Indian Legal Clinic

It has been busy and exciting the last year and a half at the Indian Legal Clinic. From students preparing for and attending a Senate Committee on Indian Affairs hearing to submitting amicus (“friend of the court”) briefs, one to the U.S. Supreme Court and the other to the 5th Circuit Court of Appeals, the Student Attorneys have worked hard. We would like to share with you some of their accomplishments. In addition to the unique opportunities received each semester, the students appeared in cases involving criminal prosecution, criminal defense and civil litigation. The students were admitted to practice in the Ak-Chin and Gila River Tribal Courts, as well as the federal district court and the state courts of Arizona.

Student Attorneys—Spring 2008 through Spring 2009

(Above photo, L to R): 2008 Spring - Prof. Ferguson-Bohnee, Mary Modrich-Alvarado, Chia Halpern, Jerome Clarke, Tana Fitzpatrick, Sebastian Zavala. Not pictured—Matt Campbell & Alex Acosta

(Right photo, L to R): 2008 Fall - Michael Carter and Joe Sarcinella

(Left photo, L to R): 2009 Spring - Daniel Lewis, Brian Lewis, Raymond Campbell, Jordan Hale, Stanley Buzzelle, Nikki Borchardt
The Indian Legal Clinic goes to Washington D.C.

Spring 2008—The student attorneys were presented with an exciting opportunity: to complete a research project on the tribal federal recognition process for the Senate Committee on Indian Affairs. They traveled to Washington D.C. in April 2008 to watch Prof. Ferguson-Bohnee testify on the issue at a Senate Committee hearing. The report that the students completed noted current problems with the federal recognition process and discussed the Clinic’s recommendation to create an independent commission as a way to improve transparency, consistency and integrity with the process.

(Above photo) The students intently watching as Prof. Ferguson-Bohnee testifies

(Left photo) The students in front of the U.S. Supreme Court.

(Below photo, L to R) Jerome Clarke, Chia Halpern, Sebastian Zavala, Senator Byron Dorgan, Prof. Ferguson-Bohnee, Alex Acosta and Tana Fitzpatrick.
Professor Ferguson-Bohnee helps community member restore her right to vote.

Native Americans were recognized as citizens under the Indian Citizenship Act of 1924 but faced significant legal barriers to voting. The right to vote was secured in 1948 for some Arizona Native Americans, but it was not until literacy requirements were banned in 1970 under the Voting Rights Act that most Arizona Native Americans secured voting rights in federal and state elections. Even since 1970, voter intimidation, redistricting, lack of language assistance, and ID measures have challenged the Native American right to vote.

Fall 2008—Agnes Laughter, 78, who speaks only Navajo, had voted all her adult life using her thumbprint as her identification. But she was turned away from the polls in 2006, when new voter identification laws went into effect in Arizona.

“I started voting early,” Laughter explained through an interpreter.

“When I voted, I always used my thumbprint. That represents me. “When I was told it was not valid, I went through much sorrow, much heartbreak,” Laughter said, her eyes filling with tears. “Many times I was not able to sleep because I was so concerned about people discrediting who I am.”

Laughter was born in a hogan and has no birth certificate. She doesn’t drive and has no driver’s license. She doesn’t own a car, or have utility bills or any of the other items that most people use to prove their citizenship.

Her case became part of a lawsuit that was settled in May 2008 when the Department of Justice pre-cleared an expanded list of the types of identification that Native Americans can use to satisfy the new identification requirements at the polls. This was especially important for Navajo Nation members who do not have tribal identification cards.

After the lawsuit, Laughter was determined to receive a State Identification card, but failed in several visits to tribal and state offices.

“Ms. Laughter is a strong, inspiring woman,” Ferguson-Bohnee said. “She faced ridicule and embarrassment after she was denied a ballot in 2006, but she was determined to continue the fight on behalf of Navajo people.”

So just days before the 2008 election, Laughter left her home in the windswept mesas of the Navajo Nation, to travel through the maze of government regulation that would allow her to once again express the electoral opinion. All of my heartache has changed as of this day,” she said. “I have an identity now. My thumbprint will stand. I feel fulfilled.”

Laughter said she feels that she made a difference through her involvement in the lawsuit. “I believe I’ve made a difference, not only for myself, but for many people,” she said. “Not only Native Americans, but for all the five-fingered people, people of different colors. I have stood for their voting rights. I have made that difference. I’ve made a difference for all.”

