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## The SideBar

by [Amy B. McLellan](#)

### **DU Professor Lucy Marsh Leads the Tribal Wills Project Team**

*The Tribal Wills Project allows University of Denver law students to travel to American Indian reservations at the invitation of the tribes to spend a week drafting wills, medical powers of attorney, living wills, and burial instructions for tribal members. The students gain valuable experience interviewing clients, providing counsel, and drafting legal documents, with the assistance of volunteer attorneys.<sup>1</sup>*

It always begins with a group meal, a celebration of the mission that we are undertaking, and a gracious thank you from our hostess for joining her on this journey. Professor Lucy Marsh has been organizing and overseeing two to three trips like this each year for the past four years. She was the only person to respond when John Roach, a fiduciary trust officer at the Office of the Special Trustee for Indian Affairs, U.S. Department of the Interior, reached out to law schools requesting assistance. Professor Marsh is thrilled to have brought together such a large group of caring attorneys and soon-to-be attorneys for this project. You see her excitement in the way that she addresses the crowd, her insistence that we share a meal, and the joy that she takes in embracing the work that is ahead.



*Lively discussion at Ignacio, Colorado. John Roach, Prof. Lucy Marsh, student Jimoh Yussuf, supervising attorney Prof. KK DuVivier, student Meghan McGregor, supervising attorney Elisa Ard, and student Brian Davis.*

There are introductions: the students who have spent vacations and study periods to join previous trips, Colorado attorneys joining for the third or fourth time, local attorneys and students who are new to the Tribal Wills project. “Thing One” and “Thing Two,” Laura Gillen and Larry Rasmussen, Lucy’s friends from Vermont, come to ensure that everyone is fed and able to get where they are needed. Lucy has personally developed a fantastic network of friends and former students who donate time and money to help make this possible. This can only happen with donations, and fundraising is not the primary focus for someone who does all of this in her “spare” time. We are all anxious and excited for the week to come, not knowing exactly how it will come together, but certainly knowing that Professor Marsh will make it all happen.

We stay in a hotel near the reservation. As you drive through the rich landscape of the Southwest, you constantly appreciate its verdant beauty. Then you reach the barren, rocky desert and you know you have hit the reservation. Even today, it is apparent what happened on the Trail of Tears less than 200 years ago, and you know you are about to witness the fallout of that history. As a non-native person, it is always saddening to witness generations of tribal people still living with the indignities that were imposed on them. The Tribal Wills Project frequently sees clients who were forced to attend boarding schools, where they suffered humility, abuse, and neglect. We see people whose relatives had their land and homesteads taken away. It surprises me to discover how many people are unaware of this history and to recognize how little interaction many of us have had with native people. This trip—this project—gives us a forum to meet, connect, empathize, and give back. For the attorneys among us, it is a unique opportunity to use the skills we worked so hard to obtain, to help people who clearly deserve our assistance.



*Ramah probate specialist Michelle Begay, supervising attorney Elisa Ard, students Robert Montgomery and Alyssa Miller, Ramah Chapter President David Jose, student Kelsey Hall, newly admitted attorney Erin Schenk, Prof. Lucy Marsh, and Justice Greg Hobbs.*

Early in the morning, we grab breakfast and head off, in teams, to sites where we will be working. The first-year students transform a gymnasium-like room into multiple, make-shift law offices. A conference room and kitchen become the copy, file, and drafting rooms. Lucy puts the first-year students in charge of seeing to it that everyone has what they need, greeting the clients, and overseeing the filing system.

Professor Marsh has gone to tremendous efforts to ensure that the second- and third-year law students and volunteer attorneys are ready to go. The students have taken Wills and Trusts at DU, and they have attended numerous seminars on drafting documents and working in a fast-paced legal clinic. There have been lectures on the American Indian Probate Reform Act of 2004 (AIPRA), the federal law that governs the transfer of tribal land held in trust for native people, and the Individual Indian Money accounts where cash payments related to trust land are deposited. This year, she arranged for lectures from Donald Harvey, Chief Judge of Tohono O'odham Nation Justice Center, and Carol (Roberta) Harvey, a Denver-area attorney and member of the Navajo Nation, on the culture, history, and customs of the people we are about to serve. We are all armed with a nicely organized binder and a flash drive with drafting information, sample documents, and explanations of relevant local state law.



