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Indian Law Section

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## What's Inside

A Message from the Chair ..... 1

A Message from the 2021 Chair .2

Announcements .....3

- Annual Indian Law CLE
- Section Annual Meeting
- Board Elections
- Attorney Achievement Award
- Photo Contest

Article on *Oklahoma v. Castro-Huerta*.....4

Committee reports .....7

Attorney Award Winners for 2020 and 2021 ..... 13

## A Message from the Chair of the Indian Law Section

Greetings Friends and Colleagues,

It is an honor to welcome you to the *Indian Law Times* of the State Bar of New Mexico Indian Law Section. This year, the Indian Law Section has worked hard to fulfill its mission of providing support, information, and education for New Mexico attorneys practicing in areas that are impacted by the specialized legal rules applicable to Indian tribes. The Board is dedicated to fulfilling the Section's mission, which has become increasingly important as we all continue to protect our communities from the ongoing COVID-19 pandemic.

Since the start of this year, we have overcome many challenges together. So far, we have experienced the lifting of the indoor mask mandate, the rise of market inflation, significant decisions from SCOTUS, and Russia invading Ukraine. As we navigate the remaining part of the year, the Indian Law Section will continue to provide a reliable and consistent stream of resources and opportunities for Indian law practitioners, educators, and our communities.

With that in mind, we are excited to host our 2022 Annual CLE Conference on November 3, 2022. We look forward to seeing everyone at this important event and all of our future events. As a final note, we are especially appreciative of our community for all the support they give the Section and future Indian law attorneys. We continue to accept donations for the Section's scholarships. Please visit the Indian Law Section website for more details.

Thank you for your membership. I hope I have a chance to meet you in the near future.

Best regards,

Lyman Paul

2022 Chair, Indian Law Section

# A Message from the 2021 Chair of the Indian Law Section

Dear members of the State Bar of New Mexico Indian Law Section,

I trust that you and your loved ones are enjoying a beautiful and hot New Mexico summer. As I write you today, reflecting on the past year's work of our Section, I am grateful for the wonderful things we have accomplished!

ILS held its Annual CLE, titled "Continuing to Advance the Profession in Times of Uncertainty" on November 4, 2021. We heard from our fantastic speakers on a variety of topics, including Indian water law, Tribal tax law, and the McGirt decision. With many important Indian law issues before SCOTUS in 2022, I encourage our members to register for this year's Annual CLE as well.

Additionally, ILS engaged membership in a variety of innovative ways despite the limitations on in-person activities due to the pandemic. Early in 2021, ILS held its 1st Annual Photo Contest, with the first-place winner receiving a \$200 VISA gift card. We had many talented submissions from our members, and the three winning entries are featured in this newsletter. ILS also sponsored a NALSA happy hour held at Native-owned business Bow and Arrow Brewing during the Federal Bar Association's 2021 Indian Law Seminar. ILS also provided free and discounted tickets for a New Mexico United match to ILS members and their families.

Lastly, the Section awarded \$15,000 in scholarships to students during 2021. ILS, through the generosity of donors, awarded \$2,500.00 to four UNM School of Law students through the Karl E. Johnson Indian Law Scholarship and \$1,000.00 to five recent graduates to assist in bar preparation.

Please join me in celebrating a great year and looking forward to a great end to 2022!

Sincerely,  
Alyssa M. Mercado  
2021 Indian Law Section Chair

# Announcements

## **INDIAN LAW SECTION CLE, STATE BAR CENTER (with Virtual Option), November 3, 2022 (ALL DAY)**

The Indian Law Section has scheduled its Annual CLE for November 3rd. The hope is that it will be primarily in-person at the State Bar Center, but a virtual option will be available regardless. See the CLE Committee report on page 7 for more information.

## **INDIAN LAW SECTION ANNUAL MEETING, November 3, 2022**

The Indian Law Section will hold its annual meeting on November 3, 2022. Watch for an e-blast with details.

