

by Liz Murphy

Professor Sarah Deer: MacArthur Fellow

The sound of solid drumbeats fills the air as a large crowd gathers closely. Necks careen, eyes open bright with excitement, and flashes of cameras blink one at a time across the crowd. Sarah Deer stands in the front of the gathering with a humble smile across her face. A traditional Native American drum group sits to her left, singing sacred songs in her honor. A passerby student, unaware of the event, approaches me and asks, “Who’s this for?” I answer, “Professor Sarah Deer.” She pauses and asks, “To celebrate her MacArthur Genius award?” I smile at this student and respond, “Yes, and for all the lives she has changed, too.”

Prior to the MacArthur Foundation (one of the nation’s largest foundations, which supports creative people and institutions committed to defending human rights, advancing global conservation and security, and understanding technology’s effect on society) and its honorary award to Deer, one finds that her life’s work began from an early age and from a grassroots approach.

In 1972, Deer was born in Silver Spring, Maryland. An enrolled citizen of the Muscogee (Creek) Nation of Oklahoma, she was born into a family of Native American leaders who sought change and justice. Her grandfather, Isaac Deer, worked as an elected representative in the Kansas legislature during the 1950s. Her father, Montie Deer, the first attorney in the Deer family, was a state court judge for 15 years and served as an assistant U.S. attorney for the District of Kansas (among other positions). Her mother avidly supported all of her daughter’s extracurricular activities, such as the debate team and volleyball. When Deer entered college at the University of Kansas, she began her studies in theater. She then changed her major, and her advocacy work began.

Deer graduated with a bachelor of arts in both women’s studies and honors philosophy. Her academic studies and research reflected her passion to advocate for victims. Her honors thesis in women’s studies addressed statutory rape laws.

During her undergraduate career, Deer worked as a rape crisis advocate and assistant director of Douglas County Rape Victim-

Survivor Service Inc. in Lawrence, Kansas. In this position, she provided 24-hour crisis intervention for sexual assault victims, recruited and trained volunteer advocates, researched and wrote grant proposals, and served as the liaison for the Haskell Indian Nations University. When asked about her experience in this position, she remarked, “This training shaped a lot of my views about the legal system, and it gave me such a unique insight into the legal procedures that women have to go through when they report the crimes that happened to them—especially Native women.”



Deer then followed her father’s footsteps into the legal field to advocate for Native women. “I wanted to change the criminal justice system for all the failings that it has done to us,” she said. Studies have proven that more than one in three American Indian and Alaskan Native women will be raped in their lifetime, and

these assaults have been severely under-prosecuted.¹ In addition, these women have a significant lack of access to reproductive health services.² Deer wanted change for both of these things.

During her time in law school, Deer worked as a teaching assistant in appellate advocacy in federal Indian law from 1997 through 1999. One of her most prominent mentors was her Indian law professor, Robert Porter. She earned not only her doctorate in law but also a Certificate of Tribal Lawyering from the University of Kansas Tribal Law and Government Center. Her accolades further foreshadowed her future research and work. She excelled in Indian law and received awards for her performance in the Native American Law Student Association moot court competition.

Deer graduated from the University of Kansas School of Law in 1999 with copious amounts of education and training in Indian law. When the time came to seek employment, she already knew that she wanted to shape her career to focus on advocating for victims of crime in Native communities. When asked about her career choices, she remarked, “Each of my careers have focused on advocating for Native women. There is such need for those to fight for the rights

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and protection of Native women and communities.”

Her first position upon graduation was grant program manager for the U.S. Department of Justice in Washington, D.C. From August 1999 through August 2002, she served as the program’s administrator for the STOP Violence Against Indian Women grant program. This position gave her another unique, hands-on experience related to advocating for Native women. She managed more than \$10 million in awards granted to 236 sovereign Indian nations. She assisted grantees in determining prevention implementations of policies and procedures pertaining to the Violence Against Women Act (VAWA). Such policies and procedures also included responses to domestic violence, sexual assault, and stalking.

