EXPERIENTIAL, MODERN LEARNING

AND COMMUNITY SERVICE AT THEIR BEST

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As many practitioners, students, and professors have long suspected, the best learning may take place outside the classroom—when students are doing real work for real people. The newly created Tribal Wills Program at the University of Denver Sturm College of Law turned out to be a remarkably successful example of such experiential, modern learning, while providing much needed, and much appreciated legal services to members of the Southern Ute and Ute Mountain Ute tribes in southwest Colorado.

The program was created thanks to the generous advice, encouragement, and training provided by Colorado Supreme Court Justice Greg Hobbs; Fiduciary Trust Officer for the Southwest Region, John Roach; Executive Secretary of the Colorado Commission of Indian Affairs, Ernest House, Jr.; Director of Colorado Legal Services, Jon Asher; Director of Metro Volunteer Lawyers, Dianne Van Voorhees; and a full day of training provided by the Director of the Indian Law Office, Wisconsin Judicare, David Armstrong, Esq.

First, some background on the federal law which makes this program so important. Because of past federal laws regarding Indian trust lands, by 1988, lands held in trust for the tribes by the federal government had become so fractionated that one tract of land, Tract 1305, was described as follows:

Tract 1305 is 40 acres of one of the most fractionated parcels of land in the world. Tract 1305 produces $1,080 in income annually. It is valued at $8,000. It has 439 owners, one-third of whom receive less than $.05 in annual rent and two-thirds of whom receive less than $1. The largest interest holder receives $82.85 annually. The common denominator used to compute fractional interests in the property is 3,394,923,840,000. The smallest heir receives $.01 every 177 years. If the tract were sold (assuming the 439 owners could agree) for its estimated $8,000 value, he would be entitled to $.000418. The administrative costs of handling this tract are estimated by the Bureau of Indian Affairs at $17,560 annually.1

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Clearly, this is not a good situation for anyone. So Congress has made three attempts to try to find a way to remedy the problem. The first two attempts were struck down by the U.S. Supreme Court as unconstitutional.\(^2\) The third attempt, the American Indian Probate Reform Act (AIPRA),\(^3\) seems to have overcome the constitutional problems found with the first two attempts. But the provisions of AIPRA, which went into effect in 2006, are still draconian. Drafting a will under AIPRA is far more complex than drafting a will under the Colorado Probate Code, for example, and far more important.

Under the Colorado Probate Code, if a person dies intestate, without a will, the property of the decedent will be distributed among the spouse and children of the decedent in a somewhat complex, but logical fashion. And a person who writes a will is free to leave his or her property to anyone. That is not the case with AIPRA.

Because the goal of AIPRA is to reduce the fractionation of Indian trust land, AIPRA provides that on the death of a person holding trust land, if the person does not have a will, then all of the trust land (in which the decedent owns less than 5%), will pass to the one oldest child of the decedent, or if there is no child, then to the one oldest grandchild of the decedent. If the decedent leaves no child or grandchild surviving, the trust land passes to the one oldest great-grandchild, and if none, then the trust land passes to the tribe.

The surviving spouse of a decedent, under AIPRA, gets no interest in such trust land, unless he or she was actually living on the trust land at the time of the decedent’s death. In that case, the surviving spouse would be entitled to a life estate in the trust land on which she or he had actually been living.

Thanks to fractionation, most tribal members own very small fractions of trust land all over the country—usually less than 5% of the ownership in any one tract of land. So it would generally be impossible for the surviving spouse to get any share in most of the trust land held by the decedent.

To prevent these results, tribal members are encouraged to write wills. However, there are three very serious problems with that. First, because Indian Reservations are frequently in fairly remote parts of the country, quite distant from major metropolitan areas, there simply are very few lawyers available to help with wills.\(^4\) Second, because of the complex provisions of AIPRA, even writing a will involving trust land is

a far more complex process than writing a will for a non-tribal member, who does not own trust land. Third, with many tribes, including the tribes in southwestern Colorado, there is a strong cultural taboo against writing wills. There is a feeling that if a person speaks about death, it may indicate that the person is ready for death, and death may be likely to occur sooner than it would otherwise have occurred. This is where the students from the University of Denver Sturm College of Law come in.

