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# CREATING A TRIBAL LAW PRACTICE CLINIC IN KANSAS: CARVING THE PEG TO FIT THE HOLE

ALIZA G. ORGANICK\*

*“Here’s to the crazy ones. The misfits. The rebels.  
The trouble-makers. The round pegs in the square holes.  
The ones who see things differently. They’re not fond of rules, and they  
have no respect for the status-quo. You can quote them,  
disagree with them, glorify, or vilify them.  
But the only thing you can’t do is ignore them. Because they change  
things. They push the human race forward. And while some may see them  
as the crazy ones, we see genius. Because the people who are crazy enough  
to think they can change the world, are the ones who do.”*  
—Apple Computers

## 1. INTRODUCTION

When I was offered a position to teach in the clinical program at Washburn University School of Law (WUSL), one of the critical factors in my decision to join the faculty was the opportunity to create a tribal law practice clinic section. I had just completed the second of two visiting opportunities teaching in the Southwest Indian Law Clinic at the University of New Mexico School of Law (UNM). This provided me with a wonderful model for developing my own tribal court practice clinic section at Washburn. At UNM, Professor Christine Zuni Cruz envisioned and realized a clinic focused on representing native people living both on the reservation and in an urban environment. Professor Zuni Cruz’s model introduces students to the practice of law in a tribal court setting. It also emphasizes the importance of understanding the internal law of tribes as part of the students’ developing legal skills.

With that model in mind, I had high expectations for the Tribal Court Practice Clinic (TCPC) section at Washburn. Immediately, it became apparent that this project was going to take time and that enthusiasm alone

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would not overcome the challenges ahead. Although there are four resident tribes in Kansas,<sup>1</sup> WUSL had no previous relationship with three of them.<sup>2</sup> As a result, it is fair to say that most of my initial contacts with the local tribes and tribal courts were met with some surprise at my interest in reaching out to them, and the reaction was not necessarily overly enthusiastic. That is not to say they were dismissive. Rather, the tribal leaders had had no reason to trust that I would have more than a fleeting interest in them. While the Prairie Band Potawatomi, Sac and Fox, and Kickapoo Nations of Kansas had some experience with law students from University of Kansas School of Law, they had no previous contact with WUSL or its students. While the clinic's relationship with the Kansas tribes is in its infancy, working in the local tribal courts has been both positive and challenging. The tribal court judges and tribal court staff are extremely supportive and encouraging of WUSL's outreach. They value and express appreciation for our efforts to represent their tribal members, many of whom are often unrepresented when appearing in tribal court. The TCPC also enjoys continuing support for its future development from our Clinic Director, Professor John Francis.

This article will focus on three main challenges in creating a tribal court practice clinic. The first part will address creating a tribal court focus within an existing clinic curriculum. The second part will address the process of designing a curriculum for the TCPC that includes incorporating the basic doctrinal foundations of federal Indian law, as well as the clinical skills necessary to practice in a tribal court setting. The third part will offer some concluding thoughts on my long-term plans and dreams for TCPC.

## II. CLINIC CURRICULUM DESIGN

Clinical legal education has been part of legal education, in one form or another, for approximately 100 years.<sup>3</sup> However, law school clinics began to flourish in the 1960s and early 1970s,<sup>4</sup> in part as a response to social justice movements that encouraged clinical education not only as a means of professional training, but also to engage students in the "pursuit of social

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1. The four resident tribes in Kansas are the Prairie Band Potawatomi Nation, Kickapoo Nation of Kansas, the Sac and Fox Nation of Kansas, and the Iowa Nation.

2. Professor James Wadley at Washburn served as a tribal court judge for the Iowa Nation Tribal Court for a few years and occasionally appointed Washburn law students to appear as guardians ad litem in tribal court cases.

3. Christine Cimini, *Clinical Programs*, <http://www.law.du.edu/clinics/> (last visited Nov. 29, 2006) (providing that the University of Denver School of Law Clinic celebrated its 100th year).

