

**ADVANCED INDIAN LAW SEMINAR:
CRIMINAL AND CIVIL JUSTICE IN INDIAN COUNTRY**

**Professor Troy A. Eid
University of Colorado School of Law
Fall 2012**

COURSE DESCRIPTION: The U.S. Constitution recognizes three distinct sources of sovereign authority within the United States: the federal government, the several states, and Indian tribes and nations. This course explores the ability of tribes “to make their own laws and be governed by them,” *Williams v. Lee*, 358 U.S. 217, 220 (1959), within our federal constitutional system. We will examine the interplay among the three sovereigns through a series of “hot topic” presentations by distinguished guest lecturers, including practical problems and case studies dealing with criminal and civil justice issues.

CLASS SCHEDULE: Thursdays, August 30 – December 6, 2012 (except November 22nd), 2:25 pm to 4:05 pm, Wolf Law Building, Room 421, University of Colorado School of Law, Boulder, Colorado.

COURSE PAPER: All students must complete a substantial piece of writing that meets the course requirements (approximately 30-40 pages). Proposed paper topics must be submitted in the form of a concise written outline submitted to Professor Eid for comment and approval on or before Thursday, October 25th. Draft papers are due Thursday, November 29th. During the final classes, students will present and discuss their draft papers for the benefit of the entire group.

PAPER DEADLINE: THE DEADLINE FOR ALL COMPLETED COURSE PAPERS IS THURSDAY, DECEMBER 13th, at 5:00 pm Mountain Time.

COURSE GRADING: The paper will count for 75 percent of the student’s final grade. The remaining 25 percent will be based on class participation.

CONTACT INFORMATION: Professor Eid may be reached at eidt@gtlaw.com or at (786) 925-1082 (cell) or (303) 572-6521 (office).

CLASS READINGS: All readings should be completed PRIOR to class unless otherwise noted. “Cohen’s Handbook” refers to COHEN’S HANDBOOK OF FEDERAL INDIAN LAW (2005 Edition with supplements).

CLASS SCHEDULE & REQUIRED READING:

August 30th

Topic: Introduction to Criminal Justice in Indian Country

Presenter: Professor Eid

Reading:

- Troy A. Eid, "Making Indian Country Safer: Colorado's 'Admirable' Experiment," 58 *The Colorado Lawyer* 21 (October 2009)

September 6th

Topic: Tribal-State Inter-Governmental Relations: Living on the Edge

Presenter: Ernest House, Jr. (Ute Mountain Ute), Executive Secretary, Colorado Commission of Indian Affairs, Office of Lt. Governor Joseph A. Garcia, Denver, CO

Readings:

- "Cultural Preservation Practices Are Evolving, According to Colorado Panel," *Indian Country Today*, Mar. 9, 2009
- "Students Could Soon Learn Indian Languages," *Durango Herald*, Feb. 16, 2012
- "'Brilliant, Courageous and Inspired Leader' Ernest House, Sr. Killed in Motorcycle Crash," *The Denver Post*, Sept. 19, 2011
- "He Was A Gentleman, and . . . A Gentle Man: Family, Dignitaries Pay Respects to Ute Leader Ernest House, Sr." *Durango Herald*, Sept. 23, 2011
- "Late Ute Chairman Honored by House," *Durango Herald*, Mar. 23, 2012

September 13th

Topic: Federal Regulation of Tribal Finance and Lending

Presenter: Maranda Compton (Delaware), Associate, Greenberg Traurig, LLP, Denver, CO

Readings:

- Ann Richards, Application of the National Labor Relations Act and the Fair Labor Standards Act to Indian Tribes: Thwarting the Economic Self-Determination of Tribes, *30 Am. Indian L. Rev.* 203 (2005-2006)
- Natalie Martin and Joshua Schwartz, The Alliance Between Payday Lenders and Tribes: Are Both Tribal Sovereignty and Consumer Protection at Risk? *69 Wash. & Lee. L. Rev.* 751 (2012)

September 20th

Topic: Cultural Resource Protection and the National Historic Preservation Act

Presenter: Melissa C. Meirink (Yaqui), Associate, Greenberg Traurig, LLP

Readings:

- Pueblo of Sandia v. U.S. Forest Service, *50 F.3d 856* (10th Cir. 1995)
- Navajo Nation v. U.S. Forest Service, *535 F.3d 1058* (9th Cir. En banc 2008)
- Quechan Tribe v. U.S. Department of Interior, *755 F.Supp.2d 1104* (S.D. Cal. 2010)
- “Consultation with Indian Tribes in the Section 106 Process: A Handbook,” *Advisory Council on Historic Preservation* (Nov. 2008)
- Patricia L. Parker and Thomas F. King, “Guidelines for Evaluating and Documenting Traditional Cultural Properties,” *U.S. Department of the Interior, National Park Service* (Rev. Ed. 1998)

