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The Tenth Anniversary of the University of Idaho's Native Law Program

Dylan R. Hedden-Nicely

It was ten years ago that I first walked through the doors of the University of Idaho College of Law. I came home to Idaho to attend law school because of the interdisciplinary degree programs it offered that allowed law students to concurrently earn a master's degree or Ph.D. from UI's Water Resources Department. However, I come from a family of teachers rather than lawyers and so I had only a vague notion of what I was doing in law school. I knew—or thought I knew—that I wanted to practice environmental law; I wanted to help people and make our corner of the world a more just and fair place.

The universe has a way of bringing people together and, as luck would have it, my first year as a student marked Professor (now Dean) Angelique EagleWoman's first year as a professor at the College of Law. Dean EagleWoman immediately set about creating an institutional program in Native American law at the College of Law. She also became my mentor, subtly guiding me through her newly developed program and a career representing Indian tribes. Much of what I have achieved in my practice can be traced to her guidance; she helped me learn the fundamentals and frustrations of Native American law and introduced me to practitioners and scholars from all over the country. Perhaps, most importantly, when she found out that I wanted to advocate for the Coeur d'Alene Tribe in the North Idaho water rights adjudication, she reached out and introduced me to Howard Funke who was special counsel to the Tribe in that case. Howard—who has had a long career representing Indian tribes throughout the Northwest—would become my employer, mentor, and friend. I owe a

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lot to Howard; essentially everything I know about practicing in Indian Country I have learned from him.

For just over a year now, I have been at the helm of the Native American Law Program, working to maintain and expand the foundation put in place by Dean EagleWoman. As one of the first Native Law Program students, an alumni of the Program, and now its lead faculty, my personal and professional life has been strongly interwoven with the success of the Native American Law Program. As we embark upon the Program's tenth year, the time is ripe to reflect upon where the Program has been and to celebrate its continued growth and success. Although the impact the Program has had in Indian Country in the Northwest has been significant, the need for strong and competent advocates in Indian Country continues to grow, making the Native Law Program more relevant than ever before.

The need for a Native American Law Program

Native American law is one of the fastest growing legal fields in the Western United States. This is particularly true in Idaho, where Indian tribes have a significant impact on the Idaho economy.¹ As of 2014,

Idaho's tribes added 13,840 jobs to Idaho's economy, when you include multiplier effects, and contributed approximately \$653 million to the gross state product.² As of 2014, the Coeur d'Alene Tribe was the second largest employer in North Idaho, the Nez Perce Tribe was one of the top three employers in the north-central region of Idaho, the Shoshone-Bannock Tribes were the fourth largest employer in Southeastern Idaho, the Kootenai Tribe was one of the largest employers in Boundary County, while the Shoshone-Paiute Tribes were the largest employer within the Duck Valley Indian Reservation.³ These Tribes have diverse economies, including entertainment, recreation, hospitality, agriculture, natural resources development, environmental remediation and restoration, communication, wildlife preservation, medical and healthcare services, cultural resources protection, education, commercial enterprises, industrial manufacturing, real estate, etc.⁴ In all, tribal economic activity has exceeded \$1.1 billion in recent years.⁵

At the same time, Native Americans are one of the most underrepresented minority groups in the legal profession. According to the last census, approximately 2.1% of all people in the United States identi-

fied as Native American, Native Alaskan, Native Hawaiian, or as a Pacific Islander (hereinafter collectively referred to as “Native American”).⁶ However, recent ABA studies indicate that just 0.2%-0.3% of all lawyers in the United States are Native American.⁷ The statistics are equally troubling in Idaho where Native Americans make up approximately 2.6% of the Idaho population,⁸ but only 0.56% of the ISB’s membership reports being an American Indian or Alaska Native.⁹

Furthermore, just 0.8% of the United States law student population were Native American in 2014, a percentage that has been stagnant since the mid-1990s.¹⁰ Among other reasons, investigators have found that this disparity comes from differing motivations for attending law school for Native Americans. Specifically, most non-Native students are motivated to attend law school in order to have a challenging and rewarding career and to attain financial security.¹¹ In contrast, Native American students were “more likely to report that they wanted to give back to their tribe, fight for justice for Native Americans, and work for the betterment of Indian people than they were to report wanting a rewarding career for themselves or seeking financial security.”¹²

UI’s Native American Law Program is uniquely tailored to recruit and help foster the success of Native American students, while at the same time, providing an educational space for *anyone* interested in learning about Native American law and policy.