4. Suzanne Valdez Carey, *Special Issue on the History of the Trial: An Essay on the Evolution of Clinical Legal Education and Its Impact on Student Trial Practice*, 51 KAN. L. REV. 509, 517 (2003).

justice.”<sup>5</sup> During this period, law school clinic models generally fell into two types, one that represents real clients, or the live-client model<sup>6</sup> and a second model, the participant-observer model, that does not represent actual clients.<sup>7</sup> As the various models developed, the core clinic curriculum for each clinical experience also began to take shape.<sup>8</sup> While the clinic curriculum design as we know it today was relatively new, there was general agreement that the core components should include practical skills training in client interviewing and counseling, fact investigation, professional responsibility, and trial practice skills.<sup>9</sup>

Increasingly over the last several years, there has also been a trend toward specialty clinics.<sup>10</sup> There are a number of reasons cited for this trend including: the efficient delivery of services, allowing for a more predictable teaching experience, and higher quality representation.<sup>11</sup> One emerging type of specialty clinic over the last several years focuses on representing individual Native American clients and Native American tribes.<sup>12</sup>

### III. THE EMERGENCE OF TRIBAL LAW SPECIALTY CLINICS AND DESCRIPTION OF THEIR CURRICULUM DESIGN

While a number of law schools now have clinical programs focusing on Indian law or tribal law, only a few have produced literature describing the development of their curriculum. Each of the programs described below has a history of teaching Indian Law as part of the curriculum in a doctrinal setting.<sup>13</sup> In the Indian law or tribal law clinics described below, a

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5. Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLINICAL L. REV. 307, 316 (2001).

6. Carey, *supra* note 4, at 519.

7. *Id.*

8. *Id.* at 527.

9. *Id.*

10. *Id.* at 517.

11. *Id.* Professor Sedillo Lopez describes specific concerns about specialty clinics including her concern that limiting the subject matter of representation leads to the increased unmet legal needs of clinic clients.

12. While the list is not exhaustive, other clinics include: Tribal Law Practice Clinic, University of Washburn, School of Law; Indian Child Welfare Act Clinic, University of Minnesota Law School; Great Lakes Indian Law Center, University of Wisconsin Law School; Indian Country Environmental Justice Clinic, Vermont Law School; Indian Law Clinic, University of Colorado; Indian Law Clinic, University of Montana School of Law; Indian Law Clinic, University of Tulsa School of Law; Indigenous Peoples Law and Policy Clinic; Native American Law Project, University of North Dakota; Northwest Indian Law Clinic, University of Washington; Southwest Indian Law Clinic, University of New Mexico; Tribal Court Criminal Defense Clinic, University of Washington School of Law; and Tribal Legal Development Clinic.

13. The Indigenous Peoples Law and Policy Program is a center for innovation in research, training, and advocacy in Indian law and international law of indigenous peoples. Through

core curriculum component is to understand the importance of culture in tribal communities. This cultural component has been integrated into the clinic curriculum and is taught alongside other skill-based classes.

#### A. UNIVERSITY OF ARIZONA — TRIBAL LAW CLINIC

In 1990, Robert Williams created the Tribal Law Clinic at the University of Arizona.<sup>14</sup> Professor Williams described its mission as to provide pro bono legal research and advocacy to indigenous peoples in the southwest United States, as well as Central America, Mexico, Canada, and Australia.<sup>15</sup> According to Williams, the Tribal Law Clinic operates year-round, placing students in tribal courts, and providing research service to local tribes and other indigenous organizations.<sup>16</sup> Core components in the clinic curriculum include: training students to listen to the concerns and experiences of the indigenous communities with whom they work, sending students to indigenous communities either locally or abroad, teaching seminar classes that explore the dimension and struggle of indigenous peoples, and bringing in tribal elders and tribal social workers to discuss traditional beliefs and practices.<sup>17</sup>

#### B. VERMONT LAW SCHOOL — INDIAN COUNTRY ENVIRONMENTAL JUSTICE CLINIC

Dean Suagee, Director of the First Nations Environmental Law Program at Vermont Law School, described the birth of the Indian Country Environmental Justice Clinic at Vermont Law School in a 1999 article.<sup>18</sup>