## **INDIAN LAW SECTION BOARD ELECTIONS: LATER THIS YEAR**

Consider serving on the Indian Law Section Board beginning in 2023. The Board attracts a diverse group of people committed to the Indian Law community. Watch for an e-blast soon announcing vacant seats and inviting interested Section members and requesting your vote.

## **ATTORNEY ACHIEVEMENT AWARD NOMINATIONS**

The annual Attorney Achievement Award gives the Indian Law Section an opportunity to recognize the amazing accomplishments of our members. Our Section includes some of the foremost Indian law practitioners in the country who have made important contributions to our profession and our communities. Nominees for the Attorney Achievement Award must be a member of the Indian Law Section and the nomination must explain, in one page or less, the nature of the nominee's extraordinary achievements in Indian law and the nominee's contributions to the community. Nominations were due by September 30, 2022. Watch for an upcoming e-blast for further information.

## **ILS Photo Contest**

During the depths of the second pandemic surge, Alyssa Mercado, 2021 Chair and Chair of the Outreach Committee, suggested an art contest as a contactless outreach event that would highlight the multifaceted talents of the Section's member. The Section's 1st Annual Photo Contest winners are Christopher Cantrell, Jonathan Miller, and Tierra (Tia) Marks. *Thumbnails are below. Look for larger versions of each throughout the newsletter.*



*1st Place Photo  
Christopher Cantrell*



*2nd Place Photo  
Jonathan Miller*



*3rd Place Photo  
Tierra (Tia) Marks*

# Why the Supreme Court's Expansion of State Criminal Jurisdiction in *Oklahoma v. Castro-Huerta* Likely Does Not Apply on Most Pueblo Lands in New Mexico

By Reed C. Bienvenu



1st Place Photo  
Christopher Cantrell

In *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486 (2022), decided June 29, 2022, the United States Supreme Court announced an important new rule regarding state criminal jurisdiction within the territory of Indian tribes.

In a 5-4 decision, the Court ruled that states have the authority to prosecute crimes that occur in Indian country where the perpetrator is a non-Indian and the victim is an Indian. (“Indian” is a term of art used for jurisdictional purposes under federal law.) As stated by Justice Brett Kavanaugh: “Unless preempted, States may exercise jurisdiction to prosecute crimes committed by non-Indians against Indians within Indian country.” 142 S. Ct. at 2504 n.9.

This decision significantly alters the jurisdictional rules that have long been understood to govern tribal lands. Prior to *Castro-Huerta*, the prevailing view was that states only possessed jurisdiction over two types of crimes in Indian country: (1) crimes by non-Indians against other non-Indians, and (2) victimless crimes by non-Indians. Crimes involving Indians—either as perpetrators or victims—were believed to lie exclusively within the jurisdiction of the federal government or Indian tribes.

*Castro-Huerta* adds a third category of crimes in Indian country to the states’ jurisdiction: crimes by non-Indians *against Indians*. Specifically, the Court ruled that the states’ jurisdiction over these crimes is “concurrent” with that of the federal government. 142 S. Ct. at 2491. Justice Kavanaugh also noted that “[t]he Court’s holding is an interpretation of federal law, which applies throughout the United States.” 142 S. Ct. at 2504 n.9. The result of the *Castro-Huerta* decision is thus a substantial expansion of state criminal jurisdiction over tribal lands across the country.

Here in New Mexico, however, the effect of *Castro-Huerta* is likely to be more limited due to a federal law known as the Indian Pueblo Land Act Amendments of 2005 (the “2005 IPLAA”), Pub. L. No. 109-133, 119 Stat.

2573 (codified at 25 U.S.C. § 331 Note). This law specifically defines the scope of state criminal jurisdiction within the exterior boundaries of the Pueblos' Spanish land grants. As a result, Congress appears to have preempted any expansion of state criminal jurisdiction under *Castro-Huerta* on these Pueblo lands.

