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## ILLUMINATING THE INVISIBLE AMERICAN SOVEREIGNTY:

A Profile of the ABF's First Scholar of Native American Legal Systems

# Illuminating the Invisible American Sovereignty:

## A Profile of the ABF's First Scholar of Native American Legal Systems



**Justin B. Richland, Ph.D., J.D.**, is an associate professor of anthropology and the social sciences at the University of Chicago. He is the latest researcher to join the American Bar Foundation's faculty, becoming a research professor in the fall of 2016, along with former faculty fellow Bernadette Atuahene.

Professor Richland is a linguistic anthropologist and legal scholar whose research focuses on the intersections of culture, language and law in contemporary Native American governance. His work has explored legal discourse analysis and semiotics, anthropology of law, and contemporary Native American law, politics, art and ethnographic museology.

He is author of two books, "Introduction to Tribal Legal Studies" (with Sarah Deer) and "Arguing with Tradition: The Language of Law in Hopi Tribal Court," as well as articles in several leading journals including the *Annual Review of Anthropology*, *American Ethnologist*, *Discourse & Society*, and the ABF's *Law & Social Inquiry*. Since 2015, he has served as associate justice of the Hopi Appellate Court, the highest court of the Hopi Nation. In 2016, he was named a John Simon Guggenheim

Fellow for his research on Native American-museum partnerships, and the role of law in shaping those collaborations. He received his doctorate in anthropology from the University of California at Los Angeles (UCLA) in 2004 and his J.D. from the University of California, Berkeley in 1996.

Professor Richland lives in Chicago's Hyde Park neighborhood with his wife and three sons, ages 10, 7, and 5. His wife, Lindsey, is an associate professor in the Department of Comparative Human Development and the Committee on Education at the University of Chicago. She also directs research at the university's Learning Lab.

The ABF recently sat down with Professor Richland to discuss his background in tribal law, his research, and how he is currently working with and for Native people in the United States. An edited transcript of our conversation follows.

### When did you begin working with Native American Nations?

JR: I first started working with Native nations when I was a law student, though I didn't have any background in it. I studied anthropology at Kenyon College for my undergrad. And so, I had always been interested in the meaning of cultural practices, norms and rules, how people make their own experiences meaningful, and how they make sense of their world and the role that culture plays in that. After graduating, I couldn't commit to pursuing a Ph.D. in anthropology, so I decided to go to law school. I was admitted to Berkeley Law, but it quickly became clear to me that conventional legal practice was not going to be in my future. I was much more interested in how the law helps us make sense of our world and the relations that people have by virtue of the law. I got very interested in those theoretical types of questions and there

wasn't a space to pursue those in the context of black letter legal classes. I fortunately met a classmate named Patricia (Pat) Sekaquaptewa, who is a member of the Hopi tribe and whose uncle, Emory Sekaquaptewa, was chief justice of the Hopi Appellate Court at the time. We started talking about various issues and she was very interested in developing programs and working for her community and her tribe. And she had just received a very prestigious Echoing Green Fellowship to start a clerkship program. So she put together a program where students would get course credits to be legal clerks for the Hopi tribe. They'd get to work on live cases and assist in the legal research necessary for the appellate court to do its job. Their efforts would directly aid in the development of Hopi common law. I started working in that program in 1995 and I was just blown away. Tribal courts sit as a nexus between Native

and non-Native ways of doing things, especially for the Hopi. These courts look in many ways like an Anglo-American style court, but they also are committed—and required by their own tribal law—to make decisions informed by the laws, customs and traditions of the Hopi nation and its people. And so I got very interested in the challenges that are posed by the meeting of these two systems. How do these worlds come together to shape contemporary Hopi jurisprudence? That ended up becoming the work that I would mostly focus on. In the meantime, Pat turned this program into a nonprofit organization. After graduating law school, I worked with them for a year, but they had very limited funding, so I had to support myself working odd jobs. And so I thought, "well, why don't I go back to school and get a Ph.D.?" I ended up going to UCLA, and the rest is history. I took my legal education and went to graduate



school in anthropology. I found a way to bring those disciplines together to continue working on tribal law and to understand how it works. To ask those big questions about meaning and interface of cultures and the role that law plays in all of that. I was thrilled to be able to continue with that work.

