advocacy and membership association dedicated to legal representation and legal advocacy for children and families.

⁹ Attorney at Law and Director of Legal Services, at TFI Family Services, Topeka, Kansas.

¹⁰ The Existing Indian Family Exception (EIFE) is a judicially-created exception to the ICWA that originated in *In re Baby Boy L.*, 643 P.2d 168 (Kan. 1982).

¹¹ Over a period of three years, Sarah Sargent and I have given numerous talks on ICWA in Kansas to lawyers, judges, social workers and as part of CLE presentations. Upcoming presentations for the fall of 2007 will be made to the Kansas Bar Association and the In-House Judicial Counsel of the Kansas Supreme Court and Court of Appeals.

¹² See generally Aliza G. Organick, *Creating a Tribal Law Clinic in Kansas: Carving the Peg to Fit the Hole*, 82 N.D.L.REV. 849 (2006).

planning this symposium with Prof. Zuni-Cruz¹³ has been such a gift. Being part of this symposium allows me the rare opportunity to reflect on the work I've been doing over the last three years and to revisit my original vision for creating TCPC.

In addition to working on this symposium, I have had a homecoming as well and have come back to the UNM Clinical Law Program to teach in Southwest Indian Law Clinic (SILC)¹⁴ for the summer. This has provided yet another opportunity to rethink, to reorganize, and to restructure my own tribal law clinic practice at Washburn.

When I started TCPC in 2004, I came directly from teaching in SILC. I had planned to use the model developed by Christine and to build on that model, recognizing that I would need to customize it somewhat. It was the core principles of practicing in Indigenous communities that were articulated and practiced in SILC that I felt so strongly about incorporating into TCPC and which I attempted to model. I thought, clearly naively, that I would transplant the SILC model straight into tribal courts and tribal communities in Kansas. It hasn't been that easy for a number of reasons. One of the fundamental differences is that SILC requires its student to take a foundational class on Indian Law or one other Indigenous law course.¹⁵ Therefore, SILC students have a solid foundation in Indian law issues before they begin practicing in tribal communities or for tribal members. The same is not true for TCPC. I must teach my students very basic principles of federal Indian law while also teaching them core clinic practice skills. This has been an enormous challenge. In addition, although it was my original mission to represent only Native clients in tribal courts, because Kansas has fewer and much smaller tribal communities than New Mexico¹⁶, building a clinic section that represented only Native clients was not practicable. For the last three years, I've done what I can to ensure that every semester each student has at least one Native client and makes at least one appearance in tribal court. They also practice in state courts in Kansas. In some ways we've been successful.

We've finally gotten to the point where we regularly practice criminal defense in two of our tribal courts. But it's been slow and it took two years just get to that point. I have been blessed with a wonderful clinic director, John Francis¹⁷. Prof. Francis has continued to support my work in tribal courts. He not only encourages students to participate in TCPC, but he has also been admitted to practice in the tribal court at Prairie Band Potawatomi. He now takes his students from the criminal law section to tribal court to represent clients. We now combine our small groups for classes on basic federal Indian law and the jurisdiction of tribal courts. His actual and institutional support has been invaluable to TCPC.

I continue to reassess the goals for TCPC. For instance, as I mentioned earlier, working on ICWA issues over the past three years has taken a lot of time and I have been trying to think of ways that my clinic students can become involved in those issues as well. The Existing Indian Family Exception is still law in Kansas. I have to admit to being completely

¹³ Editor-in-Chief, *Tribal Law Journal* and Professor of Law, the University of New Mexico, J.D., 1982, Stanford University, B.A., 1980.

¹⁴ In the Southwest Indian Law Clinic, student attorneys represent Native clients in state, federal, and tribal courts and in governmental agency hearings. Students also have the opportunity to work with tribes, pueblos, and organizations serving the Native American community.

¹⁵ Indian Law, or any other course on Indian Law, is a prerequisite for the Southwest Indian Law Clinic. SILC is a required component of the Indian Law Certificate Program.

¹⁶ New Mexico is home to 22 federally recognized tribes and pueblos. Kansas is home to four federally recognized tribes.

¹⁷ John J. Francis, Professor of Law and Director of the Law Clinic, Washburn University, B.A., Lafayette College, 1985; J.D., American University, Washington College of Law, 1989.

unaware of that when I came to Kansas from New Mexico. This particular exception to ICWA isn't an issue here in New Mexico. And so, when I realized how important an issue this was, I became involved in work across the state to try and educate lawyers, social workers and judges about ICWA and about why the EIFE should be abolished in Kansas.

What that has meant for TCPC is that in trying to take on this issue in Kansas, it also becomes increasingly difficult to find a balance between teaching core clinic classes and working on policy issues. Finding a balance also becomes the key question when making important decisions about what type of clinic you want to develop. That is, can you effectively address the policy issues and represent the larger Native community and still provide core clinical education to students? I think the answer is - that depends. I don't think this is an easy question to answer. The pressures internally, within the academy, to produce scholarship, teach and provide service to the institution are very real. Even though working on policy issues is considered part of our service obligation, clinicians are pulled in a lot of different directions. I think when that begins to happen, it becomes extremely important to come back and reassess your goals and possibly redefine them. That is the process that I am approaching now and I welcome insights from those of you who have experience with these issues.

I'd like to take the policy issue out of the clinic context for a minute and speak for a moment about the critical importance of having institutional support for working on policy issues in general. I am extremely grateful for the support I have received from my institution. Two years ago, KACC decided to make ICWA the topic of an all day CLE (continuing legal education). Washburn co-sponsored [the CLE] and provided the room, the staff and monetary support for the program. Initially, we weren't sure how much interest there would be and were very surprised when it was attended by 120 people, primarily lawyers, but also social workers, judges, and court personnel from all over the state of Kansas. At the time, the ICWA CLE was the most heavily attended [CLE session] that Washburn Law School had ever co-sponsored. That gave us an important insight into the community and provided some valuable understanding into what local lawyers and others wanted in the way of information about ICWA. That was an important step forward. However, because of the time constraints for someone who practices in a clinical setting, there are times when we fall short of fully addressing other policy concerns of the Indigenous communities we seek to serve.

The goal of this symposium is to share the knowledge and experiences of creating and working in Indian legal clinics with one another so that we may address the many unique issues that face our clinics. I am here to listen to all of you and to learn, as well as to share my challenges and experiences with all of you. I am extremely grateful for this opportunity and for your presence at this, our first Indian Law Clinic Symposium.

MS. OROPEZA: Okay, our next speaker is Professor Matthew Fletcher.¹⁸

MR. FLETCHER: My name is Matthew Fletcher. I'm a member of the Grand Traverse Band of Ottawa and Chippewa Indians, which is in Michigan, Peshawbestown -- I'll spell that for

¹⁸ Matthew L.M. Fletcher, Associate Professor and Director of Indigenous Law and Policy Center, Michigan State University College of Law, Professor Fletcher sits as an appellate judge for the Pokagon Band of Potawatomi Indians, the Turtle Mountain Band of Chippewa Indians, and the Hoopa Valley Tribe, and is a consultant to the Seneca Nation of Indians Court of Appeals. Professor Fletcher is an enrolled member of the Grand Traverse Band of Ottawa and Chippewa Indians, located in Peshawbestown, Michigan. Professor Fletcher graduated from the University of Michigan Law School in 1997 and the University of Michigan in 1994. He has worked as a staff attorney for four Indian Tribes - the Pascua Yaqui Tribe, the Hoopa Valley Tribe, the Suquamish Tribe, and the Grand Traverse Band. He has litigated over 20 tribal court cases. He is married to Wenona Singel and they have a son named Owen.

you later – and I am a professor, assistant professor at Michigan State University College of Law, along with my wife, Wenona Singel, who is in the room. We are the directors of the MSU Indigenous Law and Policy Center. That's just a little introduction.

I wanted to thank Christine and Aliza for the opportunity to be here to talk a little bit about our center and some of the things we do, some of my experiences personally as a lawyer -- both as an academic and as a practicing lawyer. So I think what I'm going to do is I'm going to start off by referencing a paper I wrote a few years ago, which we'll call "Indian Lawyer As Abductee." And it's a paper that actually hasn't been published yet, and it's been kind of floating around for a while.¹⁹

And I wanted to start off with something similar to what Shin said in terms of how easy it is to believe, as an Indian lawyer, a young Indian lawyer or law student, that once you get out of law school or once you start working for an Indian Tribe that has been under-represented, that you are going to be that savior for them. And it's really easy to think that, because I think in part, and I'm not trying to bad-mouth the guy, but many years ago I read this book by James Welch called *The Indian Lawyer*.²⁰ Of course, I wanted to be an Indian lawyer, so I wanted to read it. It's a fabulous book, wonderful. But it has kind of a Hollywood ending to it that really kind of sticks in my craw, now that I've been a lawyer for several years, and now an academic. And the ending is -- the guy goes through all this stuff. And he, for a long time, is not an Indian lawyer, and eventually at the end of the book, he is hired by an unnamed Plains tribe, possibly Lakota; I don't know. They have some sort of unlitigated treaty right that they need to exercise, and so they hire him, at least the way the book goes, sort of out of the blue, like "Oh, here is a young Indian lawyer who doesn't have anything else to do, and we need him to litigate this important treaty right for us, and let's get a couple law students from a neighboring law school" -- I don't know where; somewhere in the Plains, maybe; North Dakota, South Dakota -- "and they'll be his assistants and he'll litigate this case in the Supreme Court, and by golly, we'll have another *U.S. v. Washington*."²¹ And that's a real nice romantic ending; it's a fabulous ending. But it's not something that you should think is going to happen as a law student when you graduate, or even ever as a lawyer. You might never get that case that's going to make you famous. Okay? It's just that even if you do, you don't necessarily want to be famous.

But I guess that's where I started when I wrote this paper on Indian lawyers as abductees. And I remember reading a lot of papers. From the early to late 1990s, Carey Vicenti²² was writing, Robert Porter²³ was writing stuff about how Indian lawyers could really be damaging to the sovereignty. Indian lawyers could actually hurt their tribes, to some extent. They'd go off to the law school, they learned about Anglo-American legal systems and legal constructs, and they bring them back to the reservation and say, "I learned how it's done. It's this way."

And you know, there are growing pains. So that first generation, a good portion of the first generation of Indian lawyers that came back out of law school, went back to work for their tribes or other tribes. Maybe they just said, "Well, let's adopt Article IX of the UCC without thinking about its meaning." I mean, if you do that, you're going to have lots of problems. My esteemed colleague and wife, Wenona Singel, who has been writing on this, and Maylinn

¹⁹ Since this roundtable, this paper has been published as Matthew Fletcher, *Dibakonigowin: Indian Lawyer as Abductee*, 31 OKLA. CITY U. L. REV. 209 (2006).

²⁰ James Welch, *The Indian Lawyer* (1990).

²¹ 520 F.2d 676 (9th Cir. 1975)

²² Carey Vicenti, Fort Lewis College, Professor and Chairman, Sociology Department.

²³ Robert Odawi Porter, College of Law, Syracuse University, Professor of Law Dean's Research Scholar of Indigenous Nations Law, Director, The Center for Indigenous Law, Governance & Citizenship.