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clinical studies, direct advocacy, and a hands-on approach to education, students and practitioners provide legal and other forms of assistance to local and international indigenous communities. The LL.M. program is designed to offer candidates an intellectually exciting and professionally rewarding graduate legal educational experience in the field of Indigenous Peoples law and Policy. Additionally, the College of Law and the American Indian Studies Program of the University of Arizona offer one of the few J.D./M.A. Programs in American Indian Studies in the country. See University of Arizona Rogers College of Law, Indigenous Peoples & Policy Program: About IPLP, <http://www.law.arizona.edu/depts/iplp/about.htm> (last visited Nov. 29, 2006).

14. Robert A. Williams, Jr., *Vampires Anonymous and Critical Race Practice*, 95 MICH. L. REV. 741, 762 (1997).

15. *Id.*

16. *Id.*

17. *Id.*

18. Dean B. Suagee, *The Indian Country Environmental Clinic: From Vision to Reality*, 23 VT. L. REV. 567 (1999). See First Nations Fellowship, [http://www.vermontlaw.edu/elc/index.cfm?doc\\_id=164](http://www.vermontlaw.edu/elc/index.cfm?doc_id=164) (last visited Nov. 30, 2006).

The First Nations Environmental Law Fellowship Program and the Indian Country Environmental Justice Clinic are committed to helping tribal governments and the people of Indian communities. In addition to the Fellowship Program and the Clinic, the faculty of Vermont Law School can help students to fashion individualized

That program provides legal assistance to tribal governments and intertribal organizations that are developing environmental regulatory programs.<sup>19</sup> Students receive clinic credit for a specified number of hours and the course work includes both practicum and seminar components.<sup>20</sup> The seminar contains classes on a substantive area of environmental law in Indian Country, skills training, and professional responsibility. Other components include role-playing exercises that explore possible cross-cultural exchanges.<sup>21</sup>

### C. UNIVERSITY OF NEW MEXICO—SOUTHWEST INDIAN LAW CLINIC

In 1993, Professor Christine Zuni Cruz created the Southwest Indian Law Clinic (SILC)<sup>22</sup> as part of the clinical law program at UNM. My first experience with SILC came in May 2000, when I was invited to teach in the clinic as a visitor for the first time. I was extremely honored to be trusted with Professor Zuni Cruz's vision for SILC, not to mention to have had her share her insights and her approach to teaching using her model. By the time I came to teach at SILC, the foundation was laid and the hard start-up work was already done. Nevertheless, I was keenly aware of that work, which was so richly described in Professor Zuni Cruz's seminal article discussing the creation of SILC, *[On The] Road Back In: Community Lawyering in Indigenous Communities*.<sup>23</sup> *[On The] Road Back In* describes, in great detail, not only the development of SILC's core curriculum, but also its depth of thought and commitment to representing native people in tribal communities. In fact, SILC's curriculum design began with Zuni Cruz, who initially consulted with tribes and tribal officials about the clinic's development.<sup>24</sup> SILC requires students to participate in project and site work, as well as individual client representation.

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educational experiences in the field of Indian country environmental law, such as internships with inter-tribal organizations and independent research projects.

*Id.*

19. Suagee, *supra* note 18, at 598.

20. *Id.* at 602.

21. *Id.* at 603.

22. See UW School of Law, Clinical Law Program: Tribal Court Criminal Defense Clinic, <http://www.law.washington.edu/clinics/tribal.html> (last visited Nov. 30, 2006). "As part of the Native American Law Center at the University of Washington School of Law, the Tribal Court Criminal Defense Clinic partners with the Tulalip Tribes to serve as the public defender on the Tulalip Indian Reservation." *Id.* A seven week long intensive Indian law and trial advocacy training will teach students tribal law issues, client relations, case management, case theory, and trial advocacy. *Id.*