**Your Ph.D. dissertation focused on one of those “big questions;” on understanding the way litigants, lawyers, and judges use the Hopi and English language to argue claims in Hopi courts. Can you tell me more about that?**

JR: One of the things that became clear to me when I was going out to Hopi and observing cases was most questions of culture were being raised in oral arguments. Not in the texts, case files, or other court records. And that is partly because, even though people had been studying the Hopi language for 89 plus years, there was no standard written form for it, until relatively recently, when Emory Sekaquaptewa, working



Professor Richland with Patricia Sekaquaptewa and the late Emory Sekaquaptewa

with scholars and other Hopi speakers, spearheaded the drafting and publication of the first major Hopi dictionary in 1997. Some call him “the Hopi Daniel Webster” because of this. He was an incredible man and my mentor. He died in 2008 and I miss him every single day. So, oral argument is where things were being worked out, and I needed a way of understanding what making claims through oral discourse actually looks like. Linguistic anthropology is

very much interested in what kinds of activities, actions, and consequences happen when people talk to each other in any language. It turns out that the Hopi language has a very particular place in the history of linguistic anthropology. Back in the 1930s, Benjamin Lee Whorf came up with this massively influential theory of linguistic relativity—that language shapes the way we think about and experience the world. Though his specific findings remain controversial—including the theory that Hopi people experience time differently because their habits of speaking the Hopi language organizes time differently, the general theory that languages influence the way we make sense of our experiences of and in the world

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continue to shape linguistic anthropology to this day. So this whole theory—the Sapir-Whorf hypothesis—emerged through findings based on the Hopi language. It became a natural fit for me—as a lawyer and soon-to-be linguistic anthropologist—to pursue a study of the language and discourse of courtroom argumentation out at Hopi. And that’s what my dissertation looked at. It was titled “Arguing with Tradition” and I analyzed a bunch of cases and hearings—both in English and in Hopi—to understand how the Hopi people argued in court. And to understand how they were using their language to make certain kinds of arguments and what worked and didn’t work in that context.

**You expanded on this topic further for your second book, *Arguing with Tradition: The Language of Law in Hopi Tribal Court*.**

JR: Yes, correct. There have been studies of tribal courts based on surveys, interviews and analyses of written cases, but nothing had attempted to understand how the courts actually work on a day-to-day basis. I argue in the book that if you only understand written products or if you only interview people, you’re missing something. You are missing the very subtle, challenging, and ongoing negotiations that are the bread and butter of the Hopi legal system. Their system is about ongoing relationships among people

within a community. It is rarely about final determinations of rights. There are also subtleties and challenges that Hopi judges face. They are, on the one hand, committed to a system that has a very Anglo-American look and inheritance—due process, the rule of law, and generalized norms that treat people equally under all circumstances. This is vastly different than how the Hopi people understand fairness in their community. In their community—who you are, what clan you’re from, what village you’re from—that all matters. It matters in all sorts of ways. And your idea of culture can be dependent on your position as a ceremonial leader or as a member in a particular clan. People have different understandings of culture and so different rules can apply. So it’s very hard to apply general principles. Hopi judges are trying to deal with issues, but they are stuck between meeting the legitimacy demands of an Anglo-American due process system and of Hopi values, customs and tradition. I was really interested in understanding that tension for the book. Along the way, the book dispels a lot of easy dichotomies, like ‘when a community evokes custom and culture, it’s always going to be better or more liberating.’ Well,

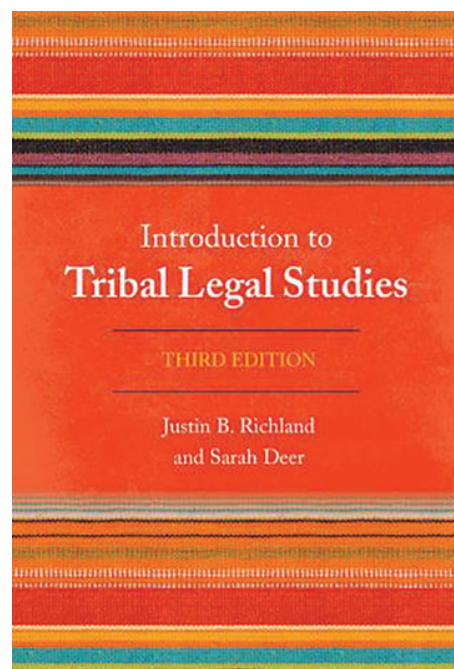


Professor Richland currently serves as an associate justice of the Hopi Appellate Court. He is pictured here with Chief Justice Robert N. Clinton and Justice Patricia Sekaquaptewa during a session at the Hopi Tribal Court in Keams Canyon, Arizona.