Then Deer, uniquely experienced and talented, accepted a position as a victim advocacy legal specialist and staff attorney at the Tribal Law and Policy Institute in West Hollywood, California. The Tribal Law and Policy Institute is an Indian-owned and -operated nonprofit corporation designed to deliver education, research, training, and technical-assistance programs to promote improvements for justice in Indian country. These improvements contribute greatly to the health, well-being, and culture of Native peoples. From September 2002 through July 2008, she focused specifically on violent crimes such as sexual assault and domestic violence.

While Deer worked at the Tribal Law and Policy Institute, she also taught numerous law classes. In January 2003, she began her teaching career at the University of California Los Angeles (UCLA) Extension as a distance-learning instructor, teaching tribal legal studies, tribal legal research and writing, tribal criminal law and procedure, and violence against Native women. This extension was part of the UCLA Native Nations Law and Policy Institute’s Tribal Learning Community and Educational Exchange program. In winter 2003, she developed and taught a course on tribal legal research and writing at the Turtle Mountain Community College operated by the Turtle Mountain Band of Chippewa Indians.

She continued to teach as a lecturer in law for the Indian Law Clinic and Tribal Law Development Clinic at the UCLA School of Law in 2004–05. Her position involved the supervision of clinical students in field placements not only in Los Angeles but on various reservations as well. Deer knew that her role to prepare students to advocate for Native communities bore a unique importance.

From 2004–2007, Deer’s advocacy work further progressed as she authored numerous publications and books. Her first book, *Tribal Criminal Law and Procedure* (with Carrie E. Garrow), was published in 2004. This book became vastly influential in the instruction of Indian law courses in law schools throughout the country, as it addresses the complexities of tribal criminal law and procedure, and it compares tribal criminal law and procedure to the Anglo-American system counterpart. The book also addresses tribal statutory law, tribal case law, and Native cultural values embedded within those laws. Deer’s second book, *Introduction to Tribal Legal Studies* (with Justin B. Richland), was also published in 2004. This book discusses the history and structures of tribal justice systems within criminal and civil jurisdictions.

Following her first two books, Deer contributed to various publications that addressed rape law reform, VAWA’s full faith and credit requirements (requiring state courts to recognize and enforce protection orders issued by tribal governments), and the improvements for tribal protection orders for survivors of sexual assault. Her articles were included in the *North Dakota Law Review*, *Suffolk University Law Review*, *University of New Mexico Law Journal*, and others.

Then, from 2005 through 2007, Deer assisted Amnesty International USA with her co-authored *Maze of Injustice* report.² This report outlines inadequacies and failings within the legal system to protect these women from violence on reservations. This report gained international recognition, and it is frequently used for research and the training of professionals in victims advocacy.

In 2007, Deer co-edited her third book, *Sharing Our Stories of Survival: Native Women Surviving Violence*. This book provides a unique view not only into the legal system’s failings for Native women but also into the personal experiences that these women face with violence committed against them. Contributors to the book were lawyers, advocates, social workers, poets, and victims. Each contributor detailed the consequences and the physical, mental, and spiritual pain effects of rape and battery on Native women.

Deer’s teaching and publishing career was flourishing. Unfortunately, this time period was also extremely difficult for Deer, as she was diagnosed with breast cancer at the young age of 33. “It happened to be genetic. My mother also had this cancer at the age of 34. She fought that cancer and survived. She was such a huge inspiration for me,” she remarked. So, Deer fought too. She was off of her feet for an entire year to battle this cancer with surgeries, chemotherapy, and other treatment. She successfully defeated breast cancer and walked away from the experience with a new perspective. “You know, when you’re off your feet for a year, you have a lot of time to think,” she said. “You only really have your thoughts ... these thoughts were about teaching.” Thus, Sarah Deer decided to become a full-time law professor.

Deer began her full-time teaching career at William Mitchell College of Law in 2009. The courses she teaches include tribal law, feminist jurisprudence, criminal procedure, criminal law, constitutional law, federal Indian law, and numerous others. She has also taught federal Indian law at the University of Minnesota Law School and Lewis and Clark Law School. Today, she not only teaches at William Mitchell but also continues her role as an instructor for the UCLA Extension’s Tribal Legal Studies.