Smith²⁴ for a long time, as well, know; and a lot of other people, too. But that's just a very extreme example. And so reading a lot of these papers - I remember as a young lawyer, my first job was in Arizona working with the Pascua Yaqui Tribe, that there can be some things that you do that are very damaging, and you don't even realize it, maybe until years and years later. So the other thing that happened with this paper -- and it will be published eventually, once the Law Review that accepted it gets around to editing it. But I did send it to a peer review journal, which is something I did in my first year as an academic, and I was a little bit nervous about that. And it certainly wasn't the Tribal Law Journal.

And I got the peer reviews back, and they absolutely hated it, like in a way that I never knew that people could get that excited about a rather dry law review article. The first one just hated it and said, "You know, this person is truly a gifted writer, and it's too bad he wasted his time on this horrible, horrible thesis." The second one just said, "Whoever this person is, they should immediately get out of the academy before they ruin it for the rest of us. This is a neocolonialist" -- and I didn't know what that was at the time. I really still don't. Anyway, that was even worse.

But that made me start to think about my experiences. Before I became an academic, I worked for four different Indian tribes in about six years. And that makes it seem like I bounced around a lot, which is true.

I showed up my first day. My boss handed me my contract, my first job at the Pascua Yaqui Tribe - when I was looking it over, he started describing what had been happening for the past month or so. They had filed a lawsuit against a bunch of former employees for five million bucks -- a RICO (Racketeer Influenced and Corrupt Organizations Act) lawsuit. They threw the book at these people, and basically the way he described it and for the amount of time that I worked there, about another year and a half, was "Since then we've been going to the mattresses."

Do you know that phrase from the movie "The Godfather"? You know, after they started shooting each other and they have to bring in all their guys to hang around the house so they don't get attacked, and they'd have to bring in a bunch of mattresses, and everybody is lying around on mattresses at night. So we were on the mattresses for, like, the entire time I worked there, and some days it wasn't any fun.

I mean, it wasn't what we were doing -- as lawyers, we weren't doing anything wrong. But we were the people that sort of had -- along with the members of the Tribal Council who told us to do it, our clients -- we were the people that were declaring war on former and current tribal employees and tribal members. So it could be rough. I mean, there are days where you go to a tribal employee's office to say "I heard you had a document about" -- something else, unrelated to this lawsuit, it was just something I had to do. "Could you give me a copy of it?" And you opened the door, and if they saw a lawyer at the door, they'd go like this (indicating fear).

And I always got that feeling of the undertaker in "The Godfather." In the middle of the night when the Godfather -he opens the door and it's the Godfather, and he's like, "Oh." And you know, I got that all the time. Every time I opened the door to go see someone, they all looked at

²⁴ Maylinn Smith, University of Montana School of Law, Associate Professor, Clinical Supervisor and Director of the Indian Law Clinic,

me like oh, this guy is coming to serve me, or he's coming to deliver a letter of termination to me.

So that was a real -- you know, I was not treated as a savior in any, way -- I was treated basically like a box of dynamite that could go off at any time.

So anyway. I'm rambling on little bit. But I did work for a few other tribes: Hupa in California, Suquamish Tribe in Washington, and my own tribe, Grand Traverse Band, for a couple of years. And those were much different experiences; it was a lot calmer. But all of them gave me circumstances in which I had occasion to reflect about the impact of being an Indian lawyer working for a corporate entity, which is a federally recognized Indian tribe.

So at Hupa, I represented -- well, we referred to it as the "Tchwunk" case. "Tchwunk" is the Hupa word for -- well, for lack of a better phrase, we'll call it sewage. I represented the Housing Department. They built a house up on a hill above somebody's house, and you know, the septic line tended to drip downward, downhill toward other tribal member property owners. So, you know, in some ways when you're representing the tribe, your tribal entity, sometimes -- a lot of times -- you're representing, you know, a government, corporate blind entity against individuals.

And that was always something that, to this day, still troubles me. But it is sovereignty. That's one thing that if you are someone who has been sued or is litigating against your own tribe and you have some familiarity with what the tribe has gone through with the people, the tribe has gone through with the treaty rights, they're fighting for federal recognition... But sometimes, you fight amongst yourselves, and sometimes the exercise of sovereignty is an exercise of sovereignty against your own people. And criminal prosecutions -- I never did much criminal law -- are a perfect example of that.

So that wasn't all of my work. I did a lot of stuff dealing with people outside of the tribe who wanted to destroy the tribe. And a classic example is when I worked at Suquamish and there was a group of people who lived on the reservation, on trust land; they had figured out a way about 70 years ago to live on trust land through the workings of the Department of Interior, thank you very much. And they often sued the tribe.

One way that they figured they would be able to save their property rights in the future was to have the tribe declared disestablished. And so the way I figured it, about every 15 years, maybe a little bit less than that, they'd get up just enough money to hire a big lawyer in Seattle and file a big lawsuit against them over some minor thing. And they would say, "This tribe doesn't even exist."

And so every litigation involving -- it was always the same people, you know. And after they'd lose, 15 years later they'd come back. This was the third time, as far as I can tell, and by then they were calling themselves by the hideous moniker "APORPMA," A-P-O-R-P-M-A.²⁵ And I don't remember what it stands for. It has something to do with the Port Madison Property Rights Association.

The organization and a whole bunch of individuals sued the tribe, Tribal Council, over some housing development the tribe was doing; a very minor issue. But, you know, Count Number 1: "This tribe does not exist." The same people making the same argument every 15 years.

And I was talking to a lady I worked with in the Housing Department about the case, and she was explaining how these people kept coming back again and again and again. And one of

²⁵ Assoc. of Prop. Owners & Residents of Port Madison (APORPMA) v. Individual Council Members of the Suquamish Tribal Council, No. 02-35522, 2003 U.S. App. LEXIS 18837 (9th Cir. Sept. 9, 2003).

them, they had a particular, specific annoyance with, she actually -- this woman, who was a named Plaintiff in two of the three lawsuits that I've been talking about, actually worked for the Indian Health Service down the road as a dental hygienist.

So half of the people that she served were people that she was suing, essentially, to declare that they didn't exist as an Indian tribe or as a people. So working on that case made me feel a lot better. So these are just some random examples of some of the work that you do as in-house counsel. I think it's helpful to know that you aren't necessarily going to get that big case. I mean, we thought APORPMA was going to go to the Ninth Circuit, at least; and it did go to the Ninth Circuit.²⁶

Neither one of the opinions were published. I mean, you can't even find the District Court opinion on line anywhere. I have a copy, because they faxed it to me. I was working at GTB (Grand Traverse Band) by the time that came out.

The Ninth Circuit decision is not even on Westlaw. It is on Lexis, though, and it's about two and a half paragraphs long. So not that big of a case, it would seem. But it's just another case, you know: "Count 1: This tribe does not exist." It goes to the very fundamental aspect of the legal existence of the tribe. All right. So that leads me chronologically speaking, into my next foray of my career into the academy. We'll be going into our fourth year as law professors, so we've been doing this a little while now.

There is something going on in the legal academy with Indian law which I can't get my hands on, I can't really get my head around. And it's this notion that there is a fundamental disconnect between the work that we do as academics -- and what I mean by "we" is anybody who writes in Indian law, whether you -- and almost all of us who do write in Indian law significantly are on the tribe's side, of course. But the question is: Is the stuff that we do actually useful? Does it mean anything to anybody?

Because every time the Indian tribes -- almost every time since about the 1980's -- go to the Supreme Court, they lose about 80 percent, 85, 90. I'm not sure what it is.²⁷ So some people have been discussing: Well, what kind of work could we do that will be useful so that we could win in the Supreme Court?

And so that brings me to my question about all this: Who is the audience that I write for in law reviews or in editorials? And I think there are a lot of different audiences you can write for. I think, first of all, you could write for the Supreme Court or the lower federal courts or even some of the state courts. Sure, you can write for them. And if you work for Harvard Law School and if you work for Michigan Law School, they may even listen to you.

But I went to Michigan Law School, and about 95 percent of the professors there complained bitterly that nobody listens to them. Okay? So okay, let's assume that, you know, if you're in the top 15 schools or so, that the Supreme Court will listen to you or somebody in a significant district court or circuit court of appeal opinion is going to listen to some of these law review articles, maybe.

But for someone like -- frankly, like me -- you know, I went to Michigan, but I wasn't particularly a good student. I didn't clerk for any of these federal court judges. I didn't clerk for the Supreme Court. They don't know me. I don't have the sense that they're going to read my stuff and really care what I say.

²⁶ *Id.*

²⁷ According to Alex Tallchief Skibine, Indian interests have lost 33 out of 48 cases, with four cases that could be classified as ties, since 1987. See Alex Tallchief Skibine, *Teaching Indian Law in an Anti-Tribal Era*, 82 N.D. L. Rev. 777, 781 (2006).

So who else can I talk to? Is there somebody else that's going to be out there to listen? I have to tell you I got into the academy because I wanted to talk to myself. And when I say that, I mean that very specifically. I worked at Pascua and Hupa and GTB and Skokomish. And every time I had a legal issue that I couldn't quite figure out, you know, where are you to turn?

Well, I started reading law review articles. And you know, there are a lot of great law review articles. They're entertaining. They make you want to wave red flags and march straight to Washington. But they're not very helpful to the average tribal attorney. So I realized that I needed to become a law professor, because the last year or so that I worked at Grand Traverse Band, every time I got a really sticky or interesting legal question, I started writing 50-page legal memorandums about them, and my boss started making fun of me, because I had too many footnotes, so ultimately I became a law professor because -- and much of the work that I've done in the last three years is stuff that just drove me nuts when I was a tribal attorney -- I needed to have an answer at least to make a reasonable argument.

So anyway, I think there are a lot more people that you can talk to besides the Supreme Court. I think you can talk to tribal judges, tribal attorneys. You can write stuff that's important to them. And on occasion, somebody will come up to me and say, "You know, that article you wrote on how drug testing is bad for tribal governments is great. Of course, it doesn't convince the Tribal Council, but it's a great article." So I do have some sense of appreciation there, and I appreciate that.

And I didn't get a chance to talk about the "center class" at all, but this is a long conference, and I'm sure we'll have lots of chance to talk about what we do at Michigan State; the "center class," as we call it, is our experiential learning class. But time is up, so thank you very much.

MS. OROPEZA: Our next speaker is Professor James Hopkins.²⁸

MR. HOPKINS: Thank you, and it's a great pleasure and, indeed, an honor to be here. I think what I want to do in the next 15 minutes is provide a bit of an outline -- I think it will be kind of sketchy -- of the work that I do and how I came to do the work. It's great to hear these stories of Canada. And I have to say, in an interesting way I think that it defines some of the work that I do, even though it's based here in the United States. I'm originally from an Algonquin community in northern Quebec, the Kitigan Zibi First Nation, which is near Maniwaki, which is near Kazabazua, which is near -- you know. So you go on and on, and then eventually someone knows, "Hey, I've been to Moosonee, you know, and I've been to Thunder Bay. I love the Hoito Cafe; great oatmeal there. But these are stories that are also endemic to Indian Country. The stories of the work that you do is also a story of local place and local environment and understanding the deep attachments that people have with those environments and how profound those attachments can be. I should say I was the director of the Indigenous Peoples Law and Policy Program beginning in the year 2000, so much of my work for the first five years was spent on building that program. The clinical coverage that I had during that time was somewhat limited.