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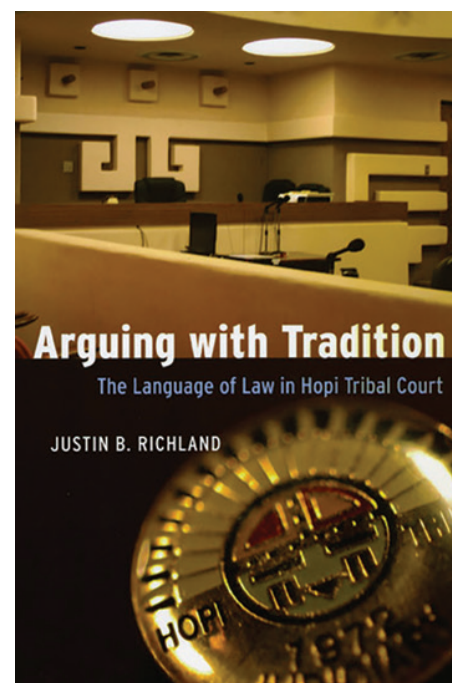
that's not always true. There are some people in the Hopi community who are legitimately members of it, but who don't necessarily have the kinds of rights they expect to have under the traditional way of doing things. So these dichotomies that culture is always good or always reifying do not reflect the actual practices on the ground. It's not until you look at how people are actually talking to each other that you realize it's an unfolding negotiation that



can go in all sorts of directions. And that's all really important to attend to.

**There have been three editions of your first book, *Introduction to Tribal Legal Studies*, with co-author Sarah Deer. And you wrote the first edition while you were still in graduate school at UCLA?**

JR: Yes, at the time that Sarah and I were first writing this, there was really no text that



worked to summarize the emerging field of tribal legal scholarship. Tribal courts didn't really emerge in any robust way until the eighties. The shifting powers, forces, and political possibilities gave tribes an increasing control over their legal system. I think Sarah and I are both proud of this because it's written in a way that presumes Native people are reading it and thinking about how to further understand their own tribal legal systems. It has theory questions at the end of each chapter. What would you do in your community? How would you think about this? It has a lot of sample texts from courts and tribal legal scholars. And so it's really written for tribal legal professionals and young Native individuals interested in tribal law. It still is one of the few books written from and for that perspective. And I think it's what I am most proud of.

**Can you tell me about the research that you are currently working on?**

JR: It has a lot of different components, but the idea I'm dealing with the most centrally is that there are two sides to law in the United States as it relates to Native nations. There's tribal law, the internal law of tribes, and then there's federal Indian law, which governs the

relationships between tribes and non-Native governments, like state governments and the federal government. My work up until now has mostly focused on tribal law, except when I'm teaching. In the teaching context, federal Indian law is a much more established area of legal scholarship and is taught regularly. And so, I wanted to figure out a way to explore the same kinds of questions, through the same methods of face-to-face interaction, but between tribes and the federal government. There's a general federal policy that's been officially in place in the United States since 1994 called tribal consultation. Since the Clinton administration, every presidential administration has authorized, re-upped, or continued to support tribal consultation. It is the idea that if any federal policy, shift, or decision made by any part of the executive has potential to impact Native Americans, the federal government is required to consult with the tribes. For example—take the Dakota Access Pipeline. The objection the Standing Rock Sioux have is that after the permit to Dakota Access was approved, the Army Corps of Engineers fast tracked the construction of the pipeline without substantial tribal consultation. Right at the end of Obama's presidency,



Professor Richland in his office at the University of Chicago, where he holds appointments in the College and the Law School.

he directed the Army Corps of Engineers to stop the pipeline, so that consultation could take place in a proper way, as part of a larger Environmental Impact Study. In fact, the Army Corps of Engineers ultimately rescinded the permit to Dakota Access on the grounds that better alternatives exist after having consulted with the tribe. Ultimately, that all got overturned by the Trump administration and it has all moved forward. And of course, it has already leaked as predicted. The whole “#NoDAPL” and “Stand with Standing Rock” protest and movement was the fallout of a failure to take seriously the opportunity to partner and consult with tribes. It's bigger

than that obviously, but that's the one legal hook. I should add that despite all of the policy language and executive statements in support of tribal consultation, the executive branch still has to voluntarily submit to it. A court cannot require the Army Corps of Engineers to consult and there is no legal binding penalty to not consult in a meaningful way. What I've been doing is collecting a bunch of data—from the Hopi tribe and elsewhere—on moments of consultation between tribal leaders and federal agents. I'm looking at the ways in which culture and law are being talked about in those contexts. I'm also working closely with the Hopi Cultural Preservation Office.



