INTERVIEW WITH C. STEVEN HAGER
MARCH 5, 2009

KEK: Hello, this is Karen Kalnins, I’m a reference librarian at the Oklahoma City University Law Library and today is Thursday, March 5, 2009. It’s about, it’s a little bit before 10 o’clock in the morning and I am here with Mr. Steve Hager. He is an attorney at Oklahoma Indian Legal Services and we are here in Oklahoma City, Oklahoma. This interview is part of the larger oral history project that the Oklahoma City University Law Library is sponsoring. As a part of that project the library is going around and interviewing attorneys and judges throughout the state of Oklahoma. So, welcome Mr. Hager.

CSH: It’s nice to be here. How are you?

KEK: Fine, fine. I was so pleased when you agreed to this interview this morning. What drew you to the law Mr. Hager?

CSH: Well, I come out of a journalism background, I graduated from undergraduate school with a degree in mass communications and from there I was working at a newspaper. And it becomes pretty obvious when you’re in journalism even in a small way, that lawyers are sort of at the center of everything in that in order to effect change in society for better or worse as we’re seeing with the unfortunate Office of Legal Counsel out at the Justice Department, if you want to change society you pretty well have to be in law. There are other ways to do it but none are as quick or as easy as the law is.

KEK: So you, in your career, or thinking about your career, it sounds like you wanted to be somewhere where you could effect change.

CSH: Well, that and make lots and lots of money which unfortunately I haven’t been able to do but when you look at our society I think there are needs that would go unmet if not for attorneys willing to do something. So, the easiest way to do that is to become an attorney.

KEK: And how did you prepare for that career path?

CSH: Very poorly. I sort of made a decision that I would go to law school without that clear of an understanding of what going to law school would entail or what it would be. The day I took the LSAT I remember I was, I took it in Stillwater because I was shooting a football game that afternoon, you know, for OSU. I was a photographer at that point, a photojournalist and so you know I took, you know everybody else is sitting in the room obviously very prepared for it and I stumble in with about 50 pounds of camera equipment with me and sit down and take the test. Then I go off to work and everyone else goes off probably to worry about their future but I didn’t
really think it was difficult to get into law school and I was almost scarily on the median of what OU accepted as a student. I kept going, “Yes, that’s me, okay.” So, my LSAT scores were okay and I applied only at OU and was accepted and went in the fall of 1984.

KEK: And what made you decide to go to the University of Oklahoma?

CSH: Convenience, cost. Student loans at this point, I couldn’t even imagine going to law school. I think any student that goes walks out with $100,000 dollars in debt. At the time it was not that expensive although I still felt it was pretty expensive all the way around but basically there were financial factors and OU was probably the best school I could get into at that price.

KEK: And tell me about your law school experience.

CSH: Well, it’s interesting because I do a lot of work with law students today and one of the things I try to get across to them is that being in law school is not the same thing as being a lawyer. And I really can’t say, I mean it seemed like there were people in my law school class who really, really, really, hated the experience. And there were other people who were just like, loved every moment of being a law student. And I was always kind of like, “Yeah, you know.” I was an average student; I spent a lot of time playing racquetball instead of studying or going to class. And my grades were nothing to shout about but they weren’t terrible either. And so it was a pleasant enough three year experience. I worked with a guy named Chuck Davis when I first graduated from law school and Chuck was a Vietnam era radar intercept officer, he was a back-seater in Marine Corps Phantom jets so he spent most of 1967 and ’68 flying close combat support missions, flying very close to the ground, attacking people and he could talk about surface to air missiles going by the cockpit, how they looked like flying telephone poles, he can do all that with no problem. But when he starts talking about going to law school at OU, the vein in his forehead would begin throbbing and standing out and he would start talking through clenched teeth. And I always found that to be kind of, kind of interesting that Vietnam couldn’t really unnerve him but law school made him angry. But I didn’t really have that experience, maybe I’ve totally blocked it out. But there are three or four law professors that I still see every once in a while and I still enjoy their company. There were other people who I did not care for at all in law school just like anyplace else. But in general, it was a positive enough experience.

KEK: It sounds like it. Which professors sort of made an impact on you while you were in law school?

