

HOUSE MEMORIAL 34 REPORT

SECTION NARRATIVES

I. House Memorial 34

House Memorial 34 requested “a review and study of the commitment to and support of the University of New Mexico for the Native American Programs at the University of New Mexico School of Law.” Specifically, the memorial requested “a full review of the school of law’s commitment to and support of all of the institutional functions impacting Native Americans,” including: 1.) admissions and retention, 2.) the Law and Indigenous Peoples Program, 3.) the Southwest Indian Law Clinic, 4.) the Tribal Law Journal, and 5.) the Native American Law Students Association “to determine the level of support currently provided and required in the future for those programs both statewide and nationally.”

This report addresses the above request through the production of data. Finally, the memorial requested recommendations on how to maximize the impact of the Law and Indigenous Peoples Program, the Southwest Indian Law Clinic, the Tribal Law Journal, and the Native American Law Students Association “on the Native American community both statewide and nationally, taking into account financial considerations and possible support for additional initiation, including an institute for indigenous legal tradition.” Recommendations on these points are included.

II. Indian Law at UNM School of Law – Historical Timeline

In 1966, the University of New Mexico School of Law began its work of recruiting and preparing Native American students for the legal profession. In 1967, the school established the Special Scholarship Program in Law for American Indians. The Special Scholarship Program included Bureau of Indian Affairs funded scholarships for law students and a preparatory program to introduce and prepare Native American students for the rigor of law school. The scholarship funding continued until 1985. In 1988, the Pre-Law Summer Institute (PLSI), continued as a stand-alone program. PLSI continues to prepare Native American students accepted, and seeking admission, to law schools throughout the nation.

The American Indian Law Center (AILC) became a non-profit organization in 1977 to administer the Special Scholarship Program, and to provide research and other services. The Center, located at the School of Law, also administers the Southwest Inter-Tribal Court of Appeals and in 2009, developed a Memorandum of Understanding between the Pre-Law Summer Institute and the UNM School of Law Admissions office. The first Native American admitted to UNM School of Law under the Special Scholarship Program graduated in 1970.

In 1992, the Law School hired its first tenure-track Indian Law faculty member to establish a program of study in the field of Indian Law; prior to that, the Law School hired adjunct professors to teach Indian law courses. In 1994, an Indian Law Certificate (ILC) Program was established by the Indian law faculty hire, and the Southwest Indian Law Clinic (SILC) was developed by a Visiting Professor. SILC was initially funded by the New Mexico State Legislature and continues to be funded by the Legislature on an annual basis through appropriations as a Research Program and Special Project (RPSP) of the State of New Mexico's Higher Education Department.

Since 1992, the Indian Law Program, now known as the Law and Indigenous Peoples Program, at the UNM School of Law has grown steadily adding tenure-track faculty members, courses taught by tenure track faculty members, adjuncts and visitors. The UNM School of Law faculty also approved the establishment of the Tribal Law Journal, an electronic journal, staffed and managed by law students with a faculty member serving as Editor in Chief.

III. Student Admissions, Retention and Graduation

The UNM School of Law graduated its first Native American law student, John Echohawk, in 1970. Since the creation of the Special Scholarship Program in 1967, the UNM School of Law has accepted and successfully graduated over three-hundred Native American students.

The data presented in this section documents admission for the past ten years (2003-2013) and shows a fairly consistent level of matriculation, ranging from 5 to 14 students admitted per class. Additionally, retention and graduation rates of matriculated students per class are 70 to 100 percent. (Note: This statement is based on the information collected by the Program using the names of students in each class identified as Native American based on student graduation.) The data also shows that many more Native Americans apply to UNM School of Law than are admitted, and of those admitted, not all matriculate. This is common to most law schools and most law school applicant populations. The loss of admitted applicants can be attributed to the higher levels of financial assistance provided by other schools and to a wide variety of other factors which students weigh in the balance when determining which law school to attend. In the past two years, the data shows we are successfully matriculating a higher number of students admitted. In most years, the data shows the Law School matriculates half to a little under half of all Native American students it accepts.

Native American student data includes those enrolled in a federally recognized tribe and those who self-identify as Native American. The current first year class has one of the highest number of Native American students, who make up 12% (based on the Program's information of 42 Native American students total) of their class at UNM School of Law during the 2013-2014 academic year. Additionally, Native American students make up 12% of the entire student body during the present academic year. This is an increase from recent years, in which the Native American student population was at approximately 10% of each entering class.