23. Christine Zuni Cruz, *[On The] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557, 590 (1999).

24. *Id.*

In order to expose students to the communities where they will work, SILC's classroom component explores the general issues that students and lawyers face when working in tribal communities, and at the very beginning of their clinic experience, emphasizes the significance of culture.<sup>25</sup> One in-class exercise asks students to identify the way culture influences their lives and requires them to use that framework before examining how culture will impact their lawyering.<sup>26</sup> Additionally, during in-class case-staffing meetings, the students are encouraged to discuss how a client's culture and relationship with her community might impact attorney decision-making.<sup>27</sup>

Other clinic classes include: interviewing the native client and paying special attention to language and culture, working with interpreters, and highlighting the importance of race and the role it plays in legal advocacy.<sup>28</sup> Thematically, SILC classes underscore the importance of understanding native concepts of justice and tradition as practiced in a tribal court setting, and compare them with the Anglo-American legal system.<sup>29</sup> Professor Zuni Cruz uses actual case examples to teach clinic students the importance of considering cultural understanding as a touchstone for exploring options they otherwise may not have considered.<sup>30</sup>

#### D. UNIVERSITY OF WASHINGTON—TRIBAL COURT CRIMINAL DEFENSE CLINIC

The Tribal Court Criminal Defense Clinic at the University of Washington School of Law opened in July 2002.<sup>31</sup> This clinic prepares law students to provide criminal defense to qualifying clients charged with crimes on the Tulalip Indian Reservation.<sup>32</sup> In the first part of the course, students learn advocacy skills and the pertinent substantive law of the Tulalip Tribes. In the second part of the course, students handle active

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25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 592-93.

29. *Id.* at 593-94.

30. *Id.* at 594.

31. Robert T. Anderson, *Criminal Jurisdiction, Tribal Courts and Public Defenders*, 13 KAN. J.L. & PUB. POL'Y 139, 146 (2003). See Southwest Indian Law Clinic, <http://lawschool.unm.edu/clinic/in-house-programs/silc.php> (last visited Nov. 30, 2006).

The Southwest Indian Law Clinic (SILC) provides students the opportunity to represent clients in cases involving Native American issues in various state, federal, and tribal courts and in governmental agencies. Students are also given the opportunity to work with selected tribes, pueblos, and community groups on broader legal issues and community education.

*Id.*

32. Anderson, *supra* note 31, at 146.

criminal cases in tribal court under the supervision of the clinic director.<sup>33</sup> One of the clinic's articulated goals is to avoid simply replicating the non-Indian criminal justice system. In an effort to maintain tribal identity, students work with tribal officials to address the root causes of criminal activity on the reservation.<sup>34</sup>

1. *Teaching Tribal Court Practice in the Context of an Existing Clinic Format—If You Build it, They Will Come*

The TCPC is a brand new area of focus, not only for the law school, but also for the tribal communities in Kansas, their courts, and our prospective clients. There are particular challenges in bringing a tribal law focus into an existing clinic format. From its inception, WUSL's clinical program has been a live-client model. Students may take clinic for either four or five credit hours, completing either twelve to fifteen hours of clinic hours per week, respectively. These hours are typically spent interviewing clients, developing case plans, conducting legal research, drafting letters and motions, meeting with clinic supervisors, and preparing for court hearings. Additionally, the students must complete a minimum of four court-watching hours.<sup>35</sup> Their weekly hourly total does not include classroom time.

a. Clinic Section Selection

When I started at Washburn in the fall of 2004, the clinical program operated four clinic sections. Two sections focused solely on domestic relations cases.<sup>36</sup> The other two included a civil law clinic and a criminal law clinic. Beginning in August 2005, the Business and Transactional Clinic was added.<sup>37</sup> Apart from the large group classes, there was relatively little cross-clinic integration; but this has changed over the last few semesters. For instance, TCPC and one of the domestic relations clinic sections have

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33. *Id.*

34. *Id.*

35. Clinic students will receive credit for a maximum of ten court-watching hours. TCPC students must court-watch in one of the four Kansas tribal courts.