Deer’s writing has neither fallen by the wayside nor slowed. In 2009, she published “Decolonizing Rape Law: A Native Feminist Synthesis of Safety and Sovereignty” in the Association for the American Indian Research *Wicazo Sa Review*.³ Next, in 2011, she contributed to the Minnesota Indian Women’s Sexual Assault Coalition report, “Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota”. Deer’s article “Criminal Justice in Indian Country” was published in the *American Indian Law Review* in 2013. As a Creek Nation citizen, she addressed her own tribe’s legal system with “Mvskoke Constitutional Jurisprudence: Vhakov Em Pvtakv (The Carpet Under the Law)” with Cecilia Knapp in the 2013 *Tulsa Law Review*. She has also contributed to the *William Mitchell Law Review* with such articles as “Relocation Revisited: Sex Trafficking of Native Women in the United States” (2010), “Dakota Tribal Courts in Minnesota: Benchmarks of Self-Determination” (2013), and “Protecting Native Mothers and Their Children: A Feminist Lawyering Approach” (2014). Further, Deer co-authored “Adult Guardianship and Tribal Nations, in Comparative Perspectives on Adult Guardianship” (2014) with William Mitchell colleague Professor Colette Routel.

Deer’s most recent publication—her fourth book, *Structuring Sovereignty: Constitutions of Native Nations*, with Melissa L. Tatum, Miriam Jorgensen, and Mary Guss (2014)—provides detailed guidance for Native nations on drafting tribal constitutions.

One would be mistaken to assume that Deer’s work rests solely in

teaching and publishing. In fact, she serves as an associate judge for the White Earth Nation Court of Appeals and an associate justice for the Prairie Island Indian Community Court of Appeals. Appointed by Attorney General Eric Holder, Deer is the chairperson of a federal advisory committee to address sexual assault in Indian country. In addition, she co-coaches, with her colleague Colette Routel, the William Mitchell College of Law Native American Law Student Moot Court Team, which is currently one of the nation's top-placed Native law moot court teams.

Deer is also a student herself. "I'm always learning!" she said. She has been actively studying her own Muscogee language for five years. She acknowledges her teacher, Rosemary McCombs Maxey, as one of her personal mentors.

In fall 2014, Deer was awarded a MacArthur Fellowship (also known as a Genius Grant).⁴ This award celebrated all of her efforts and influential work, including her publications and teaching. In addition, the MacArthur Foundation saw how influential Deer was in the passage of two landmark pieces of legislation, the Tribal Law and Order Act of 2010 and the 2013 Reauthorization of the Violence Against Women Act. The Tribal Law and Order Act of 2010 increased the sentencing power and support of tribal courts and required federal district attorneys to provide comprehensive and specific information about nonprosecuted cases to the respective tribal authorities. The 2013 Reauthorization of the Violence Against Women Act restored some of the authority that was stripped from tribal governments by *Oliphant v. Suquamish* (1978), giving tribal courts the power to prosecute non-Native Americans who assault Native spouses or dating partners or violate a protection order on tribal lands. Deer's work and advocacy improved the lives of countless women, children, and tribal communities.

Deer's work continues to flourish, and she has many plans for her future. When asked about what's next for her, she said, "I want my work to be aimed at ensuring Native women have access to repro-

ductive health care including emergency contraception. I also want to work on reversing the decision in *Oliphant* so we can restore criminal jurisdiction to tribes for crimes committed against Indians."

Lastly, she said, "I want to decrease gun violence in Indian country, especially keeping guns out of the hands of troubled children. Suicide and homicide greatly damage our communities, and decreasing gun violence through tribal law can help us change this."