Nine New Mexico Tribes are represented among the forty-two (42) (Law of IPs Program number) students at UNM School of Law this academic year. Students may self-identify with more than one tribe. The largest number of students - sixteen (16) - are from the Navajo Nation, followed by Laguna with three (3), Isleta with two (2), and Acoma, Cochiti, San Felipe, Santa Ana Pueblos and Chihene Nde Nation, each with one (1). Over the years, UNM School of Law has graduated Native American students from tribes across the nation. At present, the School of Law has Native American alumni affiliated with 115 tribes. Thirty-nine percent (39%) of the tribes represented are tribes from within New Mexico. Eighteen (18) of the twenty-four (24) tribes with land in New Mexico are represented, including: the Pueblos of Acoma, Cochiti, Isleta, Jemez, Laguna, Picuris, San Felipe, Ohkay Owingeh, Sandia, Santa Clara, Kewa, Taos, Tesuque, Zia and Zuni, the Navajo Nation, Mescalero and Jicarilla Apache Nations, and the Fort Sill Apache Tribe.

The UNM School of Law Admissions Office recruits throughout the region and across the nation at various universities. The Law School Admissions Council recently funded a Native American Pre-Law Undergraduate Scholars Program (NA-PLUS) to encourage high school and college students to consider the legal profession. The Admissions Office in conjunction with the American Indian Law Center operated the program from 2010-2012.

IV. Law and Indigenous Peoples Program-Indian Law Certificate (ILC)

The Indian Law Certificate was established by Emerita Professor Gloria Valencia-Weber in the fall of 1994 with the first certificate holders graduating in 1995. Over one hundred and forty-five (145) graduates have obtained the certificate since 1995. The certificates are held by both Native American law graduates and non-Native American law graduates.

The Indian Law Certificate requires students to take six (6) credit hours of required courses, a six (6) credit hour experiential clinical course in Indian Law (SILC), and nine (9) additional hours of Indian Law courses. In addition, certificate students are required to fulfill their writing requirement on an Indian law topic under the supervision of a Law and Indigenous Peoples Program faculty member and present their research at a public Scholars Forum held by the Law and Indigenous Peoples Program before graduation.

V. Law and Indigenous Peoples Program-Southwest Indian Law Clinic (SILC)

The Southwest Indian Law Clinic (SILC) was established and opened in the Spring of 1994 by Visiting Professor Christine Zuni (Isleta/Ohkay Owingeh), who was hired to direct the clinic in October of 1993. In 1997, Zuni was hired as a tenure-track professor. SILC was funded by the New Mexico State Legislature as a Research Program and Special Project (RPSP) of the New Mexico Higher Education Department. SILC has received RPSP funding since 1993, steadily increasing its funding over the twenty-year period. SILC's present appropriation for AY2013-2014 is \$208,200. The appropriations have a history of increases and reductions but the appropriations have generally maintained increases. Over the years, SILC's ability to utilize its funding for expenses other than salaries has decreased. In 2006, SILC was successful in obtaining an increase in its appropriation to hire a second clinician to staff SILC. In 2007, Professor Barbara Creel (Jemez) was hired, and Zuni Cruz and Creel presently co-direct SILC together.

Actual enrollment in SILC since its establishment in 1994 is at 337. In addition, SILC has supervised clinical law students from Osgoode Hall, York University's Intensive Program in Aboriginal Lands, Resources, and Governments, advanced clinicians, co-supervised students with clinicians from other clinics, student-interns from Central New Mexico Community College (CNM), UNM, and the Native American Community Academy (NACA), co-taught other clinics during the Semester-in-Practice clinics in 1995-1997, and instructed large and small clinic sections in the practice of Indian Law from 1995 to 2013. This instruction of others has been reported between 1995-2013 in RPSP reports on an average of three (3) to four (4) additional students per semester, or an additional 112 students from 1995 to 2013. Actual law student enrollment in SILC is reported in this section.

SILC is a part of the required law school curriculum, which mandates enrollment in a clinic as a requirement for graduation. SILC was made a part of the Indian Law Certificate in 1994 and later became the required experiential component of the Indian Law Certificate.

A comparison of the SILC appropriation received in 1997 with the 2012 appropriation shows the 2012 appropriation is taken up in its entirety by salaries and benefits and costs, with no amount left over for travel throughout the state, student costs, and equipment or for other expenses such as materials and services. In 1997, SILC had one faculty member. In 2012, SILC has two faculty members. SILC is limited when it is not funded for additional expenses, such as travel, student costs, equipment, materials and services.