University of Idaho’s Native American Law Program

The College of Law has a long tradition of providing legal education in the field of Native American law. The cornerstone of the Native

American Law Program is its curriculum emphasis, which provides a pre-developed curriculum that allows students to emphasize a particular subset of the law within their regular law school studies. The emphasis has four tracks, each with different course requirements: natural resources, family law, tribal governance, and economic development. In addition, students are allowed to fashion a custom track with the advice and consent of their faculty advisor.¹³ All emphasis students must take the foundational course Native American Law, as well as at least

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one of Native American Natural Resources Law and/or Tribal Nations Economics and Law. In addition to these required courses, students take electives that are consistent with their chosen track.

Emphasis students must also undertake a substantial research and writing project on some topic related to Native American law. This requirement’s purpose is to provide students with an opportunity to take a deep dive into a subject of par-

ticular interest, provide additional research and writing skills practice, and potentially provide research on a topic that may be relevant to Indian law practitioners. Past research has included projects regarding civil and criminal jurisdiction; domestic violence and sexual assault in Indian Country; the effects and potential retrocession of Public Law 280; easements through Indian Country; reserved water rights litigation and settlement; water quality; the Columbia River Treaty; etc.¹⁴

Finally, the emphasis requires students to gain experience practicing in Indian Country. This requirement’s purpose is to provide students with a chance to network with tribal attorneys and policymakers, and learn about the unique challenges and opportunities that come with working in Indian Country, while also providing a resource to tribes and other organizations that work with tribes. Almost all students bank more than the required 20 hours of experiential learning.

Students are typically paired with a tribe, agency, or other organization in the field that matches the student’s emphasis track. For example, those interested in tribal governance are usually placed in a tribal attorney’s office while those interested in family law or criminal law are typically placed in a tribal court or with a tribal prosecutor or public defender. Students interested in tribal economic development may be placed within the office of the tribal attorney, within a tribal enterprise, or with agencies or organizations that work with tribes on economic development opportunities. Students interested in natural resources may be placed within a tribal natural resources department, within an agency, or an organization that works with tribes on issues related to natural resources.

The overarching goal of these emphasis requirements are to provide students the foundational tools they need to be ready to make an immediate impact in Indian Country.

University of Idaho's Native American Law Student Association

Like the Native Law Program, UI's Native American Law Student Association ("UI NALSA") turns ten in 2018.¹⁵ UI NALSA is a critical component of UI's Native Law Program and has a multifaceted purpose. NALSA's primary purpose is to work in conjunction with other student services to provide some of the support our law students need to succeed. As most of those reading this know, law school can be a lonely, intimidating, and difficult place, particularly in the first year. This can be especially true for students not culturally attuned to the competitive environment that law schools encourage, and who may be leaving their homes for the first time. This combination can conspire to cause students that are capable of succeeding in the right environment to nonetheless fail to complete law school. NALSA combats these factors by providing an immediate space and social network for our students.

NALSA also provides a critical link between faculty and students. In a field as dynamic as Native American law, an educational program must continue to reinvent itself to remain on the cutting edge, and students expect to be enrolled in a program that is teaching them the fundamentals and the frontier of the field. It is critical that the Native Law Program be continually aware of where the practice is going and how the Program can adapt to stay on the leading edge. A primary conduit for this effort is through the relationships our faculty have with our current students, facilitated by NALSA.

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Finally, NALSA provides educational and networking opportunities for the students at the College of Law through a number of events, including panels of tribal court judges, tribal attorneys, and others that work in or with Indian Country. This year, NALSA organized a panel to discuss tribal employment rights that included tribal representatives from the Shoshone-Bannock Tribes, the Nez Perce Tribe, the Coeur d'Alene Tribe and the Umatilla Tribes, as well as a panel that included tribal court judges and litigators on the unique challenges and opportunities when working in a tribal court. NALSA students also work closely with the region's tribes for charitable purposes, including organizing an angel tree each year for reservation children in need and conducting Native law recruiting events for Native high school and undergraduate students. Each year, NALSA participates in the National NALSA moot court competition, typically sending two teams to compete. Finally, the UI NALSA works closely with faculty to offer the University of Idaho's Native Law Conference, which takes place in the spring semester and brings together tribal law scholars and practitioners in an effort to provide continuing legal education in Native American law.¹⁶ Although the Native Law Conference has been dormant since 2015, we are thrilled and much ap-

preciative to the Coeur d'Alene Tribe for making a substantial donation to NALSA making it possible to restart the Native Law Conference in the spring of 2019.