But, what I wanted to do during that time was to focus on what was happening in the United States and draw comparative parallels and contrasts with the Canadian experience. I think the work that I'm doing is paying off in the sense that I get phone calls from people and have plenty of meetings with people to find out about these differences. So if you want to talk

²⁸ James C. Hopkins, University of Arizona James E. Rogers College of Law, Associate Clinical Professor, Indigenous Peoples Law and Policy Program.

about federal Indian law being in a precarious place within the academia, I think comparative indigenous law is the further subset precarious spot to be in.

The main focus of what I do has to do with natural resources and the development or extraction or exploitation of those resources and finding common themes. I graduated from the University of Toronto Law School in 1966, and then I articulated, which is like indentured servitude, at a large national firm in downtown Toronto. And then I clerked up in northern Ontario for a year because I wanted to get direct, hands-on experience at the tribal level; and I have family who live up there, so I was able to visit them, as well. I had a private practice doing international trade law with a mix of aboriginal law, so I had the Russian Federation, as it then was, as a client, along with a number of First Nations, and it was fascinating to see some of the global regulatory parallels that these groups face in terms of trying to get access to markets.

After that I moved to the United States. I have been here ever since, but I go back quite regularly, and a number of my clinical projects are based in Canada. Here is my summary, then, of what I see in the United States, if you were from Canadian First Nations communities and saying, "So what's happening down there? We read and we hear about these horrible cases and decisions. How do tribes get any traction in the United States?"

And I've seen echoes of that already. For instance, in Arizona, I've had the opportunity to sit on a Governor's Tribal Policy Advisory Committee, which has been fascinating, because the last couple of years there has been a real consolidation/formalization of communication, like people actually talking to each other, people actually picking up the phone and returning phone calls vis-a-vis state government and tribal government.

It's not law. It escapes the attention of the courts. But it's a kind of capacity-building that I think can lead to some positive results in the sense that it's a development of a new system where people actually know what's going on. So they understand that there is a cause and effect; i.e., if a county government in the southwestern portion of Arizona wants to build a hazardous waste facility, they need to consider the interests of the abutting tribal communities; whereas, before, that simply would not have been the story. The work that I do tends not to be work that you would see an attorney or a solicitor do in court, although I'm interested in the future in getting involved in amici briefs and intervenor applications in Canada for important policy-making cases, so if you ever need any help, any of you out there, in drafting or writing, I'm sort of putting an open invite out there if you want free labor. But on the Canadian side, the questions that I get and the projects that I've been working on tend to focus on this idea of capacity-building, in that these are communities that are not litigating their treaty rights.

What they're doing is they're settling their treaty rights and they're in a process of formalizing what they call a comprehensive settlement. And typically that will manifest itself as a piece of federal law. So one of the communities that I'm working with is the Dehcho First Nation up in the MacKenzie Valley Delta who are in this process. It's a really interesting project from the perspective of federal Indian law, because it's a community whose relationship with the federal government in the U.S. context would be something that you would see maybe around the 1840's, in that they're trying to strike a real serious document where people are actually going to stay at the table and talk to each other for a long time. At least that's what the expectation is. And so those are the things that I do. And it's such a narrow area, but at the same time, it's an area that I see a constant theme. So, for example, one of the themes that I see in Canada is the absence of the federal government to do real property and civil rights within First Nations communities, so the stories that you hear which are so constant within First Nations communities under the management of the Indian Act really concern what would otherwise be an

effective, accountable, responsible government at the state or local level doing things that people would just expect. So under the Canadian system, that falls under the provincial ambit of real property and civil rights. And so there is this weird sort of juxtaposition between the two countries in that they don't occupy the same jurisdictions. The federal powers in Canada are different from the federal powers in the United States; and that has a tremendous impact on the way First Nations and Aboriginal Peoples as a whole think of this idea of sovereignty and aboriginal identity.

I think it would be too much for me to put it all together in 15 minutes, but let me just give you one concrete example. In the Dehcho instance, what I'm working on is a very specific area dealing with taxation. And so when this massive oil and gas pipeline, finally comes through, as it has in a number of other northern First Nations communities, they want to understand, at least from a U.S. perspective, what have tribal governments been able to do vis-à-vis their own capacity-building to access the revenue that is derived from that operation? And again, this is an idea that is a very new idea in the Canadian aboriginal context. And so that gives you an idea, I think, as to the comparative insights that I can bring to the forefront when I'm working on these kinds of projects.

And similarly, I have an interest in Central and South America. Our program has, through NACLE, the North American Consortium on Legal Education, been involved in a number of seminars at UNAM (Universidad Nacional Autónoma de México) Instituto de Investigaciones Jurídicas,²⁹ which is right in the heart of Mexico City, to deal with indigenous issues from a comparative and international perspective, as well. It makes for great conversation; but it also has, I hope, helped enrich the projects that I'm working on.

And I do see consistently a real interest on the part of Canadian aboriginal groups in what's happening in the United States. It not just that First Nations people in Canada love golf. We get a lot of First Nations people coming through Arizona, for example, because of the weather. That's always a big joke. Weather discussions play very well in Canada. If you ever just want to talk to anybody in Canada, just talk about the weather. But it's actually more than that. They're very interested in seeing how statutes like the Indian Reorganization Act have helped, or not, tribal governments and tribal enterprises. And so there are some enormous similarities, but these huge jurisdictional gaps mean that at the end of the day you're going to be talking about very different legal entities.

I think that's really all I can bring to the table right now. I mean, in terms of the writing that I do, I try to write in a simultaneous manner as to the type of work that I'm doing at that time; so I see in the future most of the scholarly work emphasizing this comparative aspect vis-à-vis natural resources. I should also mention -- this isn't just sort of pie in the sky -- private companies, multinational corporations, are absolutely interested in these comparative aspects. There are a number of large Canadian energy companies that have serious land interests and property interests cutting through New Mexico and Arizona, and this has only been a development in the last five years. And so I'm very, very sensitive to the relationship between energy consumption, dollar parity, the cost of energy -- i.e., oil -- and the impact that it has in Canada.

And, Shin, unfortunately, most people here won't know about Moosonee factory, but in 30 years from now there will be a nice sandy beach front on Hudson Bay, and the Province of Manitoba

²⁹ National Independent University of Mexico, Legal Research Institute.

has already said they're taking a proactive stance on global warming, and so you can buy your lots in Churchill, Manitoba. That's going to be beach-front property. So that's really all I wanted to add to the mix here. Thank you.

MS. OROPEZA: Our next speaker is Professor Mary Jo Brooks Hunter.

MS. HUNTER: Thank you. (Addresses group in native language.) I am a member of the Ho-Chunk Nation. I obviously speak my language and am proud of the fact that I speak it rather haltingly, and I don't consider myself fluent. I state that just to express, in terms of this discussion when we talk about our indigenous clients, a reminder of the fact that many of the indigenous clients do still speak their language, native language and still think in their native languages.

I have a lot of people in my tribe who, when you talk to them, you can see them translating within their heads to be able to understand the concepts. Things like *res judicata* are not something that are in the Ho-Chunk language. So when you talk about legal concepts, sometimes for our clients, that is a really critical matter. I also came to this discussion thinking about the wants and needs of the indigenous clients and wanted to talk about my background, as well. I had been a clinical instructor at the University of North Dakota for many years, from 1989 to 1993, where I was the director of the Native American Law Project. And we, in that clinic, provided legal services to members of the then Devil's Lake Sioux Tribe, now called the Spirit Lake Sioux Tribe

I took law students from the University of North Dakota, and we traveled two hours by car west to go to the reservation and provided services to the members of the community, the tribal reservation, within the tribal court and in state court. In preparation for getting the clinic to continue and to go forward when I came on there, I thought the best thing to do would be to survey the members and get a sense of what they wanted and to provide questionnaires; and forgetting, myself, about how our indigenous people have been surveyed and questioned to death, but yet having a real difficult time in trying to get a sense of how we could actually have input from the tribal members.

Finally, the first semester or two, my clinical students were questioning clients, while at the same time taking cases, so that we could provide services that really reflected what the clients wanted from a law school clinical program. I understand, the clinical program, like many things, is not static. That clinical program has gone through various changes as it has responded to what the needs of the client population are. I'm now the director of the Child Advocacy Clinic at Hamline University School of Law in St. Paul, and I've been there since 1993. I'm not a strict Indian law clinic, but because of who I am, I have developed what I consider a hybrid clinic, in that I am providing legal services in child advocacy.

However, I have become very involved in teaching my law students about the Indian Child Welfare Act, and we do a number of things involving the Indian Child Welfare Act. We represent children in cases involving the Indian Child Welfare Act in the state of Minnesota, as well as guardian ad litem solely in cases involving the Indian Child Welfare Act.

The question comes up about who is the client and how do we address the needs of our clients so that we service the indigenous community. I'll come back to that a little bit. I think it made me think, with Matthew's comment about the disconnect; because as I've been thinking in the last few months -- I was on sabbatical for the spring semester -- that the areas that I service are similar, in that native people and children are very often voiceless within the justice system, or they are misunderstood and there is a disconnect about that area of law. And I think in academia, they're both considered kind of lesser in terms of substantive matters and subject

matters. So, you know, of course, that's where I decide to hang my hat. But I think it's fulfilling. And what I try to do in my clinical teaching is to get the students who are in these clinics to accept that and to realize the potential and the importance of doing that kind of work. So that the passion that's there, you can't teach that. People either have the passion or not. But that becomes a part of the work that I do.

And some of that goes back to things that Christine's article talked about in community lawyering,³⁰ but also things that are important for me as a native attorney in terms of my own language and culture and the value of that, and then how I assess what my clients need or who I'm serving. If our clinic is taking and addressing that -- and I don't know if my clinic is a "regular" clinic or not. I think my clinic is a regular clinic, and I thought the Indian Law Clinic was a regular clinic. But maybe it was an irregular clinic. Maybe they are irregular clinics. Maybe I'm irregular. But we won't go there.

I just think that there is a certain aspect of that that translates into our work and our practice. I think it's a good point, because there is sense of us being outside or in a different area. And that holds true for the children's law as well as for the Indian law aspects of it. I went to Hamline to do the child advocacy clinic. I had decided I was tired of being the Indian lawyer and the Indian clinician and teaching about Indian law issues, and so I was going to get into children and the law. That was the clinic and I was excited about it. I had done guardian ad litem work and guardian work with Devil's Lake Sioux Tribe or Spirit Lake Sioux Tribe, and so I was looking for this exciting new change.

Yet not only do we define our clients by who our clients are, but also who the lawyers are. The work that came to me came because I was an Indian lawyer and had worked for many years in legal services and had a knowledge of the Indian Child Welfare Act. We come with the education and training. In fact, I'm writing an article for Matthew about 30 years of the Indian Child Welfare Act. We'll talk about that later.

But it made me think about how those things come back for us and then define our client community; define who it is we're working for. I was asked to represent guardian ad litem who were mainly volunteer Caucasian people in the metropolitan area who were being asked to work with native families and had no sense of [native families]. So my job as a lawyer became what I thought I was putting aside: training the judges and the social workers and so on, and my students; but then my students and those people about our native community and what our native culture was about or is about.

I think that that is something that impacts this kind of work, when we are the other; that need to go beyond the law and to get into the whole aspect of who we are. You know, with children, for example, when I introduce myself, I was giving my Indian name, which is "Rash'chand'ee," and that is a name that was given by a grandfather that means "A Name That Stands Out," which is a name that means to stand out when I leave this world and go into the spirit world, so that I will be allowed to come there. This culture that I'm a member of deals not only with the time that I have today, but the time that I'm going to have beyond.