September 27th

Topic: The Federal Trust Responsibility, Public Law 93-638, and Services Delivery in Indian Country: A View From the Trenches

Presenter: Janelle F. Doughty (Southern Ute), MSW, Director, Department of Social Services, Ute Mountain Ute Tribe, Towaoc, CO and Member, Colorado Commission on Civil Rights

Readings:

- Cohen's Handbook, "Indian Self-Determination and Education Assistance Act: P.L. 93-638," Sections 22.02 (Introduction) and 22.06 (Social Services and Financial Assistance)
- "Catching a Dream: Native Students Urged to Take Control of Their Futures," *Durango Herald*, Jan. 20, 2012
- "Cortez Hospital Settles Civil-Rights Case Over Indians' Care," *The Denver Post*, Feb. 15, 2012
- Testimony of Janelle F. Doughty, Director, Department of Justice & Regulatory, Southern Ute Indian Tribe, Before the United States Senate Committee on Indian Affairs, Washington, DC, Sept. 18, 2008
- "South Carolina Supreme Court Agrees with Return of Native American Child," *Tulsa World*, July 27, 2012

October 4th

Topic: Tribal Sovereignty, Cultural Integrity, and Intellectual Property Protection

Presenter: Amy Kramer, Associate, Greenberg Traurig, LLP

Reading:

- Complaint of the Navajo Nation in *Navajo Nation v. Urban Outfitters, Inc.*, Civil Action No. 12-CV-00195 (D. N.M., Feb. 28, 2012); complete materials available at <http://turtletalk.wordpress.com/2012/02/29/navajo-nation-sues-urban-outfitters-for-trademark-violations/>

October 11th

Topic: Practicing Indian Law: Civil Litigation in Tribal, State and Lower Federal Courts

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Presenter: Jennifer Harvey Weddle (Northern Cheyenne), Shareholder & Co-Chair, American Indian Law Practice Group, Greenberg Traurig, LLP and Chair, Indian Law Section, Federal Bar Association

Readings:

- Cohen's Handbook, Chapter 7 (Civil Jurisdiction), Sections 7.01 through 7.07
- *Cash Advance v. State ex. Rel. Suthers*, No. 08-SC-639 (Colo. Supreme Court, Nov. 30, 2010); complete materials available at <http://turtletalk.wordpress.com/2010/11/30/colorado-supreme-court-largely-affirms-tribal-immunity-in-cash-advance-decision/>

October 18th

Topic: Tribal Sovereign Immunity and Commercial Law

Presenter: Padraic I. McCoy (Quechan), Partner, Tilden McCoy + Dilweg LLP, Boulder, CO and Adjunct Professor of Law, University of Denver College of Law

Reading:

- "Tribal Sovereign Immunity and Commercial Activity: A Legal Summary and Policy Check," *57 The Federal Lawyer* 3 (Mar./Apr. 2010), pp. 41-48

October 25th

PAPER TOPICS DUE

Topic: Tribal Sovereignty and Water Rights

Presenter: Celene Hawkins, Assistant General Counsel, Ute Mountain Ute Tribe, Towaoc, CO

Reading:

- Cohen's Handbook, Sections 19.01 through 19.03 (Relations between Indian and State Water-Law Systems, Sources of Indian Water Rights, and the Reserved Rights Doctrine)

November 1st

Topic: Indian Law Practice in the U.S. Supreme Court Litigation

Presenter: Jennifer Harvey Weddle (Northern Cheyenne), Shareholder & Co-Chair, American Indian Law Practice Group, Greenberg Traurig, LLP and Chair, Indian Law Section, Federal Bar Association

Reading:

- *Nevada v. Hicks*, 533 U.S. 353 (2001)

November 8th

Topic: Practicing Before Tribal and Federal Administrative Agencies: Case Studies in Natural Resources Law

Presenter: Robert S. “Daubs” Thompson IV (Cherokee), Associate, Greenberg Traurig, LLP, Denver, CO

Reading:

- Cohen’s Handbook, Sections 17.01 through 17.03 (Tribal Control of Natural Resources, Surface Uses, and Mineral Resources)

November 15th

Topic: The View from the Tribal General Counsel’s Office

Presenter: Peter Ortego, General Counsel, Ute Mountain Ute Tribe, Towaoc, CO

Reading:

- Cohen’s Handbook, Section 18.08 (Hunting, Fishing, and Gathering Rights: Cooperative Agreements, Compacts, and Co-management)

November 22nd Thanksgiving (no class)

November 29th

DRAFT PAPERS DUE

Topic: Strengthening Criminal Justice for Native Americans: The Indian Law and Order Commission

Presenter: Professor Eid

Reading:

- Troy A. Eid and Carrie Covington Doyle, "Separate But Unequal: The Federal Criminal Justice System in Indian Country," *81 University of Colorado Law Review* 1067 (Fall 2010)

December 6th

Students present and discuss draft papers

December 13th

Final papers due

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