

# THE FIRST THIRTEEN

*Personal reflections of the argument*

A SYMPOSIUM OF THE FIRST THIRTEEN NATIVE AMERICANS  
TO ARGUE BEFORE THE U.S. SUPREME COURT

RODNEY B. LEWIS - 1980

RAYMOND CROSS - 1983 & 1986

ARLINDA F. LOCKLEAR - 1983 & 1984

JEANNE S. WHITEING - 1985, RE-ARGUED 1985

TERRY L. PECHOTA - 1986

MARILYN B. MILES - 1987

DALE T. WHITE - 1988

SUSAN M. WILLIAMS - 1989

G. WILLIAM RICE - 1992

MARTIN E. SENECA, JR. - 1993

MELODY L. MCCOY - 1997

HEATHER R. KENDALL-MILLER - 1997

S. JAMES ANAYA - 2001

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INDIAN LEGAL PROGRAM - SANDRA DAY O'CONNOR COLLEGE OF LAW AT ARIZONA STATE UNIVERSITY  
LAW & INDIGENOUS PEOPLES PROGRAM AT THE UNIVERSITY OF NEW MEXICO SCHOOL OF LAW



### **AMERICAN INDIAN LAW CENTER, INC.**

Established in 1967, the American Indian Law Center, Inc. (AILC) is the oldest existing Indian-managed and Indian-operated legal and public policy organization in the country serving to strengthen, promote, and honor self-sustaining American Indian and Alaska Native communities through education, training, and leadership.

AILC's mission is to provide training and technical assistance to tribes, tribal organizations, and tribal courts; legal and policy analysis on various issues important to tribal governments; and preparatory legal education to individuals. AILC accomplishes its mission by directing its focus on: the Pre-Law Summer Institute (PLSI); Policy and Legal Analysis; and the Southwest Intertribal Court of Appeals (SWITCA).

Over the years, the AILC has worked with officials from more than 20 states, hundreds of tribes and Native American organizations, and has trained thousands of professionals and paraprofessionals. As a result, AILC has a unique, in-depth knowledge about tribal institutions, including tribal courts and their place in tribal government, and about tribal, state, and federal relations.

### **PRE-LAW SUMMER INSTITUTE**

Since 1967, AILC has been running the Pre-Law Summer Institute for American Indians and Alaska Natives (PLSI). PLSI is an intensive two-month program which prepares American Indian and Alaska Native individuals for the rigors of law school by essentially replicating the first semester of law school. Likened to boot camp by many former participants, the PLSI concentrates its content into eight weeks of instruction, research and study, teaching students the unique methods of law school research, analysis, and writing. The success of the PLSI in providing a nationally respected pre-law orientation can be traced to its original and continuing intent — that it be based on sound legal education principles, and not function as a philosophical, political, or cultural training ground. For more than four decades, AILC has remained dedicated to providing valid training in the skills required for the study of law. PLSI received the 2012 Raymond Pace and Sadie Tanner Mossell Alexander Award for Excellence in Pipeline Diversity during the American Bar Association's Midyear Meeting in early February.

### **SOUTHWEST INTERTRIBAL COURT OF APPEALS**

AILC's Southwest Intertribal Court of Appeals (SWITCA) provides an appellate court forum for tribes located in New Mexico, Colorado, Arizona and West Texas. Since its inception in 1989, SWITCA has allowed tribal courts to bring cases before a panel of experienced judges to render decisions at the appellate level for those tribes that do not have the financial means or governmental infrastructure to administer a court of appeals for tribal court decisions. Appellate services are available without cost to member tribes.

Additionally, SWITCA provides training, technical assistance, legal research, and support services to tribal courts, tribal judges, and tribal court staff in the region in an effort to strengthen tribal and Pueblo court systems and tribal jurisdiction.

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## **A Symposium of the First Thirteen Native Americans to Argue Before the U.S. Supreme Court**

University of New Mexico School of Law  
Room 2401  
1117 Stanford Dr. NE, Albuquerque, NM, 87131  
Friday, March 16, 2012  
8:00 am - 5:00 pm

*Co-Sponsored by the American Indian Law Center, Inc., Law & Indigenous Peoples Program at University of New Mexico School of Law, Indian Legal Program at Arizona State University's Sandra Day O'Connor College of Law, and the New Mexico Indian Bar Association.*

### **An Overview**

The First Thirteen Native attorneys who argued cases impacting Federal Indian Law before the U.S. Supreme Court have come together in this symposium to discuss and reflect upon their experiences at the Court. Dale White, one of the Thirteen, conceived of the symposium, has been instrumental in its planning, and will serve as its master of ceremonies. Instead of the more usual lecture format, Mr. White will interview the attorneys in small groups to discuss their preparations for their arguments, the day itself, and its impact on their careers and on the field of Federal Indian Law.