To talk about that in a very simple sense for children who are in the child protection system, and how that's a critical piece, means teaching law students not only about the legal aspects of the Indian Child Welfare Act, but also the cultural aspects of the community and how that impacts on the legalities of the case. How does that impact in terms of the "active effort" which is a part of the Indian Child Welfare Act. Another unpublished article I delivered to UND. I have all these articles floating around too.

³⁰ Zuni Cruz, *supra* note 10.

But anyway, the active effort sets a legal requirement and impacts our families, our culture and our tribes. We need to teach that to law students and how they do that. So that becomes: Who is our client? Is it simply this Indian Child Welfare Act guardian ad litem? Is it simply this child in need of protection services case about the Indian Child Welfare Act?

It becomes about who is our client and really figuring out, is it more than that? Is it the tribe? Is it our tribal community? And that also becomes very difficult if we have a case where, lo and behold, we have to oppose the tribe. There have been some cases where we actually oppose tribes in terms of transferring a case back where it may be harmful for a family. And that's difficult, because then again, to determine who is my client and how does this impact the larger community?

We don't have time in 15 minutes to really talk about that. But in a clinical setting this requires setting up a curriculum from the beginning with the students to give them the broad perspective of understanding what it means to have indigenous clients. Because it isn't just about that one person. It's about that one person who is a member of a family, a clan, a tribe, a community, a nation, which is something that takes several weeks to explain, and it affects our teaching; I think this really impacts our teaching in this area.

It really has to be something we train them to look at as lawyers. How am I going to lawyer in that capacity, when I have to think about these broader things. So as I moved into this, it's become a revisiting of my curriculum, the syllabus. I spend a lot of time on storytelling. You have to get them to understand your community, and it is a difficult thing, to do within the limitations of a classroom, and especially from where I am, in the limitations of an urban community; because our populations, even though they may be in the urban community, come from this other community on the reservation.

So it's an ongoing process, and I think lawyering means, for me as a clinician, to teach the law students how to lawyer in that kind of arena. And it means coming up with more creative methods to teach them. Bringing people in from the community, elders from the community. Having people who are not lawyers speak to them.

And you know how law students are; they want cases and they want to hear about law review articles. But sometimes, to teach the special unique things of our community requires someone other than lawyers. And so, I'll leave you with that. Thank you.

MS. OROPEZA: Thank you very much. And our last discussant is Professor Barbara Creel³¹ of the UNM School of Law, Southwest Indian Law Clinic.

MS. CREEL: Thank you, Laura. My name Barbara Creel. I'm from Jemez Pueblo here in New Mexico. I am the only female attorney from my pueblo. I grew up in Albuquerque, so it's nice to be home. I wanted to start by saying that we can see that lawyering for indigenous peoples has an incredible intersection with so many different parts of law and social contexts. What we've heard today is that lawyering for indigenous people connects with or intersects with water law, health care law, spirituality and burials; with multinational corporations; with business law; with family law; with aboriginal title; and with criminal law, RICO. The list goes on and on and on. So what we taught in the Indian Law Clinic when I worked with Christine earlier was that you're committing malpractice if you don't understand Indian law, no matter what field of law that you go into.

³¹ Barbara Creel, Professor of Law, University of New Mexico School of Law, Co-Director, Southwest Indian Law Clinic. Professor Creel was an assistant federal public defender in the District of Oregon, where she developed federal habeas corpus and post-conviction expertise. She assisted in the defense of Native American clients on cases from reservations prosecuted under the Major Crimes Act.

But if you look at it from the other point of view, from the native person, the indigenous person has to keep, within their context, within their frame of reference, every aspect of what we see as the legal framework, when they're just thinking about surviving and thriving in their community. I heard someone say at the last Indian law conference that I went to that native people have an incredible legacy of fierceness and independence. And I love that idea. It speaks to the reasons that we're here today talking about indigenous peoples, because we have survived a huge legacy of the United States federal Indian law policy that has been the opposite of thriving and surviving.

So I approach this from a context of "I want to be an Indian lawyer and what does that mean," I wholeheartedly embrace the idea of "first, do no harm." But what does that mean? When you come with your own ideas of what harm is and what it isn't. When you come with a western concept of law, of helping. Currently, I work for the federal government and I'm a lawyer. So I have that whole package: "Hey, I'm here to help." I think it means that you understand the community that you are operating in and working with. And the only way you can do that is to understand yourself. And it's taken me many, many years and many different experiences to learn how the threads of my life come together both in my work and in my personal family, in a good way so that I can have the experience of actually feeling like I'm part of the community that I'm working with and I'm also having a positive impact or having an impact that may, down the line, have some good come out of it, as opposed to some bad.

As I said, I'm Pueblo. My father is non-native, so I wasn't able to live on the reservation. I grew up in Albuquerque as an urban Indian. I live in Portland, Oregon, right now, and I was very excited when the weekly newspaper had an article with a big picture of a woman with dark hair and a little baby with jet-black hair and it said "Urban Indian." I pulled it open to the page, and I started reading the first paragraph. It said something about the woman having a tattoo on her arm that said "Native Pride," but that it was hard to believe that she'd have anything to be proud about. She was unemployed, she was homeless, she was not married, her mother was a prostitute, and she had \$127 to her name. And it went on from there. So I knew where this article was going. And to me, it spoke to the stereotypes of both natives and urban Indians both at the same time. I didn't really have to go any further to know that it wasn't going to be about the tenacity and ferocity and independence of native people in the Northwest.

I think that we have to understand that our experiences are unique, as native people, but they're also universal. And in growing up as a native person in an urban setting, I had many experiences that I thought only happened to me and singled me out as "the Indian" in the classroom or the Indian "expert." And when my teachers or my friends use that word, they used it to mean that I spoke for all indigenous peoples. And that made me very uncomfortable, and I knew that, even in second grade, I knew that I couldn't speak to meet that. But as I get older, I see that I am in a position, with my experience, to translate many different concepts from my people at home and the people that I work with that don't have any experience with native populations or don't have enough experience or have a complete misconception; and have only accepted what has been written in the media, the general press.

So my experience as a lawyer has included work for the Native American Program of Oregon Legal Services in Portland, Oregon, working with terminated tribes in restructuring, restoration of a tribe that had become restored after the termination era. I worked in the Southwest Indian Law Clinic, I worked in the Community Lawyering Clinic at the University of New Mexico, School of Law, doing Indian law and community lawyering and poverty law. I worked as a federal public defender in Portland, Oregon. The attraction for that position for me

was working with native people, representing them on crimes and offenses that they were charged with under the Major Crimes Act in federal court.

And currently I work for the Army Corps of Engineers as a tribal liaison, but I am going to begin as a professor of law at the Southwest Indian Law Clinic, University of New Mexico, School of Law and will be starting this summer and the fall to go back into the clinic and use some of the experience that I've had in those positions to learn from the students. And it's an honor. It's an honor working in the Indian Law Clinic, because I've been there before, and I learned so much from having the time to reflect upon the work that we do together.

Many of the things that were said today definitely resonate with me in the work that I've done. One of the things that I teach now is that in understanding native people we have to understand, in lawyering, that there are several different concepts that are universal, but different. And some of the things that I can point to are a sense of community, a sense of connectedness. Mary Jo spoke of time and space, both intergenerational and supernatural, and also a sense of humility. And when I -- in doing the work that I do now, I try to translate those concepts to nonnative people so that they can understand and hopefully connect to the same ideas that they might hold, but also understand the differences and why we may not be communicating on the same level.

We've spoken today about how native people operate under principles different from western property principles that we are all so familiar with when you live in a nonnative community. We've also heard about the connectedness to landscape and land. That's also, with indigenous peoples, there is a connectedness to each other and, a use of native indigenous knowledge to continue to live and work together in a community to survive, as opposed to individuals living and working independently. The concepts of time and space being intergenerational: The buzzword that you always hear is the seven generations. That is a concept that we might hear all the time, but I have to repeatedly explain to nonnative lawyers and colleagues about making decisions that will impact many different people. And for me, the seventh generation is very personal. Where I stand, I see that as me being in the middle, and my mother's grandmother making decisions for her family that will impact my daughter's grandchild. I mean, those are the threads that I see. It's not just way in the future or, as some people have put it, "it's basically a hundred years." It's very personal.

And I feel like I am a product of federal Indian law and policy in the United States because of the decisions that my family, my grandfather made and that my mother made to leave the reservation for the opportunities and the push that she was given to assimilate, as well as the opportunities that came later for us to reconnect with a community that has been around since time immemorial, and the opportunities that my daughter will have, living at the pueblo, and learning her language and practicing indigenous knowledge that has allowed us to thrive and survive from the beginning.

One thing that I don't think that is easy to explain is this indigenous knowledge, the words that exist in indigenous languages that don't translate, and vice versa; the legal constructs that don't translate. And I think that when you lawyer for indigenous people, that's one thing that you're constantly doing. Trying to understand one concept and superimpose it on another in a way that allows the people that are being impacted by these legal principles to both understand and come up with a better solution. I think that's always a possibility -- coming up with a better solution than what has been given to us by the western legal principles.

One example that I have of that is working with the Army Corps of Engineers. The Army has a legacy of, well, killing Indians. And so the Corps of Engineers has had to bring that culture

with them when they're working with native peoples along the Columbia. One village was inundated completely by a hydroelectric dam on the Columbia, and it was what had been termed by one of the treaty tribes as the "Wall Street of the Columbia," of the West, where native peoples from Canada and the Plains and all over the Northwest came together to trade and to fish and to learn from each other. But the village population was what we would call in western terms, transient. Some people lived there; most people came during fishing season and then would leave later. There were temporary houses built, temporary drying shacks, things like that. So when the Army built the dam that inundated the village, it was during a time in Oregon, where the tribes were expected to disappear. And so they moved the people that had been left there along the river. Many of the people had left their own tribal nations and fiercely decided to become a Columbia River Indian as opposed to claiming an affiliation with a particular treaty tribe, which was a whole different Indian individual versus tribal rights issue. But there they were, and the government had to do something with them, so they moved them up on higher ground and gave them some substandard leftover housing that was already dilapidated, basically Army housing, that was being surplused, and then left them there, with no health care, no community support, no education, none of the things that were promised under any of the treaties of 1855 that were so well negotiated by the War Department.

The work that we have been doing is to go back into the community to rebuild that from the ground up. If you don't see an opening for the government to come into a community that has been devastated once, twice, five times over, to come in and say, "Oh, we're going to fix this for you," without some resistance and some push-back; this is the perfect example.

And there has been a lot of translating that I've had to do among the legal counsel and the people that I work with in order to help both understand why we're not just welcomed with open arms, with "Oh, great, this is all going to be fixed." These experiences take the concepts that we have been talking about and writing about, and actually doing them. I've had an opportunity to test some of the ideas and see what works and what doesn't. It's where the rubber meets the road in Indian law and clinical law. And my experiences, for the most part, have been good.

I try not to over-identify with the problem, but instead identify the problem and try to remember where I come from and what my background is and where the others have been coming from through history, in order to pull those threads together to assist in some way, as opposed to cause harm.

So that would be my advice in understanding the community you work with, to understand yourself and what you bring to that community first. And how we teach that, is what we're going to be discussing as we go through this conference.

But I want to thank Laura and Rebecca and Dana and Christine for the opportunity to embark on this journey and reflect on how we can all be better lawyers, but also better human beings. Thank you.