To understand the 2005 IPLAA, it is useful to know the unique history of the Pueblos' landholdings. During the period of Spanish control over New Mexico, the Spanish recognized a minimum entitlement of land for each Pueblo, referred to as a "Pueblo league," or about 17,350 acres. See Malcolm Ebright, Rick Hendricks & Richard W. Hughes, *Four Square Leagues: Pueblo Indian Lands in New Mexico* 11 (2014). After the United States took over New Mexico, a number of Pueblos possessed documents that purported to be Spanish land grants giving them a Pueblo league or, in some cases, a substantially larger area. *Id.* 205–34. Congress confirmed the Pueblos' title to the land identified in many of those written grants and recognized Pueblo leagues for the rest. *Id.*; see also *United States v. Sandoval*, 231 U.S. 28, 39 (1913). Today, these Spanish grant lands comprise the Pueblos' core landholdings. But within the exterior boundaries of many of these grants are lands that were taken or purchased from the Pueblos, which are now owned by non-Indians.

It has long been established that the Pueblos' lands are "Indian country" for purposes of federal criminal jurisdiction. However, around the year 2000, questions arose as to whether lands owned by *non-Indians* within the Pueblos' land grants also constituted Indian country. See *United States v. Antonio*, 936 F.3d 1117, 1121 (10th Cir. 2019). Congress responded to this uncertainty by passing the 2005 IPLAA, which was intended to "resolve the question of criminal jurisdiction" over Pueblo lands and also to "avoid checkerboard jurisdiction." *United States v. Smith*, 482 F. Supp. 3d 1164, 1170 (D.N.M. 2020).

The 2005 IPLAA states:

#### SEC. 20. CRIMINAL JURISDICTION.

(a) IN GENERAL.—Except as otherwise provided by Congress, jurisdiction over offenses committed anywhere within the exterior boundaries of any grant from a prior sovereign, as confirmed by Congress or the Court of Private Land Claims to a Pueblo Indian tribe of New Mexico, shall be as provided in this section.

(b) JURISDICTION OF THE PUEBLO.—The Pueblo has jurisdiction, as an act of the Pueblos' inherent power as an Indian tribe, over any offense committed by a member of the Pueblo or an Indian as defined in title 25, sections 1301(2) and 1301(4), or by any other Indian-owned entity.

(c) JURISDICTION OF THE UNITED STATES.—The United States has jurisdiction over any offense described in chapter 53 of title 18, United States Code, committed by or against an Indian as defined in title 25, sections 1301(2) and 1301(4) or any Indian owned entity, or that involves any Indian property or interest.

(d) JURISDICTION OF THE STATE OF NEW MEXICO.—The State of New Mexico shall have jurisdiction over any offense committed by a person who is not a member of a Pueblo or an Indian as defined in title 25, sections 1301(2) and 1301(4), **which offense is not subject to the jurisdiction of the United States.**

25 U.S.C. § 331 Note (emphasis added).



The final phrase of paragraph (d)—“which offense is not subject to the jurisdiction of the United States”—appears to exempt from state criminal jurisdiction any crime that is subject to federal jurisdiction. *Id.* And paragraph (c) expressly recognizes federal jurisdiction over any offense “committed by or against an Indian,” that is found in Chapter 53 of Title 18 of the United States Code. *Id.* (emphasis added). That chapter includes the Indian Country Crimes Act, 18 U.S.C. § 1152, which, in conjunction with the Assimilative Crimes Act, 18 U.S.C. § 13, incorporates the criminal laws of the states into federal law for acts committed in Indian country. See *United States v. Langford*, 641 F.3d 1195, 1197 (10th Cir. 2011).

In combination, these two provisions of the 2005 IPLAA appear to preempt the application of *Castro-Huerta* within the exterior boundaries of the Pueblos’ land grants by giving the federal government *exclusive* jurisdiction over crimes committed by non-Indians against Indians within this territory. In other words, due to an act of Congress predating *Castro-Huerta* by almost two decades, the State of New Mexico is likely prohibited from prosecuting crimes by non-Indians against Indians on most Pueblo lands.

Importantly, there are also many tribal lands in New Mexico that do not fall within the scope of the 2005 IPLAA because they are not “within the exterior boundaries of any grant from a prior sovereign.” 25 U.S.C. § 331 Note. The 2005 IPLAA presumably would not affect the reach of *Castro-Huerta* on such lands.