When the moment finally arrived, she stood proudly in front of a purple wall, drawing her 5-foot frame up straight, adorned in her family’s turquoise jewelry, and smiled as the industrial camera recorded her image. And when she held the shiny, laminated Arizona identification card, staring at herself staring back, she cried. “I want you to know, all of you studying to be attorneys, that it is for the defenseless individuals like myself, the elderly, that you are studying to make a difference in their lives. This is your destiny. A difference has been made in my life.”

Agnes Laughter on the Navajo Nation.
2008 Native Vote—Election Protection Project

Fall 2008—In early 2008, the Indian Legal Clinic met with the Inter Tribal Council of Arizona and Arizona Indian Gaming Association to discuss Native voting. One major reason for the discussion was that the 2006 Election results demonstrated that the newly implemented Arizona Voter ID law had disproportionately impacted on-reservation voters as compared to off-reservation voters. The 2006 results showed the lowest voter turn out for Arizona Indian voters. Voters who lacked ID and voted provisional ballots were less likely to have their vote counted on-reservation as compared to off-reservation because Native voters were not able to perfect their ballot with an appropriate ID.

Indians have long been disenfranchised in healthcare, education and wealth accumulation; vote denial is just the latest in this series of injustices, but it strikes at the very core of the American governance system.

The Indian Legal Clinic and its partners, ITCA, NCAI, AIGA & NABA-AZ, helped to organize over 50 election protection volunteers on Election Day: faculty, staff, students, alumni, the legal community and Native organizations, to monitor polling places and field calls on and near 15 out of the 21 reservations around the state. The volunteers responded to over 80 incidents regarding complaints about intimidation or people having trouble voting.

Derrick Beets, Fall 2009 Student-Attorney pictured above with volunteer, Prof. Bledsoe-Downes, volunteered at a polling place in Sacaton, in the Gila River Indian Community. “We’re here to give information in case people are told they’re not allowed to vote,” Beets said. “I believe people have a right to vote and that shouldn’t be obstructed by misinformation or intimidation.”

The Indian Legal Clinic files an amicus brief in the United States Supreme Court

Spring 2009—The Indian Legal Clinic and Sacks Tierney filed an amici brief on behalf of the Navajo Nation, as well as three Sioux Indians and a political science professor in South Dakota, in Northwest Austin Municipal Utility District Number One v. Eric H. Holder, Jr., Attorney General of the United States of America, et al., regarding the constitutionality of the Section 5 preclearance requirements of the Voting Rights Act. Indian Legal Clinic Student Attorney Nikki Borchardt (pictured right), Adjunct Professor and ASU Alum Judy Dworkin and Professor Patty Ferguson Bohnee prepared the brief. Amici were concerned that if the Court declared that the reauthorization of Section 5 is unconstitutional, American Indian voting rights would be significantly impacted and result in a reversal of the strides made in recent years to ensure greater Indian voter participation. This would negatively impact many American Indian voters who only recently secured the right to vote, continue to face discrimination in voting, and who cannot shoulder the financial burden to bring lawsuits under Section 2 of the Voting Rights Act. The U.S. Supreme Court found that the Texas district could apply for an exception under the preclearance provisions and therefore found it was unnecessary to answer whether Section 5 is unconstitutional.
Professor Ferguson-Bohnee and the Indian Legal Clinic awarded the 2009 ASU President’s Medal for Social Embeddedness

In April, 2009, Professor Ferguson-Bohnee and the Indian Legal Clinic were awarded the 2009 ASU President’s Medal for Social Embeddedness for the Native Vote—Election Protection project (see page 4 for project details). Social Embeddedness at ASU is a university-wide, interactive, and mutually-supportive partnership with the communities of Arizona. Essentially, social embeddedness means that both the community and the university benefit from and rely upon each other. At ASU, this vision involves the ongoing integration of five innovate and distinct, yet interrelated, actions: community capacity building; teaching and learning; economic development; social development; and research. This award recognizes ASU departmental, interdepartmental or multidisciplinary teams that have demonstrated excellence in fostering mutually supportive partnerships with Arizona communities to address community needs and implement successful solutions.

Native Vote—Election Protection Volunteers accept the 2009 President’s Medal for Social Embeddedness

L to R 1st Row—Steve Titla, Sonia Nayeri, Jonathan Howard, Karen Hartman-Tellez, Prof. Patty Ferguson-Bohnee, Prof. Judy Dworkin, Laurie Ralston, Ryan McPhie

2nd Row—Judy Nichols, Peter Larson, Kate Rosier, Ann Marie Downes, Roxann Gallagher, April Olson, Travis Lane, Jennifer Williams

3rd Row—President Michael Crow, Marianna Kahn, Denten Robinson, Nicholas Natividad, Joe Sarcinella, Michael Carter
2009 ASU President’s Award for Social Embeddedness Awards Ceremony (story on pages 4 & 5)

*Photo left:* Prof. Ferguson-Bohnee gives the acceptance speech on behalf of the project.