CSH: Oh, there were several really good professors. Kit Peterson, who was actually an adjunct professor. At the time OU had a lot of adjunct professors for all kinds of issues, she had to actually step in for Professor Spector when his situation changed and he took kind of an emergency sabbatical when I was a third year law student. She ended up teaching family law; she was a very nice person. Judy Maute who’s still down there, a very dedicated person, very nice, I always enjoyed her. Browning Pipestem was another adjunct professor who had taught
Indian Law and obviously from my career path made a big impact on me. Browning was a fascinating person and he passed away a few years ago. He was one of the, kind of the unsung heroes behind Indian Law in America. He wrote the original Navajo Tribal code, was one of the first law firms after the Little Ax case which sort of reintroduced the concept of tribal courts to America, to the United States. He was one of the first people to actually help set up those tribal courts and get them working. You know, him, Phil Lujan, Marvin Stepson, were all people who were kind of there in the beginning and Browning is the only one who’s not with us any longer.

KEK: That’s too bad.

CSH: Yeah, an interesting professor, a funny, funny guy. One of the things he would do is the old Three Stooges thing where you get poked in the eyes. And he always said that the problem with non-Indian attorneys when they went to tribal court is that they expected someone to walk up and poke them in the eyes. So, one of the things he taught us to do is to block the eye poke which anyone who is a Three Stooges fan remembers that you take your hand and you just put it between your eyes in an up and down fashion. I’m describing it, obviously it’s an audio tape, but you put it where they can’t jab you so we did a lot of that in his class. Whenever he would bring something up we would go like that so they couldn’t poke us in the eyes. Interesting guy, interesting guy.

KEK: It sounds like it, it sounds like it. Now you said you have contact with law students today, what kind of activities do you participate in?

CSH: Well, we have, we’re at Oklahoma Indian Legal Services which is a legal aid office that specializes in status-related, civil Indian law issues for low-income Native Americans. We do have financial guidelines that have to be followed. One of the things that we do is that we do host interns from well, from all three Oklahoma schools, from Oklahoma City University, the University of Oklahoma, and Tulsa University all send interns to us. And then we have people, usually during the summer we have people from schools as diverse as Case Western, Harvard, Tulane, University of Arizona, we have interns coming in. So we usually have a good cross-section nationally of people that want to learn a little bit more about Indian Law. It’s a very specialized area of study but at the same time it’s one that as our society stands right now, it’s one if you’re going to practice west of the Mississippi it’s absolutely necessary to understand at the very basics some level of Indian Law. And so we do a, kind of a process with the interns just to get them comfortable with the idea of Indian Law, to not fear it. One of the things that we do is we have open court policies so they don’t spend their summer in a cubicle writing memos. They actually go out with us, see what court is like, and kind of deal with what it’s actually like in court for the better or the worse of it they actually get to see what lawyers do. And that also give them the opportunity to talk and to figure out if this is something that they’re really interested in doing. It’s not a career choice for everyone and it’s better to find that out in law school than it is to find that out five years after the fact.
KEK: Absolutely, absolutely. Now, from your contact with these interns both during the semester and during the summer, what has been your impression about their preparation and how is that reflected in how they operate in the office, do you feel like the education now has improved, I don’t know that you can speak to that directly, but you can at least from your impression of the students you might have some sort of idea as to what you think about their legal education.