Most significantly, the reservations of the Navajo Nation, the Jicarilla Apache Nation, and the Mescalero Apache Tribe do not originate from Spanish land grants. There might, however, be other laws or treaties that affect how *Castro-Huerta* applies to criminal jurisdiction on these reservations. Notably, Justice Neil Gorsuch’s dissent in *Castro-Huerta* stated that the 1868 Treaty between the Navajo Nation and the United States “appear[s] to promise tribal freedom from state criminal jurisdiction in express terms.” 142 S. Ct. at 2526.

Further complicating things, some Pueblos also have trust or other lands that are outside of the boundaries of their Spanish land grants. *Castro-Huerta* could be determined to apply to some of these categories of Pueblo lands but not to the lands within the Spanish land grants, resulting in a confusing situation where state criminal jurisdiction varies on different parcels of land held by a single Pueblo.

Given the complexity of these issues, state and local officials in New Mexico should be cautious when exercising jurisdiction over crimes committed in Indian country by non-Indians against Indians, and they should consult with legal counsel to determine whether *Castro-Huerta* applies on the specific tribal lands involved. Pueblos and Tribes in New Mexico should also communicate with state and local officials to ensure that those officials are aware of any legal limitations that apply to *Castro-Huerta* within their respective territories. ■

***Reed C. Bienvenu is a member of the Indian Law Section Board and an attorney at the law firm of Kanji & Katzen P.L.L.C. His practice focuses on the representation of Indian tribes and tribal entities. Kanji & Katzen P.L.L.C. represented the Muscogee Nation in connection with an amicus brief filed in Oklahoma v. Castro-Huerta.***

# COMMITTEE REPORTS



*2nd Place Photo  
Jonathan Miller*

## CLE Committee

The 2022 CLE Committee consists of four members of the ILS Board of Directors: Josett Monette, Dianna Kicking Woman, Alyssa Mercado, and Garrett Davey.

On May 6, 2022, the Committee began the year with a ninety-minute panel co-hosted with the State Bar Equity in Justice Program titled “Native Women’s Voices in the Law.” The panelists were Helen Padilla, Terrelene Massey, and Alicianna Martinez. The panelists discussed their paths to the law, experiences in the legal field, and future hopes. A recording of the panel is available [here](#).

Then, a little over a week later, ILS co-hosted a CLE Conference with the Paralegal Division. The panelists were Judge Catherine Begaye, who discussed the ICWA Court and the recent New Mexico Indian Family Protection Act; Judge Renee Torres and Judge Bruce Fox, both previous Tribal Court Judges, who discussed their experiences as State Court judges with prior Tribal Court experience; and Simon Tuck and Josett Monette, who discussed practicing in Tribal Courts.

On August 12, 2022, ILS co-hosted a panel at the Annual Meeting for the State Bar. The panelists

were Judge Vincent Knight and Judge Robert Medina. The panelists continued their conversation from their ethics panel at ILS’s 2021 Annual CLE, which was titled Practice in Tribal Court: Ethical Rules.

The CLE Committee hopes to co-host at least two more panels before the end of the year. Please keep an eye out for e-blasts regarding any upcoming ILS panels.

Finally, the CLE Committee has been busy all year planning the 2022 Annual ILS CLE Conference. ILS will host an all-day Conference on Thursday, November 3, 2022. We will offer at least five (5) general credits and at least one (1) ethics credit. We anticipate holding the Conference in person at the State Bar Center, but there will be an option to attend virtually. Please watch for ILS e-blasts regarding registration and the agenda.

We look forward to seeing you at our upcoming events! If you have any questions please feel free to reach out to the Indian Law Section or Josett Monette at [josettm@nmlegalaid.org](mailto:josettm@nmlegalaid.org).

## Mentorship Committee

The 2022 Mentorship Committee consists of three members of the ILS Board of Directors: Jordan Oglesby, Alan Taradash, and Samuel Winder.