36. One section provided representation in divorce, paternity, adoption, and guardianship cases. The second focused on child-in-need-of-care cases, as well as divorce and paternity cases.

37. See Washburn University School of Law, Transactional Law Practice Concentration, <http://washburnlaw.edu/clinic/transactional/index.php> (last visited Nov. 30, 2006).

The Transactional Law Practice Concentration at Washburn's Law Clinic provides corporate and transactional services to small businesses, nonprofit organizations and neighborhood groups in under-represented communities. The students' practical application of their legal and counseling skills is buttressed by seminars that focus on ethics in group representation, client interviewing, negotiation, laws governing businesses and tax-exempt charitable organizations, and legal writing.

*Id.*



been team-teaching classes on interviewing client and preparing documents for marital dissolutions in Shawnee County, Kansas. In the fall of 2006, TCPC and the criminal defense clinic run by Professor John Francis have merged for class session focusing on criminal defense issues, including a class on criminal jurisdiction in Indian Country.

Clinic is not a required course at Washburn. Nevertheless, enrollment reaches capacity nearly every semester and there is often a waiting list. At clinic orientation, the students receive a form indicating which clinic sections are available, what types of cases they handle, and the name of the supervising professor. Students list their preference on a scale of one to five. With very little exception, students are placed in either their first or second choice. As a result of the self-selection process, the students are often very highly motivated and engaged during their clinic experience. Adding to their motivation is Washburn's reputation for providing a high quality clinic experience.

Washburn's clinic has thrived for thirty-six years<sup>38</sup> and most prospective clinic clients hear about its services through word-of-mouth or previous representation. Prospective clients call the clinic year-round, but active case intake occurs primarily at the beginning of each semester. Generally, requests for divorce services represent the majority of calls that come into the clinic, with criminal and civil cases ranking second and third, respectively. The initial client screening process occurs by phone. Staff members screen for the type of case presented and whether the case will generate an award for attorney fees.<sup>39</sup>

After the applicant has been screened for the basic qualifications, the case is routed to the appropriate clinic section, where the supervising professor determines whether to assign it to a student to complete an intake interview.<sup>40</sup> Once an intake file is assigned, the student makes an appointment with the potential client and interviews the client to determine the underlying facts and to identify preliminary issues. After the first interview

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38. In October of 2005, Washburn celebrated thirty-five years of clinical education and has been recognized as one of the earliest live-client clinical programs in the country. Professor John Francis, *Washburn Law Clinic Celebrates 35th Anniversary*, 44 WASHBURN LAW. 1, 34-35 (Winter 2005), available at <http://washburnlaw.edu/alumni/washburnlawyer/44-1/washburn-lawyer44-1.pdf>.

39. WASHBURN UNIV. SCHOOL OF LAW, CLINIC HANDBOOK 27 (2006) (on file with author). No applicant will be approved if they are able to retain counsel either by payment of an attorney's fee by the other side or by a contingent fee arrangement. *Id.*

40. This process takes no more than a day or two from the applicant's first contact. After the supervising professor receives the intake form, the professor checks the local district court website to locate any additional information about that applicant, such as whether he had an earlier court hearing on the matter, whether he has been involved in any previous actions, or if in a criminal case, whether there are any other pending charges.

with their clients, students must prepare intake memoranda and meet with a clinic supervisor.<sup>41</sup> At the meeting, the students explore the key issues with a supervisor and evaluate whether the case is appropriate for the clinic and for their own educational needs.

b. Existing Clinic Core Curriculum

Currently the classroom component uses a combination of large and small group classes.<sup>42</sup> The large group classes cover crossover topics such as: interviewing and counseling; drafting and filing pleadings; case evaluation and planning; developing cross-cultural competency; substance abuse and mental health issues in representation;<sup>43</sup> and professionalism in law practice. The small clinic groups meet at least once per week. Often, the small group classes build on the discussions that began in the large group setting, but become more section specific. At the beginning of each term, the clinic faculty members review the core clinic classes and make changes.