*Photo below, L to R:* Volunteer Denten Robinson, Prof. Rebecca Tsosie and volunteer Steve Titla.

*Photo left, L to R:* Volunteer Steve Titla and ASU President Michael Crow.

*Photo left below, L to R:* ASU President Michael Crow and Professor Bob Clinton.

*Photo below, L to R:* Volunteer Kate Rosier, law school Dean Paul Schiff Berman and volunteer Steve Titla.
Professor Ferguson-Bohnee testifies before House Subcommittee on Elections

Spring 2009—As a result of the 2008 Native Vote project, Professor Ferguson-Bohnee (pictured left), Director of the Indian Legal Clinic, testified on voting in Indian Country at a hearing, before the U.S. House Subcommittee on Elections, “The 2008 Election: A look back on what went right and wrong.”

“In 2008, with the assistance of tribes, we organized Native Vote campaigns in 20 states. One portion of our Native Vote campaign is the Election Protection project, and I serve as the Election Protection coordinator for Arizona. The Native Vote campaign and elected tribal leaders seek to empower participation in elections, but without alternatives to new ID requirements, it remains challenging for Native Americans to fully participate in the election process. If ID’s are going to be required for any voting purposes, we ask for two things: amend the Real ID Act to accept tribal documents as proof of ID and citizenship for purposes of obtaining a state driver’s license; and amend HAVA to clarify that where any form of ID is required tribal documents will also be accepted,” she testified. Professor Ferguson-Bohnee’s full testimony will soon be available for viewing on our website.

The Indian Legal Clinic files an amicus brief in the U.S. Court of Appeals for the Fifth Circuit

Spring 2009—The Indian Legal Clinic and Quarles & Brady filed an amicus brief on behalf of the Lipan Apache Tribe of Texas in A.A. v. Needville School District in the Fifth U.S. Circuit Court of Appeals. The brief was prepared by Indian Legal Clinic Student-Attorney Dan Lewis (pictured below), Quarles & Brady attorney Katea Ravega, and Prof. Patty Ferguson-Bohnee.

In the case, the Needville School District placed a kindergarten boy, a member of the Lipan Apache Tribe, on in-school suspension for wearing his hair in braids. School policy states that a boy’s hair “shall not cover any part of the ear or touch the top of the standard collar in the back.” The student believes “that his long hair is not only an expression of his ancestry and heritage, but also a sacred symbol of his life and experience in this world.”

The Southern District of Texas issued a permanent injunction prohibiting the school district from enforcing its policy, saying it violated the student’s constitutional rights of freedom of expression and religion. The school district appealed the ruling to the 5th U.S. Circuit Court of Appeals.

The amicus brief filed by the Clinic addresses the Lipan Apache tradition of wearing hair long for both expression of identity and religious purposes and requested the court affirm the lower court’s decision.
Student Attorneys co-author “Arizona Attorney” article in support of adding Indian law to the State Bar exam

Spring 2009—Indian law should be added to the Arizona State Bar Examination for practical and professional reasons, according to an article, “Indian law: A needed addition to the Arizona Bar Exam” written by two of the Indian Legal Clinic’s student attorneys, and published in the May issue of Arizona Attorney.

“State and tribal interactions are increasing at an exponential rate,” wrote authors Brian Lewis and Raymond Campbell, 2009 graduates. “In Arizona today, attorneys need to have at least a modicum of Indian law knowledge to serve their clients competently. And learning at least some Indian law will ensure that Arizona’s attorneys meet the requirements of the Arizona Rules of Professional Conduct.”

Many Indian law issues may arise in Arizona, from the adoption of Indian children and probate of real property on tribal lands to auto accidents on reservations that may involve complex jurisdictional dilemmas, Lewis (pictured upper left) and Campbell (pictured lower left) wrote in the article. The magazine invited the students to write the article, because a proposed Arizona Supreme Court rule change would include Indian law as a topic to be tested on the Bar exam. The comment period on the proposal ended May 20, 2009. In 2003, New Mexico became the first state to include Indian law on its Bar exam, followed by Washington state in 2004. The student-attorneys argued that Arizona, the state with the largest percentage of Indian lands in the country, should not fall behind.

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