The practices of this illustrious group of attorneys span the decades that the Pre-Law Summer Institute for American Indians and Alaska Natives (PLSI) has been conducted and many of them attended the PLSI. They are judges, law professors, Native American advocacy attorneys, the highest level of tribal and federal officials, and as attorneys serving Native people and tribes. They continue to shape Indian law through their scholarship, mentoring, programs to benefit Native undergraduate and law students, and have had a transformative effect on international Indigenous peoples' rights.

This historic event is being sponsored by the American Indian Law Center, Inc., the Law and Indigenous Peoples Program at UNM School of Law, the Indian Legal Program at ASU's Sandra Day O'Connor College of Law, and the New Mexico Indian Bar Association. Proceeds will go to fund the PLSI.

The symposium offers six general CLE credits.

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## AGENDA ~ Friday, February 16, 2012

8:00 AM

### WELCOME

**Helen B. Padilla, Esq.** (Isleta Pueblo)  
Director, American Indian Law Center, Inc.

**Dean Kevin Washburn** (Chickasaw)  
UNM School of Law

8:30 AM

### INTRODUCTION OF THE FIRST THIRTEEN AND SYMPOSIUM OVERVIEW

**Dale T. White, Esq.** (Mohawk), Tarbell Management Group  
***California v. U.S. (1989)***

**Video of Interview with Arlinda Locklear, Esq.** (Lumbee Indian Tribe)  
***Solem v. Bartlett (1984)*** and  
***County of Oneida v. Oneida Indian Nation (1985)***

9:45 AM

### Break

10:00 AM

### PANEL I

**Rodney B. Lewis, Esq.** (Gila River Indian Community), Akin Gump  
***Central Machinery Co. v. Arizona Tax Commission (1980)***

**Terry L. Pechota, Esq.** (Rosebud Sioux Tribe), Pechota Law Offices  
***U.S. v. Dion (1986)***

**Martin E. Seneca, Jr., Esq.** (Seneca Nation)  
***Hagen v. Utah (1994)***

11:15 AM

### PANEL II

**Prof. Raymond Cross** (Mandan, Hidatsa & Arikara Tribes)  
University of Montana School of Law  
***Three Affiliated Tribes v. Wold Engineering (1984 and 1986)***

**Susan M. Williams, Esq.** (Sioux), Williams & Works PA  
***Wyoming v. U.S. (1989)***

**Prof. G. William Rice** (Keetoowah Cherokee)  
University of Tulsa College of Law  
***Oklahoma Tax Commission v. Sac and Fox Nation (1992)***

12:30 PM

**LUNCH** (provided)

**1:45 PM**

**PANEL III**

**Jeanne S. Whiteing, Esq.** (Blackfeet Nation), Whiteing & Smith  
***Blackfeet Tribe v. Montana (1985)***

**Melody L. McCoy, Esq.** (Cherokee Nation of Oklahoma), Native American Rights Fund  
***Strate v. A-1 Contractors (1997)***

**Hon. Marilyn B. Miles** (Kickapoo Ancestry), Superior Court Judge, Humboldt County, CA  
***Lyng v. Northwest Indian Cemetery Protection Assoc. (1988)***

**2:45 PM**

**PANEL IV**

**Heather Kendall-Miller, Esq.** (Athabascan), Native American Rights Fund  
***Alaska v. Native Village of Venetie Tribal Government (1998)***

**Prof. S. James Anaya** (Purepecha and Chiricahua Apache Ancestry), University of Arizona James E. Rogers College of Law  
***Nevada v. Hicks (2001)***

**3:45 PM**

**Break**

**4:00 PM**

**PANEL V**

**Summarization and Q&A ~ All Panelists**

*This course has been approved by the New Mexico Minimum Continuing Legal Education Board for 6 hours of General Credit.*