The large group classes are team-taught by the entire clinic faculty during the first eight weeks of the semester. Small group classes continue throughout the semester and focus on their specific subject areas in family law, criminal law, civil law practice, business and transactional work, or tribal court practice. For instance, in the sections that focus on domestic cases, the curriculum includes classes on the life of a divorce case in Shawnee County, how to draft the child support worksheets, and how to allocate marital property and debt division. The criminal law section holds classes on criminal jurisdiction, DUI litigation, and plea negotiation, among others.

From the beginning, I intended to participate in the large group classes by teaching or co-teaching a number of them and requiring my students to attend. My reasons for incorporating the large group sessions into TCPC's curriculum were threefold. First, as an incoming tenure-track clinician, teaching in the large group expanded my classroom teaching repertoire and experience. Second, because the TCPC was such a new idea, and particularly foreign to the incoming students, it was important that TCPC felt like an integral part of the clinic program as a whole. I hoped that my students could see that practicing in a tribal court setting has much in common with practice in the municipal and district courts. Finally, as the newest member of the clinical faculty, I was encouraged to bring new ideas to the existing

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41. The intake memorandum must include the essential facts of the case, pending court dates, and preliminary issues.

42. Large group classes are meetings of all clinic sections together. The small groups consist of the individual clinic sections.

43. This class is the only core class that is not taught by a clinic faculty member, but by a faculty member from Washburn University's Department of Social Work.

curriculum. As a result, I created and taught a class on developing cross-cultural competency in my first semester.<sup>44</sup>

The existing clinic framework at Washburn provided the foundation for TCPC's early development. However, the problems of having so much to do and so little time remain. Over the fifteen-week semester schedule, students meet for twenty-five clinic classes. Of the twenty-five clinic classes, eleven classes are currently large group classes addressing crossover topics, leaving fourteen small group classes to cover the follow-up material and any new section-specific course work. Several small group sessions focus on staffing new clinic cases and provide an opportunity for students to engage in peer teaching. Because the core of clinical legal education at Washburn remains working with the students to develop practice skills with live clients, often in courtroom settings, these small class sessions provide an important opportunity to moot upcoming court hearings. The pressure to provide classes that focus on traditional lawyering skills and to hold case planning sessions has left little time to devote to the broad jurisprudential foundations of Federal Indian Law.

## 2. *Tribal Court Practice Clinic*

### a. Curriculum Development

The lack of an Indian law prerequisite for TCPC has significantly impacted the overall curriculum design and remains a tremendous challenge to the overall vision. Washburn has, over the years, offered one class on Native American law as a prospectus or seminar course once every two years or so, depending on the availability of the professor.<sup>45</sup> The TCPC has been the first class to focus on practicing law in tribal court.<sup>46</sup> In spite of the fact that Washburn has offered the seminar class on Native American law over the last several years, it has been an area of law that only few students have been exposed to. One of the first questions I ask my students in the first small group setting is, "Before coming to my class, did you know there was such a thing as a tribal court?" It is rare for even one hand to be raised. I follow that question with, "How many of you know how

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44. Other classes now being incorporated into the cross-section curriculum are classes on criminal law jurisdiction in Indian Country and on the Indian Child Welfare Act.

45. In the last five years, Native American Law has been taught at Washburn Law every two years: offered twice in the fall (2001, 2005), once in the spring (2007), and twice in the summer (1999, 2003).

46. From the beginning, the TCPC section deliberately included practice in state courts, as well as tribal courts, primarily because the bulk of the cases come from the local community in Topeka.

many tribes reside in the state of Kansas?" Since I came to WUSL in the fall of 2004, not one student has been able to answer that question correctly. I emphatically contend that this is not their fault. Before the State of New Mexico required that federal Indian law be tested on the state bar exam, I'm not sure how many UNM students could have answered that same question correctly.<sup>47</sup> As a result of the lack of federal Indian law or tribal law in the broader curriculum, students do not realize how many ways, as practitioners in Kansas, they will need to have a basic understanding of federal Indian law and how to practice in a tribal court. The near complete lack of information about federal Indian law, tribal law, and tribal courts, truly meant that I had to begin to create the TCPC from scratch.