VI. Law School Expenditures for the Law and Indigenous Peoples Program

The Law School will spend about 7% of its total expenditures toward the support of the Law and Indigenous Peoples Program, or \$680,051 in AY 2013-14. This amount includes the AY 2013-14 appropriation received for SILC of \$208,200. The Law School has supplemented the appropriation by a substantial amount. The SILC appropriation covered only salaries and benefits, telecommunications and miscellaneous costs.

The data also shows the amount budgeted (0.3%) to the Program for books requested by the faculty in comparison to the overall library budget.

VII. Law and Indigenous Peoples Program Curriculum

The Law and Indigenous Peoples Program divides its course listings into four categories: federal Indian law, Tribal law, international law and clinical, experiential or hybrid courses. The Program's federal Indian Law courses comprise the greatest number of course offerings, followed by clinical, experiential or hybrid courses. The Program has worked to develop a track of courses in tribal law and regularly offers a course and credit for students staffing the Tribal Law Journal. Some federal Indian law courses may provide some tribal law instruction as well, but courses are placed in the federal Indian law category if 50% or more of the course content is federal Indian law. The Program also strives to offer international law to students to allow students to take at least one course prior to graduation. The program's clinical, experiential, and hybrid courses cover those courses that provide students with actual law practice experience. Hybrid courses include those courses which are doctrinal but incorporate practical experience into the course. The Program is experimenting with one such course, this spring.

The Program has increased the number of course offerings over the years generally, regularly offering fifteen or more courses every year since 2000. As the Law and Indigenous Peoples Program faculty has increased, the program has been able to decrease the number of courses taught by adjuncts. Reliance on adjuncts can increase when faculty take leave for sabbatical or research and when faculty lines remain vacant, as occurred from 2009 to 2012. When the Program's latest faculty hire was made, the program was able to cover most of its courses with Program faculty and lessen its need for adjunct instruction. The Program has benefited greatly from local practitioners and professors from other law schools who have been willing to teach as adjuncts or visitors over the years.

Clinic is a requirement for graduation, and SILC is one of the clinical law programs that students can choose to fulfill this requirement. SILC was made a requirement for the Indian Law Certificate's experiential credit sometime after the certificate program was established. A maximum of eight students per instructor are permitted to enroll in clinic. Program courses are generally offered to upper classes in the second or third year of law school. Generally, at least one Program course has been opened up to first year students as an elective since this feature was added to the first year curriculum. Generally, the amount of student credit hours generated by Program courses is a small percentage (3%) of the overall credit hours generated, but the interests of the Native American students and students interested in the practice of Indian Law are well served by the offering of these courses.

VIII. Law and Indigenous Peoples Program Faculty

Since 1992, when the first Indian Law faculty hire was made, the Indian Law Program, now known as the Law and Indigenous Peoples Program, at UNM School of Law has grown steadily and the Program has added tenure-track faculty members, including three additional Indian Law faculty members hired specifically as Program faculty in 1995, 2007, and in 2013.

Currently, the Law and Indigenous Peoples Program faculty consists of four Native American faculty members for whom at least half their teaching load is dedicated to Program courses. The School of Law has also hired Native Americans for faculty positions outside of the Program, including a torts professor in 2002, a clinical law professor in 2012, a professor of law librarianship in 2007 and a former dean in 2009, presently on leave from the school. The UNM School of Law has one of the highest numbers, if not the highest, of Native American tenure/tenure-track law faculty members in the country. Additionally, the Law and Indigenous Peoples Program has one emerita professor, who recently retired, but continues to teach a course once a year since retirement. In the past, other interested faculty members have also assisted in the teaching of Indian Law courses and with the administration of the Law and Indigenous Peoples Program.

IX. Financial Assistance, Grants and Awards

Full time tuition at UNM School of Law is \$15,701 for in-state residents, \$33,971.28 for out-of-state residents. All Native American students from New Mexican tribes are charged in-state tuition regardless of current residency. All students are eligible to apply for in-state residency status after their first year in law school. Financial aid for students enrolled at UNM School of Law comes from many sources: tribal scholarships, UNM and School of Law endowments, Annual gifts, other scholarships and awards. Native American students at UNM School of Law in AY 2013-14 received 46% of the financial aid provided. The average amount of scholarship received provided was sufficient to cover in-state tuition; however, law students have other fees and costs associated with full time enrollment.

X. Law and Indigenous Peoples Program Administration

The leadership for the Law and Indigenous Peoples Program has steadily evolved since the first tenure track professor was hired to develop a program in 1992 and this year, an Associate Dean position was established for the Program. This is the first for an Indian Law program in the nation. The position of director of the Indian Law Certificate Program, evolved into an Indian Law Program Director position. The Southwest Indian Law Clinic director position evolved into a co-directorship in 2007.