The Mentorship Committee continues to explore the balance between mentorship opportunities and increasing the bar passage rate of Native law school graduates. The Mentorship Committee's focus over the summer has been on the bar passage rate. The Mentorship Committee met with Professor Verónica C. Gonzales-Zamora at the end of the summer to discuss her success in supporting recent graduates in passing the bar. This conversation helped inform the Committee's perspective on how to increase bar passage rates and the Committee hopes to have more conversations with faculty and law school students in the coming months.

The Mentorship Committee also plans to meet with ILS UNM School of Law Student Liaison Barbara Ryan and UNM NALSA to discuss the possibility of a Brown Bag Lunch Series. Lastly, members of the Mentorship Committee as well as some members of the ILS Board of Directors look forward to participating in the UNMSOL Attorney Lunch and Learn hosted by the State Bar on September 6, 2022.



*L to R: Callie Tompkins, Robert Waldroup, Latasha Ball, Garrett Davey, Dianna Kicking Woman, Cody Jeff, and Damian Padilla.*

## Scholarship Committee

On May 13, 2022, the Scholarship Committee attended the Tribal Law Journal & National Native American Law Student Association graduation event at the UNM School of Law and presented ILS Bar Preparation Scholarships to graduates taking the New Mexico Bar exam. The Committee awarded a total of \$10,000, its largest award to date, to the following 2022 UNM School of Law graduates:

- ▶ **Callie Tompkins:** During law school, Callie was involved in several student and community groups and co-founded Law Students for Equity and Inclusion, an organization focused on supporting law students from historically excluded groups in law school. Callie also was a staff member on the Tribal Law Journal and practiced as a clinical student in the Southwest Indian Law Clinic. After taking the bar exam, Callie hopes to advocate for those disproportionately incarcerated in our country's penal system.
- ▶ **Robert Waldroup:** Robert is enrolled with the Eastern Band of Cherokee Indians. During his time in law school, Robert clerked at the Native American Rights Fund in Boulder, Colorado; was the editor-in-chief for the Tribal Law Journal; and participated in the 2022 NNALSA Moot Court competition, making it to the Sweet 16 round. After taking the bar exam, Robert will begin a 1-year fellowship with the Alaska Native Justice Center.
- ▶ **Latasha Ball:** Latasha is enrolled with the Navajo Nation, and will be receiving her Indian Law Certificate. Latasha received an undergraduate degree in Journalism and Mass Communications from Arizona State University and plans to spend the summer studying for the New Mexico State Bar and the Navajo Nation Bar. After taking the bar exams, Latasha plans to search for a job in the field of federal Indian Law or tribal



law. Latasha loves being an advocate for Indigenous peoples because she has direct knowledge of what it is to be Native and the experience of growing up on a reservation.

- ▶ **Cody Jeff:** Cody grew up in Crownpoint, New Mexico, and is a member of the Navajo Nation. After law school, Cody will be clerking for Judge Jane B. Yohalem at the New Mexico Court of Appeals for the 2022–2023 term.
- ▶ **Damian Padilla:** Damian is enrolled with the Pueblo of Isleta. During law school, Damian was a staff member on the Natural Resources Journal and a recipient of the Natural Resources & Energy Law Equity and Inclusion Scholarship. In his coursework, Damian focused on the intersection between natural resources and issues within Indian country, and he hopes to continue this focus after taking the bar exam.

ILS and the Scholarship Committee would like to congratulate the graduates and thank members of the ILS community for their donations. Your donations support bar examinees with costs associated with taking the bar and make a difference in supporting our law school graduates and improving bar passage rates. We thank you for your contributions and we look forward to welcoming the graduates to the Section as attorney-members!