They are one of the leading tribal agencies and they've been very aggressive in insisting that federal agencies account for Native perspectives. They have been successful in helping to reshape certain federal policies and actions by insisting that Native and Hopi perspectives be taken into account in the planning stages. So my work looks at what they've been doing, and what others have been doing, to figure out what works, what doesn't, and how the process could be strengthened and improved.

**Last year, you were awarded a John Simon Guggenheim Fellowship for Open Fields:**

**Ethics, Aesthetics, and the Very Idea of Natural History, your project in collaboration with the Neubauer Collegium for Culture and Society and the Field Museum.**

JR: That project focuses on the particular context of tribal consultation as it shapes museums. One of the arenas that federal law has intervened strenuously in is the collection of Native American human remains and cultural property by museums and universities. In 1990, there was a law passed called NAGPRA (Native American Graves Protection and Repatriation Act). It requires institutions that receive federal funding and that house Native

American human remains and cultural property to inventory it and reach out to the tribes they belong to in order to determine how those items were collected and whether or not they should be returned. The Field Museum here in Chicago has an enormous collection of Native American material—upwards of 30,000 items—and one of the largest collections of Hopi cultural material. In the 25 years since NAGPRA's passing, what started off as an adversarial meeting between tribes seemingly wanting their property back and museums seemingly wanting to hold onto them has turned into something else. What's beginning to be discovered is the opportunity to partner in really novel and interesting ways. Partnering does not mean that everyone is always happy. Partnering also means hearing harsh criticism, sometimes being told “no,” and then finding ways of moving forward that respects those positions. One of the expressions of that ongoing partnership has been the introduction of contemporary Native American art into museums. How do these partnerships emerge? What is the potential for rethinking what museum exhibitions and cultural representations look like? How do partnerships between Natives and non-Natives produce surprising, unexpected, and



Professor Richland speaking with Raymond D. Fogelson, professor emeritus of anthropology at the University of Chicago. Fogelson is known for his research on the ethnology and ethnohistory of Indians of the Southeastern United States.

productive outcomes? How has law initiated all of this and does it force a conversation that otherwise would not have existed? And so for the Guggenheim Fellowship, I am exploring all of this through an ethnographic study of museum and Native interactions around these issues.

**That project is based on an exhibition you co-curated at the Field Museum in Chicago, during your time as adjunct curator of North American Anthropology.**

JR: Yes, the curator of North American Anthropology at the Field Museum is a woman named Alaka Wali. She is an incredible anthropologist, advocate and curator who is very much interested

in community relations, contemporary community outreach, and involving the community in the work of the institution and how it represents anthropological information. She had a show a few years ago in which a well-known fashion designer named Maria Pinto came and basically interned in the museum's Native North Americans collection. She drew inspiration from this collection and designed her own contemporary pieces based on the collection, and then worked with the museum to exhibit her pieces with select items from the Native American materials that inspired them, alongside each other, in tandem. Showing the two side-by-side gave audiences a new perspective on thinking about all the materials, both

Native and non-Native. For another exhibition, Alaka persuaded a well-known Pawnee artist named Bunky Echo-Hawk to become the artist-in-residence at the Field Museum. He made works to hang alongside and comment on the museum's ethnographic Pawnee materials from the turn of the 20th century. And the show that I'm co-curating involves two Native American artists—Chris Pappan, who is of Kanza, Osage and Cheyenne River Sioux descent, and Rhonda Holy-Bear, who is a member of the Cheyenne River Sioux Tribe. Their work for the exhibit is a reflection and commentary on the materials in the Field Museum, but in two very different ways. Chris's work is more a critique and it talks about the contemporary political, social, and cultural situations Natives find themselves in today. His effort is revitalizing and plays with critique, but is also in conversation with Field Museum's collections. Rhonda's work is more of an homage to what she once described as the “the treasures of her people” that are in the Field Museum. She makes these very carefully crafted dolls using extremely intricate beadwork and materials. The dolls wear the elaborate regalia from Plains culture and the beadwork traditions from which they



Professor Richland with his students in the Hopi Law Practicum program during a recent visit to the Hopi Tribal Court. From left to right: Sterling Paulson, student at UChicago Law School; Professor Richland; M. Todd Henderson, professor at UChicago Law School and co-director (with Richland) of the Hopi Law Practicum; Patricia Sekaquaptewa, assistant professor at the University of Alaska Fairbanks and associate justice of the Hopi Appellate Court; Andrew Mackie-Mason, student at UChicago Law School; Robert N. Clinton, professor of law at Arizona State University and chief justice of the Hopi Appellate Court; and Peter Hegel, student at UChicago Law School.



come. “Open Fields: Ethics, Aesthetics, and the Very Idea of Natural History” is a project based on this.