During the spring of 2013, eleven students at the University of Denver Sturm College of Law, namely Kate Bartell Nowak, Sarah Barth, Colin Fletcher, Sheena Goldsborough, Justen Hansen, Tamara Kelley, Stephanie Maas, Kate Puckett, Joseph Risch, Ansley Shewmaker, and Jimmy Woulfe, participated in the first Tribal Wills Program. During February and March students were given four training sessions—on the technicalities of AIPRA, and on the tribal culture of the tribal members with whom the students would be working on the Ute Mountain Ute and Southern Ute reservations.

John Roach, Esq., Fiduciary Trust Officer for the Southwest Region, Department of Interior, flew up from Farmington, New Mexico to give a joint lecture with Ernest House, Jr., Executive Secretary of the Colorado Commission of Indian Affairs. John covered the details of AIPRA. Ernest House, Jr., a member of the Ute Mountain Ute tribe, told the students about the cultural values of the Ute Mountain Ute and Southern Ute tribes, including the strong cultural taboo against drafting wills, or even talking about death.

Several days later David Armstrong, Director of the Indian Law Office at Wisconsin Judicare, who has run a similar program in Wisconsin for three years, working with students from Columbia Law School, flew out from Wisconsin to spend an entire day teaching the students, and practicing attorneys who received CLE credits, about the intricacies of drafting wills under AIPRA.

Three days after that, Justice Greg Hobbs, and his law clerk, Daniel Cordalis, a member of the Navajo tribe, gave a lecture to students, and attorneys receiving CLE credit, on the history of tribes in Colorado.

Then a week later, just before the students were scheduled to travel to the southwest, Jon Asher, Director of Colorado Legal Services, and Dianne Van Voorhees, Executive Director of Metro Volunteer Lawyers, met privately with the group of students to give them more advice on how to make the program successful for the clients involved. After that formal training session was over, Dianne stayed for several hours to talk with students informally about the program.

Now for the remarkable accomplishments of the students:

Sheena Goldsborough soon became the unofficial and universally recognized Team Leader for the program. She did a very effective job in
publicizing the program, organized a carpool to get everyone to the reservations, and even created a power point presentation on the appropriate dress code—something that would show proper respect for the clients and for the seriousness of the work involved, but would not make the students look like the type of person who might say, “I’m from the government. I’m here to help you.” The result was “business casual”—no three piece suits and no jeans.

Although we had originally planned to take only ten students for the program, we were able to take eleven students—and the eleventh student, Joseph (Joey) Risch, was invaluable. Because Joey, as the only first-year student, had not yet taken Trusts & Estates, he was not permitted to do any drafting. However, he turned out to be outstanding at greeting clients, assigning individual students to work with individual clients, requesting the necessary Individual Tribal Interest (ITI) statements from John Roach, and keeping everything beautifully organized. Joey soon became the universally recognized CEO of the program.

From early in the planning process, Colin Fletcher took on the responsibilities of technical support, making sure that we took down the necessary printers, computers, video cameras (for taping interviews in which an interpreter was necessary), paper, extension cords, etc. Each day Colin quietly set up all of the necessary equipment and kept it running.

Kate Puckett donated the use of her personal scanner and video camera for the program, and her large coffee maker. It was our plan to have good snacks available for the clients as they waited to have their wills completed. Both Kate Puckett and Kate Bartell Nowak were excellent at purchasing the necessary snacks for the clients locally, and then quietly cleaning up the work areas at the end of the day. I was pleased to see that without any official suggestion from anyone, Kate and Kate bagged all the collected trash at the end of each day and took it to the proper receptacle, as a courtesy to our hosts.

Thanks to calls arranged by Ernest House, Jr. during the weeks before the students went to the reservations, various tribal leaders, including Peter Ortego, (General Counsel Ute Mountain Ute Tribe), Monte Mills, (Director, Legal Department, Southern Ute Tribe), Troy Ralstin, (Executive Director, Ute Mountain Ute Tribe), Juanita PlentyHoles, Preston Corsa, and John Roach and I were in touch with each other on the final planning sessions for logistics.

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5. Individual Tribal Interest (ITI) Reports list the multitude of different parcels in which a tribal member might own a fractional share, including the size of the parcel, the size of the share owned by the individual, the location of the land, and whether ownership included the mineral rights or not.
The on-site part of the program took place on the reservations, during Spring Break, March 17 through March 23, 2013. Both the Ute Mountain Ute and Southern Ute tribes generously donated rooms for the students in their respective lovely casino hotels.