Please consider donating to the 2023 ILS Bar Preparation Scholarship. There are two ways to contribute to the ILS Bar Preparation Scholarship Fund. **You may make a donation through the link on the Indian Law Section website (<https://www.sbnm.org/Bar-Foundation/Donations>), or through a check made payable to the “New Mexico Bar Foundation” indicating “Indian Law Section Bar Prep Scholarship” on the memo line. Checks should be mailed to: New Mexico State Bar, Attn: Morgan Pettit, P.O. Box 92860, Albuquerque, NM 87199-2860. All donations are tax deductible.**

Because no newsletter was published in 2021, the Scholarship Committee wants to recognize the 2021 and 2020 Scholarships recipients. In 2021, the Section awarded a total \$5,000 in Bar Preparation Scholarships to Lora Church, Krista Thompson, Colleen Silversmith, Navalyn Platero, and Felisha Adams. On May 14, 2021, Section Chair Alyssa Mercado presented the Scholarships at the 2021 UNM NALSA/Tribal Law Journal Graduation Celebration.

The Scholarship Committee also wants Section members to know that the Section in 2021 contributed \$2,000 to the Karl E. Johnson Indian Law Scholarship in honor of Mr. Johnson’s many contributions to Indian Law, including his dedication to the Indian Law Section of the State Bar. The Section’s contribution supplemented funds raised through donations made through the Bar Foundation, and an Ad Hoc Committee was formed to decide on the distribution of the Scholarship. The Ad Hoc Committee was composed of Mr. Johnson’s wife, Michelle Giger, and attorneys who practiced with Mr. Johnson: Kelli Keegan, Veronique Richardson and Michelle Miano of Barnhouse Keegan Solimon & West. The Ad Hoc Committee selected four UNM School of Law students who were awarded \$2,500 each. Those students were Alma Buena, Christian White, Latasha Ball and Robert Waldroup. On November 4, 2021, during the Section’s Annual Meeting, Section Chair Alyssa Mercado formally announced the Scholarship awards to the recipients.

Each of the 2021 recipients demonstrated their passion in Indian law and their commitment to serving tribal communities and ILS and the Scholarship Committee congratulate them on their achievements.

## 2020 KARL E. JOHNSON SCHOLARSHIP RECIPIENTS:

Finally, the Scholarship Committee wants to recognize the 2020 recipients of the Karl E. Johnson Scholarships, which were awarded since the last newsletter was published.



*Damian Padilla*

Damian Padilla is grateful to be a recipient of the Indian Law Section's Karl E. Johnson Scholarship. He is from the Pueblo of Isleta and hopes to pursue a legal career that will help tribal communities in a variety of ways. He is focusing his studies in the area of natural resource law. He plans to use this knowledge to assist tribes in their continued effort to preserve and protect their natural and cultural resources. He appreciates the support this scholarship provides as he pursues his legal career.

previously worked for the 22nd Navajo Nation Council, the Fort McDowell Yavapai Nation, and the National Indian Education Association. In law school she interned for two small law firms, in addition to the Department of the Interior's Office of the Solicitor. She is currently working toward admission to practice on the Navajo Nation and New Mexico. Krista has one daughter, and they both enjoy time outdoors.

Cody Jeff is a member of the Navajo Nation. He is from Crownpoint, New Mexico. For his long-term goal, Cody would like to work in the judiciary system, with high hopes of becoming a federal judge. For Cody's short-term goal, he would like to work with tribes to protect and utilize their natural resources.



*Cody Jeff*

Navalyn Platero is an enrolled member of the Navajo Nation from To'hajiilee, New Mexico. Her plans for her career are to work for her Tribe and help her local community.



*Navalyn Platero*



*Krista Thompson*

Krista J. Thompson is a citizen of the Navajo Nation and is from Pinedale, New Mexico. She is Yavapai, born for the Two-who-came-to-the-water People (To'baazhni'azhi). Her maternal grandparents are Hopi Sun Clan, and her paternal grandparents are Near-the-Water People (To'ahani'). She received her

Bachelor of Science in American Indian Studies, Bachelor of Arts in American Indian Studies, and Masters in Public Policy from Arizona State University. She earned her law degree from the University of New Mexico School of Law. She

ILS and the Scholarship Committee are honored to support law school students and recent graduates. We look forward in continuing this important work and thank all of our members for their support they give to our community.