**S. James Anaya** (Purepecha and Chiricahua Apache Ancestry) holds the position of Regents' Professor and James J. Lenoir Professor of Human Rights Law and Policy at the University of Arizona, Rogers College of Law. He directs the International Human Rights Advocacy Workshop, in coordination with the College's

Indigenous Peoples Law & Policy Program. Anaya is the author of *Indigenous Peoples in International Law*. He serves as the United Nations Special Rapporteur on the Rights of Indigenous Peoples. Anaya participated in the drafting of the United Nations Declaration on the Rights of Indigenous Peoples and was the lead counsel for the indigenous parties in the case of *Awas Tingni v. Nicaragua*, in which the Inter-American Court of Human Rights for the first time upheld indigenous land rights as a matter of international law. Anaya served on the law faculty at the University of Iowa from 1988-1999, and he has been a visiting professor at Harvard Law School, the University of Toronto, and the University of Tulsa. Prior to becoming a law professor, he practiced law in Albuquerque, New Mexico, representing Native American peoples and other minority groups. Anaya received his B.A. in 1980 from the University of New Mexico and his J.D. from Harvard Law School in 1983.



**Raymond Cross** (Mandan, Hidatsa & Arikara Tribes) teaches Federal Indian Law and Public Lands and Natural Resources Law at the University of Montana School of Law. He co-advises the Public Lands & Resources Law Review and the Native American Law Students'

Moot Court Team. He began his legal career as a staff attorney with California Indian Legal Services in Mendocino County, California. He later served from 1975-1980 as the Indian Law Support Center Director for the Native American Rights Fund. In 1981, Cross returned to serve as tribal attorney for his tribal people. As tribal attorney, he presented two oral arguments before the U.S. Supreme Court on behalf of his tribal people. He also represented his tribal people in their long standing just compensation claim against the United States for its 1949 taking of over 156,000 acres of the tribal people's best agricultural lands as the site for the Garrison Dam, the world's fourth largest rolled earth dam. In 1992, Congress awarded the

Mandan, Hidatsa and Arikara Nation over \$149.2 million in just compensation for the wrongs imposed on the tribal people by the Garrison Dam. Cross graduated in 1970 from Stanford University and in 1973 from Yale Law School.

**Heather R. Kendall-Miller** (Athabascan) is a senior staff attorney with the Native American Rights Fund (NARF) in the Anchorage, Alaska, office. A lawyer, teacher, and mentor, her legal experience includes cases involving subsistence, tribal sovereignty, human rights, and taxation. In 2001, Kendall-Miller was instrumental in winning the Katie John subsistence hunting and fishing rights case. She has worked with other Alaska Native communities like the Native Village of Venetie, the Native Village of Kluti Kaah, the Native Village of Barrow, and the Nome Eskimo community. Prior to joining NARF, she worked with Sonosky, Chambers, Sasche & Miller in Anchorage, Alaska, and Washington, D.C. From 1992-1994, she was a Skadden Fellow where she worked as a staff attorney for the Alaska Legal Services Corporation representing indigent clients. During the second year of her fellowship Kendall-Miller worked for NARF as a research attorney assisting in trial preparation for tribal status, among other cases. Her civic activities include serving on the Honoring Nations Advisory Board of the Ford Foundation and as a board member of the Alaska Conservation Foundation. Kendall-Miller received a history degree, magna cum laude, from the University of Alaska, Fairbanks in 1988 and her M.A. J.D. from Harvard University Law School in 1991.

**Rodney B. Lewis** (Gila River Indian Community) is a consultant to Akin Gump Strauss Hauer & Feld LLP. He advises tribes on various federal and state public policy issues. Most recently, Lewis served as general counsel of the Gila River Indian Community, in which capacity he led the Community's negotiations with the federal government, the state of Arizona, and over 30 non-Indian parties for settlement of the Community's water rights and claims. As a result of those negotiations, the Arizona Water Rights Settlements Act of 2004, Public Law 108-451, was introduced. Lewis was the first member of an Arizona Indian tribe to become a member of the State Bar of Arizona. He is the founding chair of that State Bar's Indian Law Section. Lewis was the first member of an Indian tribe to appear before the U.S. Supreme Court, having successfully argued *Central Machinery v. Arizona State Tax Commission* in 1980. Lewis received his M.A. in 1969 from Arizona State University and his J.D. from the University of California at Los Angeles in 1972.