The special exhibitions “Drawing on Tradition: Kanza Artist Chris Pappan” and “Full Circle/Omani Wakan: Lakota Artist Rhonda Holy Bear” are running at the Field Museum until January 13, 2019. To learn more, please visit [fieldmuseum.org](http://fieldmuseum.org).

**You currently serve as an associate justice for the Hopi Appellate Court. How were you appointed to that position and what does it involve?**

JR: I had been clerking for the Hopi Appellate Court since the mid-1990s, first, as a student, and then later, as a volunteer. I have always maintained a connection with the court and continued to visit the community. Then, I was appointed by Emory Sekaquaptewa, who was chief justice at the time, to serve as a justice pro tem. I am now appointed to a four year term as an associate justice. The responsibilities of the Hopi Appellate Court is to review decisions by the lower Hopi courts for any judicial errors and to hear any appeals on decisions made by the lower courts. It is truly an honor to have been asked to serve in this capacity and it continues to

humble me that I’ve been given this responsibility. I’m now running what’s called the Hopi Law Practicum at the University of Chicago Law School, a program similar to the one I was in as a law student. The students in the program serve as clerks for the appellate court for a year. We hear matters on criminal law, civil appeals, and help to decide and issue judgements.

**You are also co-founder of The Nakwatsvewat Institute, a nonprofit organization that works with Native communities.**

JR: Yes, Pat (Sekaquaptewa) and I, along with a student of ours while we were at UCLA, started The Nakwatsvewat Institute. It is a dispute resolution nonprofit organization that offers training on alternative dispute resolution to the Hopi people. It is a way to avoid having to hire lawyers and an alternative to going to court, in hopes of reaching resolutions that are more lasting and efficient.

To learn more about The Nakwatsvewat Institute, please visit [nakwatsvewat.org](http://nakwatsvewat.org).

**Lastly, I know you have been involved with the American Bar Foundation for a few years, first as a visiting scholar and now a research professor. Why did you decide**

**to join the research faculty at the ABF?**

JR: I have known about the American Bar Foundation for about 20 years. When I was a law student at Berkeley, I first heard about the ABF through the well-known Ph.D. program there called Jurisprudence and Social Policy. I wasn’t in that program, but I was introduced to some of the ABF’s research and I learned about the organization as this amazing resource and a pillar of law and society research. I was then recruited to the University of Chicago by John Comaroff, who was on faculty at the ABF at the time. It was definitely on my mind that coming to Chicago would be an opportunity to also have a relationship with the ABF and all of the leaders of sociolegal scholarship who have come through this institution. In 2013, I was fortunate enough to be asked to become a visiting scholar. Then, I decided to apply to become a research professor, and I was so delighted to be offered a spot. If you do work in law and sociolegal scholarship, there are very few places that have the resources and the connections to both the profession and the academy that the ABF has and always had. This makes the ABF a key resource and touchstone for anyone working in and with

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U.S. legal contexts. For me, I see the opportunity as a way to further an understanding and appreciation of tribal law, federal Indian law, and the contemporary place of Native Nations and their peoples in the U.S. more generally. Despite being in close contact for hundreds of years now, Native American Nations, their laws and governments, are one of the least known areas of law in the United States. We really have three sovereign governments in the United States—the federal government, state governments, and tribal governments. There are 566 federally recognized tribes in the United States, and countless more that currently do not have relations with the federal government. Despite these numbers, Native American peoples, their laws and governance remain largely invisible to non-Natives. Often what is known of Native America is a dramatically oversimplified picture. Native nations are seen as either

falling apart from unsolvable problems of substance abuse and poverty, or as wallowing in the filthy lucre of Vegas style casinos. While these issues do face many (though not all) of these communities today, the actual story of contemporary Native Nations is a more nuanced one that, above all, must include a story of Native endurance, self-determination, and success as well. It behooves us to appreciate and understand the place of Native Nations, their ongoing efforts at self-determination and the role that

law figures centrally in those efforts. I can think of no better place than the ABF to help me tell this story. Felix Cohen (son of the great legal philosopher Morris Cohen) was the head solicitor of the Department of the Interior in the 1930s, a chief architect of the so-called “Indian New Deal,” and a staunch advocate for Native American welfare. He once said the treatment of Native Americans is the “canary in the coal mine” of American democracy, and that if you want to know how the health of a nation is, you will attend to what’s happening to its most vulnerable populations. It seems to me that this is still true today. And I look forward to working with and through the ABF and its amazing faculty and staff in furthering an understanding of and about Native America today.



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