MS. OROPEZA: Thank you. The panelists have offered some very interesting and important topics for the respondents. Thank you.

III. RESPONDENTS

MS. PARISH: Okay, I think we're ready to get started. I'm going to lightly monitor. First I'd like to introduce the Respondents on the panel. The first is Professor Alfred

Mathewson.³² He's the acting clinical director at the University of New Mexico School of Law. Next to him is the only non-UNM respondent, Professor Robert Hershey.³³

MR. HERSHEY: Yes

MS. PARISH: -- from the University of Arizona. What's your title?

MR. HERSHEY: Director of clinical education.

MS. PARISH: Okay, the director of clinical education; thank you. And then Professor Christine Zuni-Cruz, who is the director of the Southwest Indian Law Clinic at UNM; and Dean Mike Norwood, who is the associate dean of curriculum for the University of New Mexico. And I think the idea is that we'll just go down the list here. I'm not sure which end wants to go first.

MR. MATHEWSON: I defer to the dean. I can go if you want.

MR. NORWOOD: A volunteer.

MS. PARISH: And you have ten minutes each.

MR. MATHEWSON: That's a lot of time. I want to thank Christine Zuni-Cruz and the Tribal Law Journal for inviting me to take part on this panel; although I must confess, I have no idea why I was extended the invitation.

MR. NORWOOD: Your good looks.

MR. MATHEWSON: And I'm not quite sure exactly what I am supposed to do, except that I was asked to be a Respondent. So what I did was I listened, I took notes about each speaker and things that they said, and formed some impressions. I'm going to speak from my perspective as an experienced clinician, having taught in a clinical program several times over the last 24 years, and from the vantage point of listening to the conversations and my reactions to what was said. I teach in the business area, and so my work in our clinic has been in the business, tax, economic area, working with clinical students.

One thing of the things that struck me, I would say, was the diversity of viewpoint from the panel as they presented their perspectives working in Indian law clinical programs or indigenous peoples law clinical programs and their experiences with that. And each one told how they came to be where they are now. What struck me was how, once they told us that and then where they are, that suggestions were made about the road ahead, what comes next, more so than necessarily how far these programs have come. And just from what I've seen, a lot has changed since I first started hearing about community lawyering or lawyering in Indian Country. A lot has happened, and that came through in what was said. So I was struck, as I listened, as they talked about how they were pulled into being a part of the law system, teaching in a clinical program, the challenges of preparing students to practice in Indian communities, and how that was a challenge and how they were being tugged based upon what they had gone through and what they have seen in terms of which side they may be on, representing the tribe as opposed to representing individuals.

But it wasn't just that they were being tugged. It was almost a sense of guilt at being a part of the system. I wouldn't say it came through quite that way, but by the time they were all done, I was left with this question: Where would the communities that they cared about, that they expressed that they cared about, be if they had never come? If their students had never been taught by them and come to those communities? Where would those communities be without them?

³² Alfred Mathewson, University of New Mexico (UNM) School of Law, Professor of Law. Professor Mathewson's teaching and research focuses on sports law, minority business enterprises and corporate governance. He frequently supervises in the Business and Tax law Clinic and has served as Acting Director of the UNM Clinical Law Program.

And so with that, I'll go through the things that I heard and what led me to that question. Shin Imai began with this statement "People intending to do good can do a lot of harm," and he was explaining how he came to see that in practicing law in indigenous communities the concern that lawyers would do a lot of harm. But before he was done, it wasn't just about lawyers; it was about the legal system in which he was trained and sending him to do that -- doing harm --and the sense that there was an imperialist legal system and that lawyers going into these communities were imposing this other legal system on that community, and that was a concern. And what he was trying to do with students was trying to limit that harm, to undo that.

Aliza Organick talked about -- the thing that stood out to me in terms of what she does now is that she is training students to provide individual representation of tribal members in tribal courts; not just in the American legal system or state court legal systems, and this representation and fascination or the emphasis on the existing Indian Family Doctrine, is something that she's grappling with. At the end she came back and talked about the personal impact of looking at individual tribes, at individual representation, versus dealing with the bigger issues.

And Matthew, I left just as he was opening, so I didn't get the beginning, but I came in on the phrase, "in the mattresses" or "to the mattresses," and he was doing that in terms of talking about being an Indian lawyer representing a corporate entity in terms of looking at, tribal governments, and that there was this issue of sovereignty.

But in terms of what he did, it sounded to me that he was in essence representing the entity, the tribal government, against individuals, and that was a concern of his. Another thing that he expressed, and I'm still thinking about this, was the issue about audience and whether what you do matters, whether what we do matters to anybody. And I should say, because he was focusing and I think he did make this statement, that he was talking about Indian lawyers as academics in terms of their writing and their audience.

And so this was a focus on scholarship, not just a focus on training students, but of what you were doing with your scholarship and whether it was helpful at all. And then James Hopkins began with an outline; he said an outline of the work that he did and how he came to do that work. And the work seemed to be comparative indigenous law; particularly dealing, though, with trade, international trade; at least larger corporations, corporate entities, but not necessarily exclusively tribal governments, but also in terms of multi-national corporations and how he got into practice in Indian law in the economic setting, in the business setting. But his focus, though, was not business. I don't think he used the phrase "business" at all. It was international trade regulation, it was oil and gas, natural resources, dealing with the issues, but not just focused on what happens in the United States, but looking at Canada and the U.S. It was international in scope.

And then Mary Jo Brooks-Hunter, she began, talking about language. What struck me was, when you are going into an Indian community, an indigenous community, the role of practicing and understanding of language. Where there is the language barrier, how do you teach students where there is this big gap with language? And the subsequent focus was on culture and communities and training students, but I was still struck where she began, with the difference that having a different language meant, and whether or not people knew or understand how to do that.

And Barbara Creel ended this picking up, really, where Shin Imai began, but her phrasing of it was "First do no harm." Her struggle with trying to figure out exactly "what does that mean?" And she came to some universal concepts, she said, that are different. But things like

community -- universal concepts, may be different -- community, connectedness, intergenerationality, the supernatural, time and space.

And that's where I'll stop, but going back to that question: Since they said all those things and raised those concerns, where would those communities be without them and without their students, and what does that hold for the future?

MR. HERSHEY: My name is Robert Hershey.³⁴ I'm the Director of Clinical Education at the Indigenous Peoples Law and Policy Program, University of Arizona. Thank you all for inviting me. And Christine, thanks again. It has been about 15 years since we were here, and I don't know if you had written your community lawyering article back then, but I know that shortly thereafter you published your domestic violence article, and it's always a good resource for me just to wait for you to publish something. You and Matthew and all the other academic people here. So I thank you all. I also want to thank the native peoples in this area for not giving any further ground and maintaining the dignity and respect that they deserve in the constant push-back to the attempted assimilation of your rights and your land and your cultures here, too. So thank you again for inviting me.

I'd also like to acknowledge the presence of the distinguished guest that just arrived, Justice Lomayesva of the Hopi Supreme Court. Let me tell you a small bit about myself, and through this telling you a little bit about myself, I can weave in some of the responses, because of the similar things that I've gone through. I was born and raised in Hollywood, California -- surfing, skateboarding down the Avenue of the Stars. And I never admitted this; I was thinking about this for the first time today: That when I was young, the guy that played Kit Carson on TV, I got my holster autographed by that guy, and didn't until this particular moment realize that I should probably say something today in front of a large group of Indian people that I did such a thing.

MS. HUNTER: We forgive you.

MR. HERSHEY: But it meant so much to me at the time. Anyway, so from Hollywood upbringing, hiking up in the hills and being outdoors and sitting watching the waves and staring at the horizon for a thousand hours, I did develop my own kind of relationship with the romantic notion of what it meant to be with nature. And so when I went through law school -- and we had no classes in Indian law, I didn't know what I was going to be doing when I graduated. And "going to the mattresses" has just triggered something else, because William Kuntzler came and spoke, he was representing all the Black Panthers at that time. I graduated in '72. And so he was saying, "You can come to Chicago, and we've got plenty of mattresses that you can lie down on, and you can represent the Black Panthers."

I see a card in April, before I graduate, that they're looking for an attorney at DNA Legal Services on the Navajo Reservation. So I say, okay. I go up there to interview and I get off the interstate and I turn off on the Lupton Road exit, for those of you that are from here -- Lupton Road exit -- and I'm driving north and the red rocks are there and I'm going, "Oh, man." I'm 24, and I'm just totally in love with this country. And there is a Navajo woman driving a buckboard, a horse-drawn buckboard, there. And I'm going, "Whoa, this is really getting interesting and this is wonderful."

So I take the job at DNA Legal Services and I look for a place, and I wind up living in a one-room little tiny cabin that's way back in the canyon on the road between Fort Defiance and Crystal, New Mexico, and it's way back. No electricity, it's a two-burner woodstove, I'm hauling

³⁴ Robert Hershey, University of Arizona James E. Rodgers School of Law, Director, Indigenous Peoples Law Clinic.

my water and doing all this, although I had the opportunity to get a house with electricity, and now my memory of how romantic it was has changed a little bit. I'm kind of thinking maybe I should have taken the house with electricity.

Anyway, I was young and youthful and idealistic, but I wasn't a savior. That whole savior complex, I think, even got me into trouble, because the other DNA attorneys were kind of saying to me, this white guilt thing, I just never had it. I don't know, really, what that meant to me, but it did not ingratiate me as well with the other DNA lawyers in my office, because there seemed to be some sort of a sense of responsibility that we had done something to native peoples and it was our job to remedy it and fix it.

So I think they got back at me. What they did was they gave me all the Federal Regulation Z cases, which is the usury interest cases, and they had me sue, like, twenty-six used car dealers. I mean, what a way to start your legal career on the reservation. It was just, oh, God. But you know, it was very abusive toward native peoples. But in any event.

So, here is where I learned. My landlady, Bertha Harvie, one day the very beginning of my stint there, she says, "Would you do me a favor? Would you take my goats back to the canyon?" She lived near the highway. "Would you mind taking my goats back to the canyon right next to your house?"

And I said, "Sure." I mean, being a surfer from Los Angeles, I had lots of experience in herding goats.

MR. HERSHEY: And so I took them, and I don't think I got more than 100 yards before they start tearing off up into the hills. And there is this one with the big bell clanking and clanking and clanking. I told this to the Gila River Council once, and they were looking at me like, what a dummie.

MR. HERSHEY: Anyway, so I come back after about an hour of trying to find them up in the hills, and she's laughing and laughing and laughing. You know. And I said, "What's so funny?"

She said, "They know where to go." And I was like mortified and so apologetic. So this is my first lesson in humor. And so I know we talk about the importance of place and setting and we use like, Basso's Portraits of "The Whiteman" and things with sense of places, often. But I use Keith Basso's Portraits of "The Whiteman," which are joking imitations of the white man. So when I'm working with White Mountain Apache, they are laughing at these jokes. I don't understand why they think they're so funny, but they think they're absolutely hilarious. But this is introduction to the humor. So I never came at this with the idea of being a savior. In fact, I was kind of angry, because I had no formal Indian law training in school. I was very angry that I did not know how to practice and you have so many cases right away as a legal aid attorney, and you come from this idea: What are you going to do?