On the night of Sunday, March 17, DU hosted a dinner at the Ute Mountain Ute reservation to provide an opportunity for tribal leaders to address the students. At the dinner, no more than two students sat at any one table, so that the students and the tribal members promptly began the process of getting to know each other.

After a greeting by Bradley W. Hight, Vice-Chairman of the Ute Mountain Tribal Council, the evening began with a long prayer, in Ute, by Terry Knight, Director of Cultural Resources for the Ute Mountain Ute Tribe.

Bradley Hight then described his experiences, while on two tours in the military, of learning about the different cultures in the countries in which he was stationed. He then invited each student to ask a question about the Ute Mountain Ute nation.

Terry Knight then described important components of the Ute Mountain Ute cultural traditions. Juanita PlentyHoles described her experiences growing up on the reservation, taking a job off the reservation, and then returning home. Priscilla Blackhawk, former Magistrate Judge for the Ute Mountain Ute Tribal Court, then gave us the organizational details for the following days. Waylon PlentyHoles, Director of The Weenuche Smoke Signals Media Department, became a great friend, and helped us throughout the week, getting announcements on the local radio station and in the local newspaper, doing a radio interview about the project, and helping us whenever we had questions about anything.

We were greeted on Monday morning by Peter Ortego, Esq., Tribal Council for the Ute Mountain Ute Tribe, who showed us around the Justice Center, and showed us the various rooms in which we would be working. The first client showed up promptly at 9 am, and from then until the end of the program we had a constant stream of clients, and the tribal leaders were wonderfully supportive in giving us all kinds of assistance to help us do a good job for the clients.

Toward the end of the day on Monday we were told that there were employees at the casino, about four miles away, who would like to have wills, but who could not take enough time off from work to come to the Justice Center. So the students suggested that when we finished the day at the Justice Center, at about 6 p.m., we move down to the casino, to do more wills.

Our first night in the casino we were in a spectacularly impressive Executive Board Room—but no clients came. So for the next night we requested a more easily accessible room, and we were given a large
room, excellently located right between the casino and the adjacent restaurant, and right at one of the main doors into the casino. That day the students ended up working continuously for more than 13 hours straight.

At one point, well into the evening, Colin Fletcher took his own car to the home of a tribal member, with whom he had been in contact all day, so that he could give her a ride to the casino so that she could finally sign her will. Then he gave her a ride back to her home.

Another student, Ansley Shewmaker, ended up taking one of her clients to dinner at the adjacent restaurant so that both Ansley and the client would have a chance to eat dinner. The students were working continuously, for the whole day.

For at least four clients, the interviews had to be recorded on video tape, because the client spoke only Ute or Navajo, or in one case, only a sign language based on Ute. Priscilla Blackhawk, the former Tribal Court Magistrate, was wonderful in providing interpreters when necessary.

John Roach, the Fiduciary Trust Officer for the Southwest Region, spent a great deal of time every day helping the students with specific questions about AIPRA, and making sure that everything worked smoothly. I checked every word of every document before it was given to the client, supervised the execution of each document, and sat in on interviews in particularly complex situations.

We were all sorry to leave the Ute Mountain Ute reservation on Wednesday, but made the most of our travel day by having a quick tour of Mesa Verde, led by Joey Risch, who had worked there during previous summers.

At the Southern Ute reservation we were met by various tribal representatives at the spectacular Southern Ute Cultural Center & Museum, and given a tour of the fascinating museum. At 9 o’clock the next morning we began work in a lovely, big conference room in the casino hotel. We continued writing wills until about 6 pm on Friday night.

As the students became more confident in their work, and were able to work more quickly, it was wonderful to have Paul Padilla, a recent graduate of the University of Denver Sturm College of Law, spend two full days of his time helping to supervise and assist the students. Paul took plenty of time to explain to the students why changes needed to be made to their drafts, and to answer a multitude of questions from the students. Paul also provided an outstanding role model for the students.

Even though most of the tribal leaders and many of the tribal members were in Denver, at the big Denver Powwow, on Thursday and Friday, there seemed to be plenty of people remaining who were pleased with the opportunity to write wills. Neither the date of Spring Break, nor the date of the Denver Powwow could have been adjusted, of course. Despite that, the Tribal Wills Program was a remarkable success—giving
the students a wonderful chance to do real work, for real people, and a chance to gain a new appreciation for the beauties of the Ute Mountain Ute and Southern Ute reservations.