The University of Idaho's collaboration with regional tribes

The University of Idaho and the College of Law prides themselves on the close relationship they have with the region's American Indian tribes. These relationships provide the backbone of the NAL Program, ensuring that the College of Law can provide meaningful education that is relevant to Indian Country. The University of Idaho has a memorandum of understanding ("MOU") that outlines the collaborative relationship the University enjoys with ten regional tribes (hereinafter referred to as "MOU Tribes").¹⁷ The University of Idaho President's Native American Advisory Council is one result of that MOU. The Advisory Council holds biannual meetings—one meeting held on-campus and the other hosted by one of the ten MOU Tribes—where university and tribal representatives discuss the current projects and further collaboration.¹⁸

Like the University generally, the College of Law prides the relationship it has with the region's American Indian Tribes. The College hosts the Native American Law Advisory

Board, which is an advisory board to the College to strengthen its relationship with the region's tribes and to provide meaningful legal training for Idaho's students.¹⁹

The NAL Program also collaborates with the MOU Tribes to provide experiential learning opportunities for NAL students by placing students in tribal attorneys' offices, tribal courts, within tribal agencies, and within tribal executive and legislative offices. For example, we have worked closely with the Coeur d'Alene Tribe to provide tribal court appointed special advocates, also known as guardian ad litem, to the court in proceedings involving child welfare.

Also, this year marks the restart of the UI Native American Law Estate Planning Project. Estate planning is a significant issue in Indian Country, particularly in the Northwest, where tribal lands can have many hundreds of owners as a result of intestate succession.²⁰ As a pilot, the Program worked with the Nez Perce Tribe and Coeur d'Alene Tribe, each of which provided funding for a UI law student (supervised by a licensed attorney) to provide estate-planning services to tribal members on those reservations.²¹ The symbiotic benefits of this project are significant. Students receive incredible experience working with Native American clients in a broadly-applicable legal field, while the Tribes receive an economically efficient means of providing a legal service that is sorely needed in Indian Country.

Ultimately, in order to succeed as a program, we must be providing education on topics that are relevant in Indian Country. As a result, the Native Law Program's continued success is directly dependent upon its relationship with the regional tribes. We are proud of the relationships we have and we look forward to continuing the dialogue.

Ten years and going strong

The College of Law is proud of the Native American Law Program's achievements over the past ten years. Our alumni have struck out into Indian Country near and far, making lasting change for the betterment of Indian people. I would like to thank everyone who has made the mission of the NAL Program possible. In particular, we thank the Coeur d'Alene Tribe and Nez Perce Tribe, both of whom have provided substantial support for the Native Law Program, NALSA, our students, and myself.

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It is my honor to take the helm of this amazing program at the University of Idaho College of Law. Looking to the future, I am excited to continue to expand upon the foundation built by Dean EagleWoman over the past ten years. As we continue to innovate and evolve the Program, however, we will always be guided by its core purpose of close collaboration with our region's tribes in an effort to provide an environment for Native legal minds to succeed and be leaders in the field of Native American law. Here's to the next ten years!