Donations for Bar Preparation Scholarships and to the Karl E. Johnson Indian Law Scholarship can be made on the State Bar Foundation's webpage: <https://www.sbnm.org/Bar-Foundation/Donations>.

Thank you and we look forward to your support and involvement in the Indian Law Section!

## UNM's Law and Indigenous People's Program (LIPP)



*3rd Place Photo  
Tierra (Tia) Marks*

The UNM School of Law is pleased to announce the addition of two recently hired tenure-stream faculty members who will be teaching courses in the Law and Indigenous Peoples Program (LIPP).

Assistant Professor Vanessa Racehorse (Shoshone-Bannock/Cherokee/Shoshone-Paiute) began teaching this summer at UNM, covering a section of the Southwest Indian Law Clinic (SILC) as supervising attorney. In the fall of 2022, she will teach the LIPP writing seminar and the Indian Law Appellate Advocacy drafting course, and will serve as faculty advisor to the Tribal Law Journal. Professor Racehorse earned her J.D. from Columbia Law School and her LL.M. in international criminal law from the University of Amsterdam, and in spring 2022 she taught Indian Law at the University of San Diego School of Law. “I am honored to join the Law and Indigenous Peoples Program at UNM School of Law, where there is an outstanding legacy of commitment to the field of Indian law and tribal self-determination,” Professor Racehorse said. “LIPP holds a unique and vital place in legal academia, that serves to not only grow and advance the field, but also values doing truly meaningful work for the benefit of Indigenous peoples. I look forward to becoming part of the strong Native American

community that exists at the law school and further contributing to students’ interest in learning about and supporting tribal nations.”

Assistant Professor Nadine Padilla (Navajo/Pueblo) will be teaching courses at the intersection of Indian law and natural resources/environmental law. During the 2022–2023 academic year she will be covering sections of UNM’s Natural Resources/Environmental Law (NREL) Clinic. Professor Padilla earned her J.D. from UNM School of Law, and recently served in an appointed position as the Deputy Cabinet Secretary of the New Mexico Indian Affairs Department. She brings over a decade of experience working with tribes and environmental justice communities throughout the state. “I am excited to join the Natural Resources and Environmental Law program at UNM School of Law,” Professor Padilla said. “I look forward to working with students and clients and building upon the existing work of the NREL program to benefit communities around our state.”

Recent and ongoing LIPP faculty scholarship and teaching activities include the success of Professor Barbara Creel (Pueblo of Jemez) in arguing a case of first impression, *State v. Hobbs*, and securing a unanimous July 2022 New Mexico Supreme Court decision granting a new trial based on DNA testing. Professor Creel and her New Mexico Innocence and Justice Project students have been working on this litigation for a number

of years. During the summer of 2022, Professor Creel taught Criminal Law in Indian Country at Lewis and Clark Law School in Portland, Oregon, where she also gave a presentation updating the federal defenders of Oregon on recent Supreme Court Indian law decisions. Professor John LaVelle (Santee Sioux Nation) has a major article forthcoming this summer in the Indigenous Peoples' Journal of Law, Culture & Resistance, titled Of Reservation Boundary Lines and Judicial Battle Lines, the first of a two-part investigation into the Indian law doctrine of reservation diminishment/disestablishment, which examines the Supreme Court decisions in this area in light of insights gathered from the collected papers of individual Justices archived at the Library of Congress and various university libraries. And Professor Sam Winder (Southern Ute Indian Tribe), director of SILC, is conducting research this summer for an article-in-progress tentatively titled Trial by Ambush: The Prosecution of Indians in Federal Court. In June 2022 he delivered the keynote address on "Criminal Justice Reforms in Indian Country" for the Navajo Nation Bar Association's Annual Bar Conference, discussing issues raised in his article.