Currently, Washburn's clinical program requires only Professional Responsibility as a prerequisite. Many students take concurrent classes to support their clinical education, such as Pre-Trial Advocacy and Trial Advocacy. At this time, TCPC does not require Federal Indian Law as a prerequisite. Moreover, as a practical matter, no foundational courses in Indian law are available on a sufficient enough basis for students who might want to seek out that background. Therefore, the TCPC faces a double challenge not presented to the other clinics at Washburn. That challenge is teaching substantive Indian Law and tribal court practice simultaneously, which is like teaching a criminal law clinic and criminal law at the same time. It is in the context of the small group classes that curriculum development for the TCPC has its focus. Unfortunately, tribal court practice and the broad overview of federal Indian law and its impact on tribes has been only a small part of this emerging small group clinic section. In past semesters, only three small group class settings have focused exclusively on tribal court practice. Additionally, in discussing active tribal court cases, we pay specific attention to comparing and contrasting how the state and tribal courts function.

Another issue that affects TCPC curriculum design is who we accept as clients. TCPC accepts both Native and non-Native clients. In spite of the fact that Kansas is home to the twenty-first largest population of Native Americans in the United States,<sup>48</sup> we have not received enough tribal court cases to maintain a section entirely devoted to tribal court practice. WUSL accepts approximately eight clinic interns for each clinic section per semester. The caseload for each intern varies among sections, but most of

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47. New Mexico has required that Indian law be tested on the state bar exam since 2002. Since that time, Washington and South Dakota have also required that Indian law be tested.

48. Projected State Populations, by Sex, Race, and Hispanic Origin: 1995-2025, <http://www.census.gov/population/projections/state/stpjrace.txt> (last visited July 1, 2005).

the students average four to seven cases each semester, depending on case complexity.<sup>49</sup> Over the last four semesters, the same has held true for the TCPC, where we have averaged less than four tribal court cases per semester.<sup>50</sup> This has been a source of frustration.

Beginning in the fall of 2006, in an effort to increase the tribal court caseload, TCPC began to do criminal defense work in the Prairie Band Potawatomi Nation Tribal Court.<sup>51</sup> This growth into tribal criminal defense was significantly aided by integration with Professor John Francis's criminal law clinic section. Until this year, Professor Francis's section practiced criminal defense primarily in Topeka's municipal court and in Kansas District Courts.<sup>52</sup> Expanding into tribal court criminal defense work will necessitate another set of small group classes with a specific focus on criminal law in Indian Country. Another new class session will also address Kansas's unique jurisdictional relationship with Kansas tribes.<sup>53</sup> This year for the first time, TCPC and the criminal law clinic held a second joint class session with guest speakers. Our guest speakers included the Tribal Prosecutor for Prairie Band Potawatomi Nation Tribal Court<sup>54</sup> along with a local criminal defense attorney who practices in both the Prairie Band and Kickapoo tribal courts. This new cross-clinic section cooperation invites another opportunity to revisit the small group curriculum structure.<sup>55</sup>

#### b. Case Coverage and Other Challenges

Washburn's clinic is open year-round, although intake operates on a more limited basis. Cases are accepted for the first half of the fall and spring semesters, with little or no intake conducted over the summer. Limiting intake helps to control the individual student caseload.<sup>56</sup> Stopping intake for summer is important due to limited faculty coverage during those

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49. Clinic interns earn either four to five clinic credit hours over the course of one semester.

50. The average number of referrals has increased over the last two semesters, with most of the referrals coming from the Prairie Band Potawatomi Tribal Court. There have been far fewer referrals from the other tribal courts.

51. TCPC students have had several cases heard in Prairie Band over the first several semesters. All have been domestic cases.

52. Professor Francis's clinic section has also represented clients in federal court both at the trial and appellate levels.

53. Kansas tribes operate under the Kansas Act. 18 U.S.C. § 3243 (2000).

54. Attorney Tom R. Barnes, who also practices in Topeka, has been the Tribal Prosecutor at Prairie Band District Court for the last three years.