Endnotes

1. See generally, Steven Peterson, *Impacts of the Five Tribes to Idaho's Economy* (2014), available at: <https://www.sde.idaho.gov/indian-ed/files/curriculum/Idaho-Tribes-Economic-Impact-Report.pdf> (last visited June 27, 2018).
2. *Id.* at 3.
3. *Id.* at 6; 9; 10; 12; 14.
4. See generally, *Id.*
5. *Id.* at 3.
6. Norris, Vines, and Hoeffel, *The American Indian and Alaska Native Population: 2010*, in 2010 Census Briefs, C2010BR-10 at 3 (2012) (hereinafter "Native American Census Brief"); Hixson, Hepler, and Ouk Kim, *The Native Hawaiian and Other Pacific Islander Population: 2010*, in 2010 Census Briefs, C2010BR-12 at 4 (2012) (hereinafter "Native Hawaiian Census Brief").
7. Mary Smith, Native American Attorneys Systematically Excluded in the Legal Profession, 40 ABA Human Rights Magazine 4 (2014), available at: https://www.americanbar.org/publications/human_rights_magazine_home/2014_vol_40/vol--40--no--1--tribal-sovereignty/native-american-attorneys-systematically-excluded-in-the-legal-p.html (last visited June 28, 2018); Patrick Folliard, *Native American Attorneys: Small in Number, Not in Influence*, Diversity The Bar (2006) available at: <https://www.mcca.com/mcca-article/native-american-attorneys/> (last visited June 28, 2018).
8. To arrive at this figure, I added the number of Idaho that reported to be either Native American, Alaska Native, Native Hawaiian, or Pacific Islander and divided that by the total population for the state, as reported in the 2010 census. See, Native American Census Brief, *Supra* n. 6, at 7; Native Hawaiian Census Brief, *Supra* n. 6, at 6; Idaho: 2010 Population and Housing Unit Counts at 9, available at: <https://www.census.gov/prod/cen2010/cph-2-14.pdf> (last visited July 10, 2018).
9. 2016 Idaho State Bar Membership Survey, available at: https://isb.idaho.gov/wp-content/uploads/2016_isb_membership_survey.pdf (last visited July 10, 2018).
10. Institute for Inclusion in the Legal Profession, *ILLP Review 2017: The State of Diversity and Inclusion in the Legal Profession* at 22 (2017). However, ABA studies indicate that this figure is too high as a result of non-Native Americans

falsely claiming to be Native American on law school applications. See Lawrence Baca, *American Indians and the "Box Checker" Phenomenon*, ILLP Review 2011: The State of Diversity and Inclusion in the Legal Profession (2011), available at <http://nylawyer.nylj.com/adgifs/decisions/090611diversity.pdf>

11. Smith, *supra* n. 8.

12. See generally, National Native American Bar Association, *The Pursuit of Inclusion: An In-Depth Exploration of the Experiences and Perspectives of Native American Attorneys in the Legal Profession* (2015), available at: http://www.nativeamericanbar.org/wp-content/uploads/2014/01/2015-02-11-final-NNA-BA-report_pp6.pdf (last visited June 28, 2018). See also, Smith, *supra* n. 8; Folliard, *supra* n. 8.

13. Courses in Native American Law have been taught by distinguished faculty including: former interim UI President, Dean of the College of Law, and emeritus Professor Donald Burnett, Emeritus Professor Dennis Colson, Douglas Nash, as well as Distinguished Professor Barbara Cosens. However, the birth of the NAL Program as it now exists took place in 2008 when Professor (now Dean) Angelique EagleWoman came to the College of Law

14. Angelique EagleWoman, *A Tradition of Excellence in Native American Law at the University of Idaho College of Law* 57 Advocate at 58-9 (Oct. 2014).

15. UI NALSA has a long history of being headed by co-chairs and this past year it was chaired by Darrel Aubrey (Karuk and Yoruk) and Christopher Murray. Next year, Gaylen Edmo (Shoshone-Bannock) and Garret Brown share the helm

16. Past conferences have included

"Soothing Waters: Tribal Protection & Stewardship," "Living in Balance: Tribal Nation Economics & Law," "Reconnecting Tribal Economies: Indigenous Networks and Commerce," "Idaho Indian Law Basics," and "Tribal Stewardship of Plant and Food Sovereignty."

17. Available at: <https://www.uidaho.edu/president/direct-reports/tribal-relations/mou> (last visited July 1, 2018). The ten "MOU Tribes" are the Coeur d'Alene Tribe, The Confederated Tribes of the Colville Reservation, the Confederated Tribes of the Umatilla Indian Reservation, the Kalispel Tribe of Indians, the Kootenai Tribe of Idaho, the Nez Perce Tribe, the Shoshone-Bannock Tribes, the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, the Spokane Tribe of Indians, and the Confederated Tribes and Bands of the Yakama Nation.

18. See <https://www.uidaho.edu/president/direct-reports/tribal-relations/advisory-council> (last visited July 1, 2018).

19. See <https://www.uidaho.edu/law/academics/emphasis-area/native-american-law> (last visited July 1, 2018).

Our alumni have struck out into Indian Country near and far, making lasting change for the betterment of Indian people.

20. See generally Jessica A. Shoemaker, *Like Snow in the Springtime: Allotment, Fractionation, and the Indian Land Tenure Problem*, 2003 Wis. L. Rev. 729.

21. This year, we were pleased to have Sheala DiMartini work on the Coeur d'Alene Reservation and Jessica Boone on the Nez Perce Reservation. Both worked under the guidance and supervision of David Risley, an attorney in Lewiston.

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