And you have to learn all about culture and distinctiveness of identity, which brings me to this whole issue of identity, which many of you talked about throughout. You talked about identity and what it meant to be an Indian and whether you're an urban Indian or reservation Indian or whatever it is. And I try and get this out to my students right in the beginning. I'll talk a little more about the curriculum tomorrow, but the idea of imagery in American Indian policy, stereotypes, Indian identity, who is more Indian than not. It's too burdensome. It is too cumbersome for everyone to negotiate on a constant daily basis their individual identity and be responsible for the past practices of genocide and whatever it might be that resulted in your being raised in a city versus on a reservation. So let's get that out. I know that was a concern to many of you that came through. I'll save my mud story for tomorrow. I think the Navajo word is

"haush-kusch" [phonetic], for those of you that speak Navajo here. It's mud, it's plural. It's big mud.

Aliza asked about the Indian Child Welfare Act and why can't they get it, why don't people get it. And I do think that there are still racial prejudices that Indian children are better served in homes of non-Indian parents off the reservation, and I think that still exists. So it's something to consistently fight. That's the paradigm that changes, too. That's why native people and Indian peoples and all of us in practice here have been pushing back and pushing back and trying to go ahead and disclaim this idea of why can't Indian people just be like any other minority? Assimilate? Why is there a special rights category? Which is absurd, because people don't take the time or seek the necessary acquisition of knowledge to understand that there are political histories that have been established. And so I think that may be one answer to your question: That they can do it better, and they just don't want to be bothered with learning this kind of very esoteric thing: Indian law. What is that? Well, we have to teach them. The push to publish that you're experiencing: Well, I've got Rob Williams, and we've got Rebecca Tsosie and Bob Clinton and Matt Fletcher and Christine Zuni Cruz and Gloria Valencia-Weber, and we've got a whole host of these academics. At least I've been pleased to be able to have published some things. In fact, I have a primer on crafting contemporary business agreements that I've sent out to practitioners for peer review. So I am encouraging people to go ahead and write for your audience, what you meant by "your audience": How do you figure out what you're doing? And no, I don't think just the academic stuff, nobody is going to read it. I do think if we have to read another Marshall trilogy kind of law review article, that might be bordering on why do we need it when we have plenty of those.

But there is so much that you can weave: the academic and the history, I do think a major part of what we do and how we all practice -- you mentioned storytelling, and storytelling is so important, because after all the years, all these years of repressive genocide and colonization and resistance, Indian people are still telling their stories. And it is absolutely critical. And tomorrow I'm going to tell you, too, I don't even let the students loose for two, three, four weeks until we go through lots of storytelling and cross-cultural diversity issues, until we understand that. So that push-back with storytelling, I think, is extremely important.

James, the attachments to place, capacity building: When James came aboard, it was the idea to integrate an international flavor into our program and James helped develop a group of students that came from all over the world for our masters of law program. And so I cannot tell you how enriching it's been for the last seven years to have people from all over the world, and we incorporate within our program that interaction between the JD students that are in Indian law program and the masters of law students, whether it be from Ecuador or Brazil or Nicaragua or Canada. We have so many students from Canada. To have that kind of diversity in our program, it's really magical. And so it opens up: Not only are we working on international law issues in addition to domestic issues, but it's enriching to have all these different stories that I think is very important. Mary Jo, you talked about responding to the changing needs of the clients we serve, and I do think that that's very important for us, as clinicians, to be that responsive. We're always asking: What do you need? And we ask the students that, too: What do you need? And it's kind of trying to match the students' interests with what the tribal needs and the requests we get at that time. But it does change; all of you and people with their varied careers, figure out that things change. Times change, needs change. Economic development is big right now. Obviously, the tribes are concentrating on that. How can we help that?

We just helped Crow Tribe do an LLC code, which was something that was very high on their priority list. And you hear a lot about the need for corporate governance, corporate business codes, business economic development. So our job is to go ahead and assist adaptation.

MS. PARISH: If you could begin to wrap up.

MR. HERSHEY: Yes. And Barbara, that intersection between law and social contacts carries over into all kinds of identity issues. It carries into educating the nonnative population, because there is something in keeping the stories alive and making sure that nonnative peoples understand the distinctiveness in Indian identity, the distinctiveness of separate place, communities, and that not all Indians are alike. And I think it's very important to make sure we tell that story. Lastly, I litigated for the White Mountain Apache Tribe; a couple years for the White Mountain Gila River. I almost made the worst law in years on a case with Gila River. How do we deal with issues and how do we tell students that, yeah, you can do everything right or you try and teach them everything, but if nonnative peoples want to press or state governments want to go ahead and press issues, how do we find ways to settle things with alternative dispute resolution? Ways to keep things from going to the Supreme Court and making bad law? That's something I can talk about a little bit more later. But thank you very much.

MS. ZUNI CRUZ: I greatly appreciate this opportunity to reflect on the thoughts of others. I think it is very important to be able to listen and to hold voice and to learn not only on a personal scale, but also to be able to teach others, especially our students, how to do that and how that can be an important manner of communicating. And so I thank our speakers for their thoughts this afternoon and for giving me an opportunity to reflect on many of the important things that you have said. And actually, that's just what I'm going to do: I'm going to just go through some of the thoughts that resonated with me and that I would like to reflect back as being very important. I heard from Shin Imai that there is this idea of the lawyer and the law student and what they can do as "myth." I guess I would look at it as lawyer and law student as myth; that there is a myth of what the lawyer or the law student can do. There is both the myth that we create ourselves, as well as the myth that others have concerning what it is that we can do. And I think that this arises in terms of the lawyer as a savior; really, that's a myth of the lawyer. It is a myth that's internal to people who become lawyers that, in fact, the lawyer believes she or he can be some sort of savior. There are real limits to what a lawyer can do. I think that it takes going to law school, becoming a lawyer, to really understand that; because I feel that even within my community that people have thoughts or ideas about what a lawyer can do when, really, a lawyer can do a certain amount of work, certain things, but they cannot do everything.

And also, in terms of the impact and the consequences that arise when we have lawyers entering the community, whether those lawyers are from the community or whether those lawyers are outsiders to the community; that it's very important to understand that there are impacts and consequences that arise from bringing knowledge that is external to the community back into the community. And it's a very important thing to remember and to reflect on. I think that this relates to the other idea that sometimes things translate poorly. We don't always have a good translation. Of course, this is true with language. But the same holds true for principles and ideas and systems. And that I think the thought was that there are these systems of justice and they don't necessarily pattern themselves in the same way in smaller indigenous communities that they may pattern themselves in larger, what I like to call, "artificial" communities where people don't have these relationships that go back for generations and where

they don't have blood ties with one another. And so the translation can sometimes be poor, and as a lawyer you need to be able to understand this.

I really like the idea of starting with the reality of the community; that when you go into any community to do anything, but certainly when you go in to lawyer, you have to begin with the reality of the community. What is that community experiencing? What is their reality and how does that limit or broaden your ability to do what you need to do as a lawyer? Aliza, I think raised this point in terms of needing to reassess lawyering in a clinical setting, and I think that that's a very important thought: That lawyering in a clinical setting may in fact be different from the lawyering that you would do in a private practice or lawyering that you as a clinical professor might do yourself if you were in private practice. And really, I think that the challenge is for us to think about that in terms of how is it different? How do we need to be thinking about it? And then she linked it to this research and this writing that she's doing on the "Existing Indian Family Doctrine." And I really see that as her struggle in terms of isolating an issue that represents, really, this hard work of attempting to address real issues within a community, a real issue within the state of Kansas that is there for the indigenous peoples within that state, and needing some reflection from a clinician who is in an institution in that state who has resources available to her, and to be thinking in terms of: What is it? How can I use these resources for this community in order to help them address their very important theory of law that really goes against their very existence of people? I mean, you know, it's like why is it that they cannot for themselves define who they are and have others respect that? I think that really raises an important point of reflection in terms of our work as clinicians in institutions, because it's related to what is the role of the clinician in making the resources of the institution and the institutions that we're in available to the community? Especially where indigenous issues may be at fierce odds with state law, state politicians, the politics of the moment, whatever. And she also brought up this concern of moving from individual representation to representation on larger issues, representing indigenous peoples within the state on larger issues, not just on individual issues which I think is a subject that is really worth some more discussion.

Matthew, I like the picture, I guess, the word picture, of Indian lawyers as live mines, you know, or as this box of dynamite. I like it both for the positive as well as the negative connotations that it raises.

MS. ZUNI CRUZ: But I like your focus on the lawyer and the Indian lawyer. I was having a conversation with one of my colleagues on the court, and he was reflecting on how difficult it was, he was trying to explain to the other justices who sit on the court with us how difficult it was for he and I to move between the outside world and our jobs out there and then back into the community and consider issues and make decisions. And he used a word picture that I thought was really, really great. And he said, "You know, Christine and I, we are off over in these high rise, steel and glass buildings, and then we get in our cars and we come over back to dirt roads and adobe, and sometimes crumbling adobe," he said, "and if you don't think that's a hard transition to make, then you don't really understand."

That illustrates not just a physical difference; it illustrates the deeper sort of differences that occur when you move between a western way of thinking and then to indigenous ways of thinking. How am I doing on time?

MS. PARISH: About a minute.

MS. ZUNI-CRUZ: It is really important, though, to think that within these communities where the thinking is so different, that there are damaging things that lawyers can do, and so that we really need to be thoughtful about what it is that we do. I like Mathewson raising the issue of

scholarship and what does that have to do with scholarship and who is our audience. Maybe I'll leave that for the scholarship panel that we're going to have later.

There is really so much, so much more, but I think that in the interest of time, let me just raise a couple of other things. I think that there is this need to be conscious that our clients are in fact defined by who they are, but they are also defined by who their lawyer is. And so, you know, I am always aware of this when I go into court with a native client, and I'm native myself. I've had the experience of being mistaken for the law student, for the victim of domestic violence. I've been mistaken for everything other than the lawyer. And so, sometimes people are very surprised that I'm in fact not only the lawyer, but the professor. And I think that it's something that we need to be conscious of in terms of -- because it's not only our identity that is an important thing that we need to grapple with. It's also what it is that people want to project onto us in respect to our identity. It's as though we have to deal with both. You know, as if identity isn't hard enough; we also have to deal with stereotyping.

But these are very important things that our students need to learn, they need to recognize. Because both they, if they are native or persons of color, and their clients, if they are people of color, native clients, are struggling with these things, and so it's the job of the attorney to properly translate the client to everyone so that they get a good and an accurate picture of who the client is. There are many other things, but I'm going to stop there so that my colleague, Professor Norwood, can share the important things that he has to share with you. Thank you.