*Supervising attorney Elisa Ard, student Robert Montgomery, and supervising attorney Diane Burkhardt, at Ramah, New Mexico.*

Next, local attorneys join us along with interpreters and notaries. For most of the local estate planning attorneys, this is their first contact with the project. They rarely have an opportunity to practice estate planning dealing with tribal lands and assets held in trust by the federal government. Even though they have law practices nearby, most of our clients cannot afford their services.

Julie Redhouse, who works for the Office of the Special Trustee in the U.S. Department of the Interior, arranges for our visit in advance. She has made flyers and posters, attended tribal meetings, and visited people in their homes to let them know about the opportunity, and to sign them up. We are about to see 78 clients in four days, and Julie has a wait list of another 75 tribal members who wanted to come, but we just can't meet the demand on this trip.



*January tribal wills team excited to get to work in Phoenix, Arizona.*

The clients who arrive know the importance of having a will, of being able to keep their land, their mineral rights, and their animals in the family. This most recent trip was to New Mexico, to work primarily with members of the Navajo Nation. During our previous trip, to the Phoenix area, we saw clients who were members of over a dozen different tribes. Many of our New Mexico clients have grazing rights and farm equipment, along with sheep, cattle, and even a llama. They ask the students to ensure that their ceremonial jewelry, blankets, and instruments go to specific people. Even though the students are drafting simple wills and healthcare documents, they have been taught to be very explicit in their drafting, to provide for many layers of contingencies, and to make sure they are fully implementing their clients' wishes. They are keenly aware that these documents go through three tiers of law—federal regulatory law, tribal law, and state probate.

There seems to be no such thing as a simple will when you include all of the trust land and accounts, the personal belongings, and the wishes for possessions to remain in the family, when members have left the reservation, descendants have intermarried with non-tribal members and some of those beneficiaries may not be qualified, under federal law, to inherit tribal land. Furthermore, there are often stepchildren and grandchildren who, in all respects, are like blood relatives to our clients, but are not legally adopted. The students are confronted with a web of relationships and possessions. They need to figure out how to convey the concepts in words the client can understand, yet are legally accurate, and will carry out their clients' desires. It is no simple task, but the students exert all of their effort to meet the complex needs of these families.

At night, exhausted and hungry, we all head back to the hotel for drafting and editing. Behind the scenes, Lucy has arranged for her almost magically elf-like helpers to have dinner waiting for us. After a collegial meal, we head to the conference room at the hotel to do the drafting. The

students draft documents well into the night. Lucy and her band of volunteer attorneys read draft after draft, making sure that what is written makes sense and carries out our clients' wishes. We become frustrated that we can't address all of the complexities of each situation, but we do our best, hoping our clients will be well-served with the result.



*Happy drafters at Huhugam Heritage Center, Arizona.  
Students Stephen Klein, Sarah Rice, Matthew James,  
Joan McMillian Bowen, Erik Carlson, and EmmaRose Boyle  
(guest participant from Vermont Law School).*

The next day, we return. The students enthusiastically interview more clients and begin to do signings. Lucy has each student review every word of the documents with the clients. A local state attorney reviews everything to ensure it meets state law. There are notaries and witnesses and interpreters; sometimes we need the help of Navajo interpreters all day long. A beautiful and sophisticated language, it is impressive that so many tribal members have managed to get by living on or near the reservation speaking only their native tongue. A great grandson of one of our clients accompanies her on her return trip to sign documents. While they wait, she patiently speaks to him in Navajo, and he answers in English. I ask if she would like a drink or a snack. He repeats what I say in English, and she responds in Navajo. It is an interesting interaction. The interpreter gently leans over and reminds him that he should practice speaking Navajo. He nods respectfully. He has spent his school vacation visiting his great grandma, and you can tell how much he adores her.

Over the course of the week, I am moved by the close family and community ties of the Navajo people. Many of our clients are materially poor, despite owning large tracks of land, but they are rich in culture, tradition, and community ties. You witness a dignity and harmony that is hard to find elsewhere in our society.



*A client signs her will at Ramah, New Mexico, with the assistance of interpreter Kee Lee and student John Gatewood.*

Finally, the students load the printers and leftover supplies into a rented van. You know that Lucy Marsh is already engaged in thinking about the next trip. I leave with this contagious sense of peace, having spent a week with a team of people who shine at every level. You often hear about the worst of the legal profession, but here you get to see the best of it on a tremendous scale.

**Note**

1. See [www.law.du.edu/index.php/tribal-wills-project](http://www.law.du.edu/index.php/tribal-wills-project).
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