Dedicated administrative support for the Program was established in 2004 with a Indian Certificate Program Administrator, a position which evolved into a Program Administrator in 2008, reflecting the growth of the Program beyond a certificate program. Administrative support for SILC has remained in the Clinical Law Program since 1994, and as SILC seeks to expand and work more directly in tribal communities across the state, dedicated administrative support for the SILC will be necessary and is a priority in seeking additional funds.

XI. Native American Law Students Activities

Law students have played a major role in initiating new developments in the Program. Law student initiatives are responsible for the Law School's creation of an Indian Law faculty position to develop a program of study in the field of Indian Law, to seek legislative appropriations to create and fund the Southwest Indian Law Clinic, and to develop a journal on tribal law. The UNM Native American Law Students Association (NALSA) is a critical student organization that supports law students and assists the community. UNM NALSA is a chapter of the National Native American Law Students Association.

XII. Native American Staff at UNM School of Law

At present, UNM School of Law employs two Native American staff members out of a total of fifty-eight staff members.

XIII. RECOMMENDATIONS

I. Key Recommendations

a. Indigenous Law Institute

Associate Dean Christine Zuni Cruz received an inaugural New Mexico Native American Community Based Initiative Award from the Santa Fe Indian School Leadership Institute in 2013 to develop an Indigenous Law Institute. The Award is supported through Kellogg Foundation funding. The UNM School of Law is interested in the development of the Indigenous Law Institute and in being a founding participant in the Indigenous Law Institute. The Law and Indigenous Peoples Program seeks to broaden its offerings for, and engagement with, the community as a whole. More specifically, the Law and Indigenous Peoples Program seeks to expand its track of courses on tribal law and has developed an online law journal that specializes in scholarship on the Indigenous (chthonic) legal tradition and modern tribal law and emerging tribal judicial systems. In addition, the Southwest Indian Law Clinic practices in local tribal court systems and assists individuals appearing before tribal courts throughout the state of New Mexico, as well as in matters before federal and state courts.

Tribal judicial and legal systems are in an accelerated state of development. The Indigenous Law Institute seeks to promote an understanding and appreciation of the wealth of the Indigenous legal tradition embedded in an Indigenous knowledge system. The Indigenous legal tradition holds culturally appropriate solutions to modern challenges. A deep understanding of the interplay of the Indigenous legal tradition with the American legal tradition, in operation at varying degrees within modern Tribal judicial systems, is necessary as modern Indigenous governments envision and design appropriate systems for their peoples. The interplay of the Indigenous legal tradition with the dominant American legal tradition of the state and federal judicial systems, affects the rights of Indigenous Peoples and tribes.

The UNM SOL has built a strong program in federal Indian law, and will continue to prepare its students in the rigors of understanding this complex field of law. Of equal importance in the preparation of lawyers equipped to function in Indian country and in federal and state courts, which impact individual and the collective group rights and inherent authority of tribal governments, is an understanding of the Indigenous legal tradition. The Indigenous legal tradition is central to the framing of collective group rights, including relationship to land, and precepts and concepts critical for attorneys to grasp when working with peoples and communities moving between two legal traditions. It is of utmost importance to the development of tribal law and legal systems.

Legal pluralism, the existence and operation of more than one legal tradition, whether acknowledged or ignored, is the great challenge for tribes, and for nation states with tribal peoples within their midst. The Indigenous legal tradition is a subject of critical importance internationally and the Indigenous Law Institute will develop initiatives at the local, regional, and global level.

The UNM School of Law seeks to expand its work in this area, seeing it as an area of tremendous importance to the development of law and legal systems for traditional Indigenous Peoples among the Pueblo, Navajo and Apache Nations in New Mexico and in the southwest region. It is the appropriate next area of development for the Law and Indigenous Peoples program. The Institute will serve the needs of the state and build on the strength of the Law and Indigenous Peoples Program's work in this field.