55. In addition to working with the criminal defense clinic, TCPC and the Business and Transaction Clinic, which was developed by Janet Thompson Jackson, Associate Professor of Law at Washburn, are exploring ways to expand outreach opportunities to tribal members who have an interest in creating 501(c)(3) organizations.

56. Students taking clinic are often taking a full law school semester course load of fifteen credit hours (including their four to five clinic hours) and many of them also work part-time.

months.<sup>57</sup> From May to August, the clinic faculty is reduced from five to two. Typically, only one supervising attorney remains to handle the criminal caseload and one to handle the domestic caseload.<sup>58</sup> Each spring, the clinic closes as many cases as possible in order to transfer a manageable caseload to the two summer clinicians. Student enrollment in the summer clinic is also reduced from approximately twenty-seven students to nine or ten.

During the summer months, the reduced coverage and enrollment affects TCPC in two very significant ways. First, not all of the WUSL's clinicians are admitted to practice in the tribal courts and so are unavailable to cover tribal court cases. Second, students do not have enough time to prepare for tribal court practice during the summer months. The summer clinic runs on an abbreviated class schedule and the core classes are taught by clinicians without an Indian law background and without tribal court practice experience.<sup>59</sup> Therefore, no tribal court practice classes are included in the summer curriculum. That means that during the summer semester, TCPC cases must either be closed by the end of the spring semester, or continued, if to do so does not harm the client; or transferred to private counsel. As a practical matter, this presents a very difficult dilemma in TCPC's core design and function. Because our case management is so challenged, we must severely limit the types and complexity of the cases we accept. Thus far, we have found no resolution to this problem and it remains one of our primary concerns.

#### IV. CONCLUSION: LESSONS LEARNED AND THE FUTURE OF TCPC

The TCPC at Washburn is a clinic in its developmental stages and continues to work toward meeting the needs of the students, clients, tribal courts, and local tribal communities. A number of factors will determine its ultimate success, but it is clear that at its core, a coherent and thoughtful curriculum design is essential. Equally as important is the commitment of the law school and its clinical program to the success of TCPC. Over the last two years, TCPC has been in a state of constant evolution, which has left little time to reflect and to assess long-term goals. Despite operating in

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57. Currently, only one clinician has a twelve-month contract, as opposed to a nine-month contract.

58. My current contract runs for nine months or from mid-August to mid-May, and therefore, I do not work in the summer semester.

59. Although Washburn's clinic director, Professor John Francis, is currently admitted to practice in Prairie Band Nation Tribal Court, he has recently changed his summer teaching schedule and will no longer be available to supervise cases during the summer months.

an almost constant reactive mode, there are upsides. Constant adaptation to change means constant creativity in finding ways to make TCPC a better experience for students.

Important to the future success of TCPC will be more cross-clinic section integration. Further integration is an important key toward reaching the goal of creating a more comprehensive tribal court practice clinic experience. Although it is perhaps too early to assess its long-term success, working with the criminal defense clinic this semester has been a very positive experience thus far. This cross-clinic work has created more intra-clinic dialogue about tribal court practice and criminal defense in Indian Country. As a result, the students are more engaged with one another in this practice area.

This experience underscores the need to incorporate basic federal Indian law foundations into the small group classroom curriculum. Beginning in the spring semester of 2007, small group classes will include basic information about the relationship between Indian tribes and the federal government, the foundation of tribal courts in general, and on local tribes in particular. In addition, future classes will also explore the cultural aspects of representing individual Native clients in their Native communities.

Continuing to build relationships with the various tribal courts, maintaining relationships with court personnel and further relationship building with tribal communities in Kansas has been wonderful, so far, and will also be key to future success. The TCPC at WUSL continues to be a work in progress. There is no single model for success of an Indian law or tribal court clinic and each model must be created to fit each unique circumstance. The future success of TCPC at Washburn depends on the continued support from WUSL, the clinic, and most importantly, the Kansas tribes and the Native people TCPC seeks to serve.