MR. NORWOOD³⁵: Thank you, Christine, and thank you, Aliza, for inviting me here. It's an honor to be here with you. I was very much engaged in listening to what you had to say. I think you had some terrific insights and stimulated a lot of thought. I was asked to respond to what I heard as an experienced clinician. I am that. I've been working in clinical programs for over twenty years, so I think I qualify as experienced, some of which, most of which, I've probably forgotten. One of the things I did learn as a clinician early on was the importance of connecting clinics to the overall curriculum. I am now serving as associate dean of academic affairs, and one of my parts of my job that I like -- there are many parts that are not so pleasant -- but the one part that is fun is to imagine curriculums that are meaningful for our students and imagine ways in which we can do better in terms of educating our students. And my reaction to what I heard is that this group has a great deal to offer, not only to your own work with clinics and the other academic work you're doing, but to the overall education of all of the students that enroll in our law schools. And so we need, together, to encourage you to continue to invade the academy in as many places and ways as you can to make your voices heard. One of the things that I would alert you to, and I'm sure most of you are well aware of this, is there is a strong movement undertaken right now in the area of outcomes education and best practices. There are

³⁵ J. Michael Norwood, Professor, University of New Mexico School of Law. Professor Norwood centers his work in four general areas: clinical legal education, children's advocacy, technology law, and computer applications. The primary focus of his clinical work is developing sustainable, community oriented law clinics. Professor Norwood's clinics bring a multidisciplinary approach to serving the unmet needs of underrepresented clients and groups. To this end, he has participated as principal investigator or consultant on numerous research grants that have supported this approach to clinical legal education. In his current clinical work he developed and teaches a child advocacy clinic that includes a multidisciplinary clinical component through a cooperative arrangement and strategic alliance with the pediatrics department at the University of New Mexico School of Medicine.

two reports that have just been issued. One is the Best Practices Report³⁶ and the other is the Carnegie Report.³⁷ Both of those reports should resonate very strongly with your work and should assist you in finding your way forward, because a lot of the themes I heard today are resonated in both of those reports. And let me sort of react, partly as an experienced clinician, but partly as an associate dean of academic affairs, to what I'm hearing.

First of all, I'm hearing tension, lots of tensions in the room, about the lawyer's role and yourselves as individuals, and this same tension that I have felt just in practicing the kind of law that I've practiced all these years. First of all, we all have an urge to have our personal values and our own sense of self and identity somehow connect to our work. And I know that's a struggle that you -- some of which I heard today -- was that there was sometimes a feeling of disconnect between what we are asked to do in our role as lawyers and what we feel we would like to be doing as people.

That sense of disconnect is one that is discussed in the Best Practices Report and is one which we need, as legal educators, to figure out how to make that connection clear to our students; that there is a way to be a successful lawyer and a successful participating member of our profession while still maintaining moral integrity and moral maturity. And that's a lot about what you are about, and that's a lot about what you do in your work with the students that you encounter, to find a way for them to find a place for themselves.

At the same time, you're engaged in outcome education, and I heard some important outcomes that, although there was a lot of diversity in approach and experience, I think there were some common themes that I picked up. Outcomes education really is a way of defining what we would like our students to be able to do when they leave us. And by "us," I mean all law schools. For yourselves, I heard that there's a desire among you that students will be able to practice Indian law competently. But then that's pretty vague and broad, and what the heck does that mean anyway? And I heard some specifics about that today, which I was pleased to hear. And let me identify just a few things I wrote down.

One, the student will be able to understand communities when representing Native Americans, including the importance of place, language, storytelling, heritage, and so forth. So I heard that an outcome that you have is to have students be able to articulate something about the communities they're working with. That word "communities," I hope this group will be able to define, too, because I've struggled with that word for years, and I know it's difficult to define.

Students will be able to explain and apply ICWA or figure out some other substantive area of law that you deal with and be able to explain it to somebody else. Understand it and explain it. So you're dealing with substantive knowledge as well as an outcome. Students will find the space for personal morals, values in the practice of law. I already mentioned this. Students will be capable of exercising the fundamental skills of the profession. And specifically, one fundamental skill that I heard as a common theme was students will be able to listen to not only their individual clients, but to the needs and wants of the communities that they work with. A clear fundamental skill. But then this group has the additional pressure of not only teaching

³⁶ ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION, A VISION AND A ROADMAP (2007). (available online at <http://www.cleaweb.org>) (last visited April 1, 2009).

³⁷ WILLIAM SULLIVAN, ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) (findings from the Carnegie Foundation for the Advancement of Teaching's 1999-2000 study of legal education).

the special skills and highlighting those that are important to Indian law work, but also the skills that are necessary to practice law in general. Huge challenge.

Students will be able to explain the importance of storytelling in the practice of law. These are just a few of the things that I wrote down, having listened to you talk about your work and what you're trying to accomplish. In addition, you have taken on other missions, academic missions, which are huge and important.

I've heard service mentioned; service missions. In the academic world, you're a three-legged stool: teaching, service, scholarship. And I heard all three of those things. Service is very challenging, as well, I hear. We have laws we would like to work better. Do we do that through legislative process? Appellate process? How do we do that? We would like laws that work well to accomplish our clients' aspirations individually, and how do we do that? That's a service. And just representing and improving individual clients' rights, that's a service. So a lot of what we do in clinic is provide service. It's huge, and it's a huge effort to be able to do that. Then I heard scholarship. You may have some scholarship outcomes you'd like to pursue, too. And what I heard there was one thing that you really want to do, and I applaud you for this, is when you do scholarship, try to do it in a way that has an impact. You want your scholarship to make a difference on whatever audience you're addressing. And that's laudatory. It's not just scholarship for tenure's sake, publication's sake alone. It's to have an impact. And that's really a challenge to be able to do that.

IV. PARTICIPANTS

MR. CLEVELAND: Well, we were scheduled to go to 4:00, and I apologize for having my back to people. But we wanted to give everyone some opportunity for comments or questions or anything else for the panelists here, so if people would like to say something, raise your hand or let me know, and I'll take a few minutes for that. Everyone is scowling, so it must be time to go.

MR. HERSHEY: Just wait. Somebody will raise their hand.

MS. SEKAQUAPTEWA: My name is Pat Sekaquaptewa, and I'm the director of the Tribal Legal Development Clinic at UCLA. I suppose what was reaching out at me from a number of speakers was this sense that we can do a lot of harm when we go back. So what was leaping out to me from what they were saying is that there is a fear or a worry or an anxiety that [when] we go back and work with our communities, our tribal communities, that we can really cause harm. And I think all of us who are native who practice as judges or lawyers or whatever capacity we operate in have this lingering fear.

In a really simplified form, some of it is a resistance to all things western, all things white, all things imported or forced upon our communities. And I think that's a really -- through the years of working with my own tribal community, I think that's a really simplified way of looking at it, and a lot of our law students come in looking at things from that simple perspective.

And I think the reality, though, is that we have entrenched government machinery at home that is not original, and it may not be organic, but it may be organic. For example, I'm talking about an IRA Tribal Council or an IRA Constitution, something that we didn't dream up ourselves or our great-grandparents didn't put in place, but something that has come to be a skin that is sticking to our communities and our governments today, and today's membership have expectations about how this machinery will operate. So it is possible to have a tribe with a western adversarial-style tribal court. It is possible to have a tribe with a representative

legislature. Others have these legislatures where all the adult members of the tribe make up the voting populace. But we have this entrenched governance machinery that we live with now, and our communities have expectations with respect to this machinery. And a lot of the hard issues about doing harm -- the comments about everybody plead[ing] guilty really stuck in my mind, because at Hopi, I was going back through the criminal cases trying to see what our criminal law issues are, and they're all about whether there are valid guilty pleas and effective waivers of right to counsel. The same thing: Everybody is pleading guilty. And really having to think through why that is happening and, at the same time, thinking through Matt's statements about the fact that our tribes are these corporate entities or they're states, they're governments, and they can bring the weight of the police department down on that little old lady in her house, and her drunk son, and search that house. And there have to be some precautions against the weight of the state in that situation.

So I think there is a whole bunch of issues that we have to think through both as academics, as lawyers, as teachers, when we work with students in this environment, where we have young governments, we have complicated problems of how we're going to use these entrenched government entities that we have that people are used to, and that we're going to have to sort through in each of our communities under the value system and the needs of each of our separate communities. And I know we're talking about hundreds of tribes here, with hundreds of different cultures and languages. But that requires a lot of attention to detail. And I suppose the message for myself has been to take the time to pay attention to the detail in each of our tribal communities with our students on their assigned legal projects and do deep, thorough work in each situation. And it's a lot of work, and it's overwhelming, and it leaves me with an overwhelming feeling, with your reflections on your work. That's about it.

MR. HERSHEY: Pat, I have a question to ask you, and I'd like to know from some of the other clinicians too. I try and tell my students that I do not want you graduating law school and going right back and working for your own communities right away. And I'd love to hear your thoughts on that, because I just don't think it's the right thing to do. I think new, young attorneys have to get some experience first, because there is just too much pressure in addition to the familial pressures.

MS. FERGUSON BOHNEE: Well, my own tribal council told me to go practice on the Navajos first. I actually went and worked on some federal government projects for three years with other tribes nationally before I came home. So I think there is some wisdom in that, if nothing more than to not do yourself in politically at home, you know, too soon. You will sooner or later.

MS. ORGANICK: I just wanted to respond because your comments presume that the students that you're teaching are largely native or almost totally native.

MR. HERSHEY: No. I was just talking about the students from that particular community.

MS. ORGANICK: And I just wanted to open this up to those of us who are practicing in very nonnative communities, but reaching out to native communities. And I was saying before that I have taught, in my three years at Washburn in the clinical setting, only three native students. And so all of the stuff that both enriches and terrifies us as Indian attorneys and Indian clinicians and Indian academics in terms of trying to convey not only who we are, as the teacher, but who the community is, is enormous. It feels completely overwhelming in many respects.

And so one of the, I think, compensations, I guess -- and it's not one that I feel comfortable with at all -- is a pullback and a drawback from sort of this peeling back the layers

that deal with identity and these crucial issues of who is the community and going back to strictly a best practice: Okay, I'm a clinician and at the end of the day, let me reframe this for students who do not have the lexicon, for students that it's just not in their paradigm. They have the want-to. There is the want-to, because they have self-selected tribal practice. But they don't have... and I can only give them in my 15 weeks with them, in addition to trying to help them through interviewing and counseling, help them through motion practice, help them through all of these best practices tools that we learn as clinicians... That's been the biggest struggle for me as a new clinician, as an Indian who is practicing in a nonnative institutional environment... trying to reach out to tribal communities. So, you know, I would love to be able to say to a student, "Be careful. Take the time to go someplace else and practice someplace else before you go back home." It's just not my reality at Washburn.

MR. CLEVELAND: Thank you. And I forgot to mention before we speak, we need to identify ourselves for the reporter.

MS. CREEL: Thank you, Pat, for pointing out that what we're talking about a lot of times is fear, what has been instilled in ourselves and we instill in others. But what I heard throughout all the comments was that we have this embarrassment of rich needs in our communities and that that fear should not stop us from going forward. And one example I have of that is working with native prisoners and going in, thinking that I was going to help get religious freedom inside the walls and having this great presentation in front of 45 native practitioners, and then being told -- and some of you have heard the story before, I'm sorry -- "Look, lady, you're not going to help us do anything. You're going to come in here, you're going to stir things up, and then you're going to leave."

And I was shocked and stunned, because I really thought that that was something that resonated with my values and something that I thought would have impact and something that the law was allowing at that time. But I didn't let that stop me. I kept going back and back and back. And eventually, through just sheer -- you know, just my sheer tenacity -- we were able to have an impact, and the relationship that grew out of the push-back from some of these men was much, much richer than if they would have just said, "Yeah, right on." I learned so much from working through that fear of both my clients and the institution and the law. And so that's what I think that all of us bring, all of us are faced with. It's like going up against that fear and then doing it anyway.

MS. ZUNI CRUZ: I want to respond to your statement, Robert. I really believe that it is my challenge, our challenge, to prepare our Indian law students to be able to go directly home and lawyer. And I think that -- you know, maybe I am getting into my comments for tomorrow, but I think that, we do a great job of preparing them to lawyer outside the community -- to go to state court, to go to federal court -- and I really think that it's a challenge to be able to prepare the student to go back within their own community, in particular, but within any indigenous community, and to be able to lawyer well.