**Arlinda F. Locklear** (Lumbee Indian Tribe) represents tribes throughout the country in federal and state courts on treaty claims to water and land, taxation disputes with states and local authorities, reservation boundary issues, and federal recognition of tribes. Locklear was the first

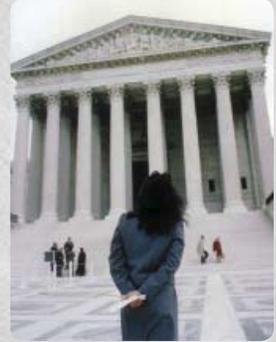
Native American woman to argue a case in the U.S. Supreme Court. Locklear began her career as an attorney at the Native American Rights Fund in Boulder, Colorado, and later transferred to the Washington, D.C., office, where she supervised significant litigation of Indian issues, as well as the legislative work of the office. In 1987, Locklear went into private practice. She was a member of the Board of Advisors for the *Encyclopedia of Native Americans in the 20th Century*. Locklear was awarded the Outstanding Woman of Color Award given by the National Institute of Women of Color in 1987, the Julian T. Pierce Award given by Pembroke State University in 1994, the 1995 Carpathian Award for Speaking Out given by North Carolina Equity, and the Parks Award for Community Service given by North Carolina State University in 2003. Locklear received a political science degree from the College of Charleston in 1973 and a law degree from Duke University School of Law in 1976.



**Melody L. McCoy** (Cherokee Nation of Oklahoma) joined the Native American Rights Fund (NARF) as a staff attorney in 1986. At NARF, she has worked primarily in the areas of jurisdiction in Indian country, tribal rights in education, tribal intellectual property

rights, and tribal trust funds. McCoy is a past Co-Chair of the Federal Bar Association's Indian Law Conference (1990-1992). She served as President of the Colorado Indian Bar Association from 1990-1992, and as a Board Member of the American Indian Bar Association (now the National Native American Bar Association) from 1990-1991. She was a member of NARF's Litigation Management Committee (LMC) from 1992-1995, and since May 2007 she again has been serving on the LMC. She is admitted to practice law in Colorado and Massachusetts. She has practiced before all levels of tribal and federal courts. McCoy received her undergraduate degree from Harvard University in 1981 and her law degree from the University of Michigan in 1986.

In 1996, **Marilyn B. Miles** (Kickapoo Ancestry) became the first woman elected to the Humboldt County state court bench, where she presides as a Superior Court judge over criminal cases. She previously was a judge at the Klamath-Trinity municipal court on the Hoopa Indian Reservation. Miles credits



her time working in the single judge court in Hoopa for providing her with the community contact she felt she needed as a judge. Prior to becoming a judge, Miles spent her legal career representing low-income Native Americans and tribes throughout Northern California. As a staff and then directing attorney of the Eureka office of California Indian Legal Services, she worked on and argued cases mainly in federal and state appellate courts. The case Miles argued before the U.S. Supreme Court, *Lyng v. Northwest Indian Cemetery Protection Association*, became the subject of the First Amendment chapter in Caroline Kennedy's book, *In Our Defense, the Bill of Rights in Action* and was featured in the film, *People of the Klamath*, on the PBS Nova series. Miles earned her B.A. from San Jose State University in 1968, an M.A. from Humboldt State University in 1971, and a J.D. from the University of California, Davis in 1980.

**Terry L. Pechota** (Rosebud Sioux Tribe) has been in private practice in Rapid City, South Dakota, since April, 1983. He began his legal career in 1972 as a staff attorney at South Dakota Legal Services where he became the Director from 1974-1976. Pechota then



moved to private practice for a few years. In 1979, Pechota was tapped by President Carter to serve as the United States Attorney for the District of South Dakota, where he served until 1981. He then worked as a staff attorney with the Native American Rights Fund prior to returning to private practice. Pechota received a B.S., cum laude, from Black Hills State College in 1969 and a J.D. from the University of Iowa College of Law in 1972.