With a star quilt given in her honor draped around her shoulders, Sarah Deer, an awe-inspiring woman, stands before us. The drumbeats come to a close, and one can feel the power of the moment lingering throughout the crowd. We erupt into applause, cheering for how much she has contributed to the world. As the people line up to congratulate her and shake her hand, I snake my way up to the front of the queue. When it's my turn to acknowledge my professor and mentor, I can't help but feel emotional.

"Thank you so much for everything," I say to her. Words could never express how grateful we truly are for all that she has done and will continue to do to fight for the rights and safety of Native women everywhere. ☺

Endnotes

¹PATRICIA TJADEN & NANCY THOENNES, DEPARTMENT OF JUSTICE, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN, (2000).

²AMNESTY INTERNATIONAL, MAZE OF INJUSTICE: THE FAILURE TO PROTECT INDIGENOUS WOMEN FROM SEXUAL VIOLENCE IN THE USA (2007), www.amnestyusa.org/women/maze/report.pdf (last visited Jan. 23, 2015).

³24:2 *Wicazo Sa R.* (fall 2009).

⁴MACARTHUR FOUNDATION, MACARTHUR FELLOWS PROGRAM, SARAH DEER: LEGAL SCHOLAR AND ADVOCATE (Sept. 17, 2014), www.macfound.org/fellows/912 (last visited Jan. 23, 2015).

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¹⁰COHEN'S HANDBOOK ON FEDERAL INDIAN LAW (2012 ed.), § 4.02[3][a] at 226-227 discusses the much-criticized "implicit divestiture" theory for limiting the inherent sovereign powers of Indian tribes.

¹¹Echo-Hawk (2010) explores the dark side of federal Indian law identified by legal scholars.

¹²See Echo-Hawk (2013) at 105-125.

¹³Echo-Hawk (2010) at 55-84 contains a comprehensive analysis of *Johnson*.

¹⁴Echo-Hawk (2013) at 7. See also, BLACK'S LAW DICTIONARY (abridged 9th ed., 2010) ("Human rights" are "[t]he freedoms, immunities, and benefits that, according to modern values (esp. at an international level), all human beings should be able to claim as a matter of right in the society in which they live.").

¹⁵Words of Alexander Hamilton, quoted in Jordan J. Paust, *On Human Rights: The Use of Human Rights Precepts In U.S. History And The Right To An Effective Remedy In Domestic Courts*, 10 MICH. J. INTL. L. 543 (1989).

¹⁶*Id.* 552-553.

¹⁷*Id.* 572-611.

¹⁸*Id.* 650.

¹⁹These end products are elaborated on in Echo-Hawk (2013).

²⁰*Id.* 27-38.

²¹Preamble ¶ 4, UNDRIP.

²²Preamble ¶¶ 11, 15, 18, UNDRIP.

²³Echo-Hawk (2013) 157-181, 183-217.

²⁴*Id.* at 71, 78-79.

²⁵Siegfried Wiesner, *Rights and Status of Indigenous Peoples: A Global Comparison and International Legal Analysis*, 12 HARV. HUM. RTS. J. 57, 125-126 (1999).

²⁶Cohen's, § 5.07[1], [4][a]. See also, Curtis A. Bradley and Jack L. Goldsmith, *Customary International Law As Federal Common Law: A Critique Of The Modern Position*, 10 HARV. L. REV. 816, 822 (No. 4, 1997).

²⁷*Mabo v. Queensland*, 174 FLR 1, 42 (Australia High Court, 1992). See also, *Canadian Human Rights Commission et al. v. First Nations Child and Family Caring Society et al.*, 2012 FC 445, ¶¶ 351, 353-354 ("[t]he Supreme Court of Canada has recognized the relevance of international human-rights law in interpreting domestic legislation.").

²⁸Cohen's, supra n. 10, § 5.07[1] at 489.

²⁹See Echo-Hawk (2013) at 63-94 for a legal analysis of the status of the declaration under domestic and international law.

³⁰S. James Anaya, UN special rapporteur on the rights of indigenous peoples, *The Situation of Indigenous Peoples in the United States of America*, U.N. Doc. A/HRC/21/54 ¶ 104 (2012).