I see that as a challenge, and that's what I want to do, is to prepare students so that they're able to go home and lawyer right out of law school, or to go into another community and to do that well right out of law school, as well as to go wherever else and lawyer in regular places that people lawyer. But I really see that as a challenge, that that's what we need to be doing, because that's where there is a need.

MS. SMITH: I'm Maylinn Smith from the University of Montana, and I want to echo what Christine said. I work with a lot of non-Indian students and Indian students, and my goal is that they go practice wherever they want, but they need to have those skills to do it effectively.

So the Indian students that want to go back, I have a very different discussion with them on some of the pitfalls of being a tribal member going back to the community and some of the things that they need to try and avoid and how to handle it so they don't get sucked into that familiar part; which is a very different conversation than I have with non-Indian students that go and practice in the tribal setting. That's best practices. But they have different roles that they're going to play in that community, depending on where they come from. And giving them those skills to do it, I think, is the role of the clinician.

JUDGE LOMAYESVA: Hi. My name is Fred Lomayesva. I'm one of the associate judges at Hopi, but in my other life I'm also a litigator for the tribal courts of Arizona. And there is a number of things that are being said, and for those Indians that are here, what I'd like to say is, one: We're Indians because we resisted and our ancestors resisted, and that's why we're Indians. Once we stop fighting, we'll no longer be Indians. We'll merge into the greater population. For those of you who want to [inaudible] what I would encourage you to do is learn how to be a fighter, because there is a hostile system out there and there are non-Indians who manage [inaudible]. They may not mean anything and may not be racist, but it's still out there. To give you an example, I was doing a review in an ICWA case, in fact, in Arizona. The father was Indian, the mother was non-Indian, and he had not established paternity. So the question was whether this child was an Indian child for the purposes of the application of the Indian Child Welfare Act. We all go into this big chamber, there are a dozen lawyers in there and there's a judge, and we're all sitting around, and I'm the only Indian in there. And we're all sitting around, and they're all talking about what it means to be an Indian. Now, I don't know about you guys, but I'm sitting there looking at these non-Indians all talking about what it means to be an Indian; and not only are they talking about what it means to be an Indian, they're also talking about whether it's a good thing to be an Indian or not.

Because, they're concerned if we declare this person an Indian, this child, then suddenly all sorts of things happen, like the application of the act. The Indian tribe could intervene; maybe remove the child from the jurisdiction of the state court. And of course, the state court is a good court, and there is a lot of services that are available for this poor child, stuff that may not be available to them in the tribal court system.

So they're all sitting around talking, and they're yelling at each other, they're going at it. And I was sitting there, at some point it becomes a little surreal, like you just watched a foreign film and you're not exactly sure where you were anymore. And I'm thinking, and suddenly I just stand up and I look at everybody and I say, "You know, it's a good thing to be a Indian."

JUDGE LOMAYESVA: And everybody just shuts up. The discussion stopped. And then the judge looks at me and she said, "Well, you know, we're really not being racist." I say, "Yes, you are." She was a nice woman. I liked her. And as I exited the courthouse, every attorney came up and said the same thing to me. But you know what? That's why I was there: Someone had to get up and say it's a good thing to be an Indian, and it's a good thing that this child be declared an Indian.

So, you know, there are a lot of issues about identity, but I would have to say it's not all that complicated. When you go home, your relatives know who you are. What's more important than that? You know, all things aside. So if you're going to go into this area, you need to be prepared to stick up for your client, stick up for yourself, and say something about these things. Anyway, just a word of wisdom and encouragement for you guys who are about to go into the fray. Don't be afraid to get your hand messed up a little. Thanks.

MS. ZUNI-CRUZ: Any other comments or questions?

MR. FLETCHER: Yeah, I'll try something. This is Matt Fletcher again. Something that Pat said. Whenever I go to a conference, Pat is there. It pays to pay attention to Pat, so I always do so. You know, you reminded me of something I've been thinking about for a long time. You know, it has to do with the academy and scholarship and what we do.

And sometimes, as people who just write a lot of the articles in a vacuum, you know, we don't expect to cause any damage. But I think the nice thing about the fact that a lot of us that do Indian law, even though I'm technically not a clinician, I do have some relationship with the tribes in Michigan and with some other tribes outside Michigan. We do have a clinical-type presence at the law school, although we don't like to use the word "clinic," because then the rest of the clinics get all nervous. So we are sort of clinical, but not really. But I think the important part is that there are a lot of Indian professors who really technically are just stand-ups. I remember that phrase. But really, we're not. We do other things, too. We really have a firm grasp, I think, of what goes on in Indian country; much more so than, I think, somebody who is a stand-up torts professor who doesn't practice anymore. You know, once you leave practice, your knowledge of real world sort of ends at that point. And I don't think that's really true for the wide majority of Indian law professors, but every now and then it pays to listen when an Indian law clinician comes up to you and says, "What you're arguing in this particular instance" -- for example, there is a debate going on nationally, I think, about whether or not a tribal court conviction, criminal conviction, should be counted in federal and state courts. Okay? And I've had several tribal judges, several tribal members, people from all over, just kind of inform me, saying, "You make that argument, it's great: Sovereignty." You know, recognize our judgments on par with federal and state court judgments. You know what is going to happen in tribal court? Everybody is going to stop pleading guilty and everybody is going to go to trial, because they know that if they get picked up a mile down the road off the reservation, then that's going to be strike two. And you know, it's going to be in court, and it wouldn't have been." So there are real-world impacts, on some occasions, to the things that we write. So I think that the nice thing about a conference like this is that it's a reminder that what we do as stand-ups, for the most part, we need to be able to understand how that's going to impact what we write in terms of our research and our ideas. It's nice to know the impacts, [that] people are going to be recognizing them and looking forward and helping us pave the way. So thanks to the clinicians, there is not a pure separation like I think there are in a lot of other fields.

MS. VALENCIA-WEBER: Gloria Valencia-Weber from New Mexico School of Law. It's been a while since I've been in clinic, but I do want to respond to the combination of the last set of comments. We've heard about what do we say to the native students that are graduating, especially when they come in for advice about careers. And we constantly deal with that, any of us who are teaching primarily in Indian law. I join with Christine's goal of preparing students to return to work for their own tribal community or another, if it's immediately after law school, with all the precautions that several people here have mentioned; Pat, mainly, and Maylinn Smith did. But any of the native students I've dealt with who have that plan coming into law school and who leave with that plan have generally already been very much involved in their community before they came to law school. A number of them had already worked for their tribal government; had been working on that same environmental or natural resources stuff; all kinds of projects. So they have a somewhat more realistic view than, say, somebody who is clearly a member -- by every legal, by U.S. standard, as well as by Indian internal standard, they're members, but maybe have been raised not primarily within the tribal community. At the same time, I have to affirm that I join Sam Deloria on the statement that the needs of indigenous

people in the United States are so vast that anywhere that we can get indigenous tribal people placed as lawyers and who have opportunity to give perspective, that is otherwise not going to be there, we need to have those people there, whether it is in state, municipal, federal government, agencies. And I've had students who are pueblo students in New Mexico go to honors, say, in the natural resources area, Department of the Environment at DOJ, and come back, and they have a wealth of skill that they can offer to their tribe -- their pueblo and tribes -- they would not otherwise have. They have been in the hot house and they know how the game is played. So that when they then come back and represent their pueblo, they are better equipped. They not only have the commitment, but everything else. And I recall having this conversation with Sam as somebody was talking to us, a student, about how he was very interested in business courses, and Sam and I were encouraging the student: Take every business course you can, because the economic development of not only your people, but others, will depend upon that knowledge. And if you end up in Wall Street learning to do the bond market, somebody has to learn how tribal governments are going to issue bonds for economic development. And why shouldn't it be tribally trained, tribally culturally sensitive lawyers, rather than the usual smart guy on Wall Street that give us results like Enron? So I think we have to be very sensitive to who is this student? What does he or she want? What have they come in to law school knowing were their primary, and have been unchanged, commitments during the course of their training. And our job is to enable them to be able to make those career goals work, not just for them, but for the people they're most committed to.

MR. FLETCHER: This is Matt Fletcher again. I didn't work for my tribe out of law school, and I think a lot of the students that I've worked with at UND and MSU didn't, don't, and are not going to work for their tribes out of law school. And there is a reason for that, which is purely pragmatic, which is that their tribes aren't hiring at the time that they graduate. In fact, their tribes might never hire.

The guy who ran the Michigan State University Indigenous Law program for a couple of years, Professor Del Lavedure -- you guys know who Del is -- he couldn't have worked for his own tribe out of law school, because they never had in-house counsel. In fact, it took years for them to figure out they needed in-house counsel, so they did end up, in fact, hiring Del.

In my particular situation, there was one tribal attorney who works for Grand Traverse Band, had been there a long time, and who was doing a fantastic job, and they didn't need anybody else. I still think they don't think they need anybody else, but they do have somebody else. So it's interesting to me to hear when people say, "Well, when did you decide to go work for your own tribe?" And I said, "I decided to go work for my own tribe when, five years out of law school, they finally called me up and said, 'Hey, would you like to work for us?'" And that's when I was being pushed into the situation of, Well, do I want to work for my own tribe? I never really had occasion to think about it until then, and I think that's true for a whole lot of students. And so, I mean, it's interesting to me to hear, "Oh, don't go back to your own" -- you know. It almost sort of assumes that the law schools are just waiting for the moment: "Come on, graduate. Now come here." Sometimes I suppose that's true, but I don't know --

MR. HERSHEY: I have a lot of students that are like that.

MR. FLETCHER: Do you?

MR. HERSHEY: Yes.

MR. FLETCHER: Well, see, that's a different experience than I've had. So that's interesting.

MR. CLEVELAND: I know for myself -- my name is Dana Cleveland -- and my tribe does have a lot of opportunities. The Colville Tribe has a prosecutor's office, a public defense office, an in-house counsel office, a legal services office, as well as many, many contracts. We also have counsel for our business corporation. We have a lot of attorney positions there. You know, I was open to whatever experiences came my way, whatever path was shown to me during my course of law school. The tribe has always been the option. They're the ones that sent me here, so eventually the obligation is going to come to pass, regardless. But another thing that's passed through my mind: You know, it's hard being away from home for some of us. For me, it is very difficult being away from home. Law school is not easy. I cannot wait to get back home, and besides Albuquerque, there is nowhere else I would really care to be besides home. But another thing is -- and this is my personal opinion -- is that a lot of times what ends up happening is we have tribal members that go out and do experience other things, and whatever the financial "twisting" that goes on in people's minds, our tribe can't offer the kinds of incentives financially that firms or the Hill or whatever people get interested in can. And those people never do come home, and that's a serious detriment to our community. And then the reverse or the flip is that what we end up getting is the bottom of the white barrel, as I call it. You know, the people that can't get jobs anywhere else come to our tribe and really mess things up. And I don't appreciate it.

MR. CLEVELAND: So I want to go home. And that's just my perspective on that.

MR. CLEVELAND: If there aren't any other comments, then I think we'll break. And we'll be meeting up at 6:30 p.m. at the Tiwa Steakhouse at Isleta, unless someone else has another announcement that needs to be made.

(The Roundtable Discussion concluded at 4:25 p.m.)