In early 2022, preLaw rated UNM School of Law #1, for the second time in a row, in the magazine's biennial ranking of the "Best Law Schools for Native Americans," indicating that the law school's unique "A+" grade rested on such factors as student and faculty diversity, services available to help Native and other minority students, and UNM's distinction of having seven tenure-stream faculty members who are citizens of tribal nations. Professor LaVelle, director of LIPP, said the Program is "grateful for the ongoing commitment and investment of the UNM Dean and faculty, as well as the University Administration, in making sure UNM continues to provide exceptional opportunities for both Native and non-Indian students interested in preparing for Indian law careers in service of the needs of Indigenous communities."



# ATTORNEY ACHIEVEMENT AWARD WINNERS FOR 2020 AND 2021

Each year, the Indian Law Section recognizes a Section member whose achievements in the field are extraordinary. With no newsletter published since 2020, we want to honor the recipients for both 2020 and 2021!



## 2020 Richard Hughes

Richard Hughes has practiced federal Indian law for decades. Prior to 1978, Richard worked for eight years in the legal services program on the Navajo Reservation representing individual Navajo Indians. His practice since has included representing tribes and tribal entities in connection with land claims, water rights, breach of trust claims (against the United States), lease and right-of-way negotiations, land acquisitions, trespass, Indian gaming, and economic development. Richard has been at the forefront of Indian law for decades and has been involved in numerous, consequential matters and cases, and has made significant contributions to the community.

For example, Richard played a primary role in securing a major victory for Pueblo water rights. On interlocutory appeal, the Tenth Circuit in *United States*

*v. Abousleman*, 976 F.3d 1146 (10th Cir. 2020), ruled that only a clear, deliberate, affirmative act by a sovereign could have the effect of extinguishing aboriginal rights, and the mere extension of sovereign authority, or the passive administration of water rights did not amount to such an act. A resounding reversal of the district court, it paved the way for a much more beneficial outcome for Pueblos.

Richard has also made significant contributions to the community. He has given presentations at numerous CLE programs, written articles on various Indian law topics, and co-authored a book, with land grant historian Malcolm Ebright, and land grant historian and former New Mexico State Historian and now State Records Administrator Rick Hendricks, entitled *Four Square Leagues: Pueblo Indian Land In New Mexico* (UNM Press, 2014). The book contains several case studies of Pueblo land disputes throughout history and won the 2015 Fray Francisco Atanasio Dominguez Award presented by the Historical Society of New Mexico. Richard has also served on numerous non-profit boards including the board of DNA People's Legal Services.



## 2021 Peter Chestnut

The Indian Law Section is pleased to announce the winner of the 2021 Attorney Achievement Award, Peter Chestnut!

Peter Chestnut, founder of Chestnut Law Office, P.A., is a graduate of the University of New Mexico School of Law, the Massachusetts Institute of Technology, and Harvard College. For over 30 years, Peter has represented Pueblo Indian Tribal governments and agencies with an emphasis on general counsel representation and water law. His contributions to his tribal clients

and the field of Indian Law are indelible. Well respected by his colleagues throughout New Mexico and in Indian Country; Peter's thoughtful, diligent, and professional approach to the practice of law is renowned.



Peter founded the Chestnut Law Offices, P.A. which focuses primarily on Pueblo Indian tribal government and business representation. Highlighting some of Peter's many accomplishments, Peter has served as the counsel of record since 1981 for the Pueblo de San Ildefonso in the *Aamodt* Pueblo Indian Water rights adjudication and settlement. This leading Pueblo water rights case affirmed the legal nature of Pueblo Indian water rights, impacting all Pueblos in New Mexico. During Peter's work in *Aamodt* he was involved in litigation, settlement negotiations, securing congressional approval, and remains involved in the ongoing implementation process. Peter also represents the

Pueblo of Acoma in their ongoing water rights adjudication. This lawsuit, which is over 30 years old is now in settlement negotiations to quantify Pueblo Indian water rights based on past and present uses. In addition, Peter has worked extensively in the creation, implementation, and defense of the legal basis for Class III Indian gaming and casino operations in New Mexico. Navigating tribal clients through the early days of Indian gaming has in turn established Indian gaming as a major basis for local and tribal economic development.

Watch for a gathering to honor Peter in the coming months.

**Congratulations Richard and Peter!**