UNM SOL seeks the support of the University, the state, and the tribes to move forward in creating this unique Institute. The School of Law seeks to expand this area of its curriculum, through engagement with the community, and development of Indigenous legal scholars and law graduates competent in this area of the field. The Institute is currently in planning stage under Professor Zuni Cruz's seed grant, with a planned convening of an advisory group of known tribal leaders in this area and other key advisors. The Institute seeks to create a relationship, presence and connection for Tribal communities, bridging the law school with the community for law students and graduates, tribal experts, lawyers, judges, tribal leaders and elders, connecting leaders in the field from the academy, legal practice and the community. The creative Institute will bring experts in Indigenous knowledge, and from cross-disciplinary fields, such as language, visual arts, and experts in narrative and oral tradition together with legal experts, law students, and traditional law experts

b. Southwest Indian Law Clinic Community Engagement

The Southwest Law Clinic is moving into a new phase of community engagement, seeking to partner with other legal service providers serving the same population of underrepresented individuals facing similar issues. SILC is also seeking partnerships with tribal governments and others providing legal services to those within the tribal community in need of representation in tribal, state or federal courts. SILC seeks to expand into the rural community to allow law student clinicians and community members in need of legal assistance to meet within tribal communities or urban enclaves. Moving out into the community will allow SILC to work on initiatives of importance to the community and to work with the community to address legal needs.

To make this move into the community and to work with other non-profit legal service providers, SILC will require greater flexibility. Additional support is required to be in the tribal community, and on-site, with office space external to the law school, to travel, and for

administrative assistance to support work external to the law school and to administer satellite offices, and agreements with tribal communities. This expansion allows students to experience the “measure separatism” of tribal life in rural areas.

The UNM SOL recommends additional support for SILC to allow for a separate SILC administrative assistant and external office space in the community. Ideally, SILC requires three Indian Law clinicians, and under the present plan, is proposing that a third rotating clinician be a law practitioner from the non-profit sector in partnership with the clinic to share resources and knowledge between the not-for-profit practice of law and the academic clinic to tackle social justice issues facing underrepresented clients in partnership between the non-profit legal provider, such as DNA or NM Legal Services or the Partnership for Community Action.

c. Program Space

As the Law and Indigenous Peoples Program at UNM School of Law has grown, so has its need for its own physical space. At present the Law and IPs Program has four Law and Indigenous Peoples Program faculty members, a Program Administrator, a student body of Native Americans and other students, ranging from thirty to forty students interested in preparing for practice in the field of Indian and tribal law, or international advocacy for Indigenous Peoples. At present, the Program has no collective space in the law school for students, faculty, and staff to see one another, meet, and interact on a daily basis. In addition, the Program operates its own clinical section, the Southwest Indian Law Clinic, and the Tribal Law Journal. All units, including faculty offices and administrative offices, NALSA office space, Tribal Law Journal office space, and the Southwest Indian Law Clinic are in separate areas scattered throughout the entire law school building. Program space that would allow students, faculty, and staff to see one another on a regular basis, to meet, socialize, and be in close proximity would enhance the building of community and support of all. While the Program has sought to cluster its faculty and program staff offices in the same corridor, there is no informal common space, no conference or meeting space, and therefore no opportunity for frequent and informal interaction.

A culturally accommodating space in academic institutions, which are often alienating to Native students, faculty and staff alike, can promote the intangible message of feeling welcomed, respected, and valued, critical messages for the only law school in a state with a long history of hostility toward its native population. Creating space for native students and faculty is a welcoming act, not an isolating act, in academic institution space.

II. Supportive Initiatives and Elements

a. Bar/College/High School Prep

To increase enrollment of New Mexico tribal members, it is highly recommended that a high school and college preparatory track be created to help students prepare themselves for a potential career in law, emphasizing the support needed in areas that will help students excel in high school and college - reading, writing and test taking skills needed for college and law school entrance exams. In addition, funding for Native American law graduates to study for the

bar examination without having to work while preparing for the examination and to assist students as they prepare for the exam, or to coach and assist them in overcoming stereotype threat, and sharpen writing and analytical test taking skills, is an ongoing and critical need.

b. Law Library

The amount of money budgeted for the Law and Indigenous Peoples program is a small fraction of the entire law library budget. As the UNM SOL supports the development of an Indigenous Law Institute, new acquisitions and the building of a special collection on the Indigenous legal tradition will be necessary, as will working with tribes and partnering to provide public access to law, legal sources and legal opinions specific to tribal jurisdictions.

Space within the library for collective collaboration, for students and faculty and the public, when accessing the Indian Law library collection or consulting with federal Indian Law and Tribal Law research specialists, would be ideal.

c. Indian Law in the First Year

The subject of Indian Law was placed on the New Mexico State Bar Examination as the result of the efforts of former SILC Supervisor Professor Kip Bobroff, SILC student Calvin Lee, and Chief Justice William Johnson of the Pueblo of Isleta Appellate Court. However, given the importance of Indian Law to the state of New Mexico, it is recommended that federal Indian law be offered to students as a required course.

d. Targeted Recruitment

Targeted recruitment of Native American students in colleges and universities with Native American Programs, tribal colleges is strongly recommended