**G. William Rice** (Keetoowah Cherokee) spent 18 years in private practice representing tribes and entities prior to joining the faculty at the University of Tulsa College of Law where he founded the LL.M. Degree in American Indian and Indigenous Law



and serves as the Co-Director of the Native American Law Center. Rice has served as the Attorney General for the Sac and Fox Nation, Chief Justice for the Citizen Potawatomi Nation, and Assistant Chief and Chief Judge for the United Keetoowah Band of Cherokee Indians in Oklahoma. He has

taught at Antioch School of Law's Indian Paralegal program, visited at the University of Oklahoma in the Political Science department and the Cornell Law School, and served as the Director of the Northern Plains Tribal Judicial Training Institute at the University of North Dakota School of Law. He has participated in the United Nations' Working Group on Indigenous Populations, Working Group on the Draft Declaration on the Rights of the Indigenous Peoples, and the Workshop on Indigenous Children and Youth. His book, *Tribal Governmental Gaming Law*, is the first law school level casebook to be published for use in Indian gaming law classes. Rice earned his B.A. from Phillips University in 1973 and his J.D. at the University of Oklahoma College of Law in 1978.

**Martin E. Seneca, Jr.** (Seneca Nation) has been in private practice since 1979 representing tribal clients from across the country. He practices in the courts of the Seneca Nation of Indians and in the federal courts. He is experienced in all phases of legal representation of tribes, including natural resources (land and water), federal programs, economic development, jurisdiction, gaming, and litigation. Seneca has held senior positions in the U.S. Department of the Interior, including Director of the Bureau of Indian Affairs Office of Trust Responsibilities, and Acting Commissioner of the Bureau of Indian Affairs, as well as in the U.S. Department of Energy and the Federal Energy Administration. In 2006-2008, Seneca was Special Counsel to the President of the Seneca Nation of Indians. Prior to his work with the Bureau of Indian Affairs, Seneca was an Associate Professor of Law at the University of Utah College of Law. Seneca received a B.S. and M.S. from Brigham Young University in 1965 and 1970 respectively and a J.D. from Harvard Law School in 1971.

**Dale T. White** (Mohawk) became in-house General Counsel for the Tarbell Management Group (TMG) a business located on the Mohawk Reservation owned by members of the Mohawk Tribe in May, 2010. TMG owns a number of diverse businesses including a restaurant, a Comfort Inn franchise hotel, a fitness center, four convenience stores, two fuel distribution and transportation companies,

and Ohserase Manufacturing, a federally licensed tobacco product manufacturer. Prior to joining TMG, White was General Counsel for the St. Regis Mohawk Tribe (2006-2010) and General Counsel for the Mohegan Tribe of Indians in Connecticut (1999-2006). He has practiced in the field of Indian law for thirty years: as a trial lawyer in the U.S. Department of Justice Indian Resources Section (1979-1983), and in private practice in the State of Colorado from 1983-1999 eventually becoming a partner in an Indian owned law firm. In private practice, White litigated a number of cases in federal court, including arguing eight cases in the U.S. Courts of Appeal between 1984-1990. In 1988, he successfully argued a case in the U.S. Supreme Court, becoming the first member of an Iroquois tribe to argue a case in the Supreme Court. White received a B.A. from Princeton University in 1976 and a J.D. from Cornell Law School in 1979.

**Jeanne S. Whiteing** (Blackfeet Nation) is an attorney in private practice in Boulder, Colorado, representing tribes and tribal entities. Her practice focuses on natural resources law, Indian water rights, land claims, and jurisdictional and tax issues. She was a staff attorney and Deputy Director with the Native American Rights Fund from 1975-1986, before entering private practice. Whiteing currently represents several tribes in the litigation, negotiation, and implementation of their water rights. She also represents tribes in establishing their authority to implement water quality standards programs under the Clean Water Act. Whiteing received a B.A. from Stanford University in 1972 and a J.D. from the University of California, Berkeley, Boalt Hall School of Law in 1975.



**Susan M. Williams** (Sioux) is a shareholder in Williams & Works, P.A., which focuses on tribal jurisdiction, water and natural resources rights, legislative affairs, and business negotiations. She has led efforts to restore, establish, and utilize Indian water rights, and has represented many tribes and pueblos on a wide range of issues. Williams co-chaired the Tribal Sovereignty Initiative to consider options for tribal sovereignty. Earlier in her career she was the first Director, and later Chairperson, of the Navajo Tax Commission. Williams has taught Indian Law at the law schools of Harvard, Stanford, Arizona State, and New Mexico. She has served on numerous boards of directors. Williams received a B.A. from Radcliffe College in 1976 and a J.D. from Harvard Law School in 1981.