CSH: I don’t there’s, you know I hear people going, “Oh, these kids today,” but the reality is they are certainly as prepared as we were. As far as the technology goes, when I was in law school, and granted this was just shortly after the dinosaurs became extinct, we had…. In order to go for instance to get on Westlaw you had to go into the OU Law Library, you had to go to the special Westlaw room, and in the room there was a, what it was basically a dummy terminal that was hardwired into a specialized phone line that went straight to West Publishing. And so you punched in the little codes and the keys and then you sat there and the green cathode screen came up and you were literally, directly, linking into their very primitive database at the time. And we still had to learn how to use the reporters and use the books and do our citations in paper format and you always had to check the pocket parts and you had to do all that. You try to explain that to a law student today and they just look at you blankly and kind of wonder if you’ve lost your mind because it’s so much simpler today. And especially being in Oklahoma with OSCN which is just head and shoulders above most states’ online systems. With OSCN we’re spoiled rotten, we can look up cases, we can look up laws, we can see what’s happening in the various court districts, it’s a whole new world. And, they’re much better at that. We have a lawyer, I won’t mention any names, who is barely able to turn on his computer and occasionally has problems doing that. Now, Albert’s only a few years older than me so it’s obviously not just an age thing. But when you start asking him to do something online you’re, you might as well hang it up. The kids today don’t have that problem at all, they understand at the very least, how to go online, how to do the research and people that think their education is worse or better, I don’t see that. I see a lot of variances, some people are better than other people and to be honest, I don’t see a great deal of difference in the schools and I know that might be heresy for some people. When I was at OU we had a Dean who shall go nameless because I can’t remember his name, but he wanted us to, he tried to convince us that the University of Oklahoma was the Harvard of the Southern Plains. And I suppose technically that was true in that we were a law school and we were in buildings just like Harvard had, they were made of brick and mortar and stuff but I didn’t see the connection there. Now with having worked with attorneys from Harvard I’m willing to give him a little bit more of a break because I don’t see them as being particularly superior to the students we produce here either. But, it really comes down to the individual student and their motivation and their interest in it. And as I mentioned the debt earlier, in order to go to any law school today I think you have to be pretty self-motivated. So, the people we get are generally really good and I don’t see, we’ve had people who are going to graduate summa magna cum laude, we’ve had people who are just barely scraping by and I don’t see a lot of variance in them
when they’re actually practicing law because it comes down to what they’re willing to put into it. And, in our field, you have to be pretty self-motivated to have, to be willing to put up with the things people put up with when practicing Indian law. But I think the students are really good, I don’t have a problem with them at all.

KEK: Great. Well, what year did you graduate from OU Law School?


KEK: And what were your plans after law school?

CSH: Well, I was actually already sort of working with a guy, I mentioned his name earlier, Chuck Davis and he was running an environmental law firm which basically means we did oil and gas law. So, that really, that firm kind of morphed into something that was called Brown, Marbury, Davis, and LeBron which had several attorneys in it and I was kind of the catch-all guy who did a wide variety of cases. And that firm lasted until, it was sort of dissolved in 1990 and that’s when I came here. As a matter of fact I just, I think I started March 1st of 1990 at OILS so I’ve been here 19 years now.

KEK: Wow, that’s impressive.

CSH: Yeah, it’s pretty interesting.

KEK: And, what, what drew you to this area of the law, to Indian Law?

CSH: Well, even at Brown, Marbury, Davis, and LeBron I was doing a lot of Indian law just sort of by default because we were doing oil and gas law and there’s a lot of trust land and there’s a lot of restricted land. Some estimates have said that 63% of the state falls under some kind of Indian jurisdiction, tribal jurisdiction. And so, you know, you can’t really do any oil and gas work in Oklahoma if you’re not going to be dealing with Indian Law issues. So I was already kind of looking at that and I just, I really liked the work that OILS was doing and that it was offering; that it sounded like it was important. One of the things that sort of drew me here was that they were working on a class action lawsuit called Colley versus the United States which was about oil and gas issues in the Anadarko Basin so it was kind of a good fit. They needed an oil and gas person and I needed a steady paycheck so it worked out well. And a dental plan, they had a dental plan, which was good.

KEK: That’s always a plus.

CSH: It really is.

KEK: It is. Tell me, explain for the record, what you mean when you say reserve land or Indian land and what that means because I don’t know that people outside the state of Oklahoma and in Oklahoma there are so many Native American tribes, yeah if you could explain that.
CSH: Well, trust and restricted land is land held by Indians with certain obligations on it. Trust land is actually land held by the United States government in trust for an individual Indian. So, that land cannot be adversely possessed, you can’t enter into a contract let’s say John Smith is a Comanche or Kiowa person, he can’t enter into a contract on his own land with an oil company that has to go through the Bureau of Indian Affairs which raises issues because sometimes the BIA will lease without letting anyone know that they’re leasing their land, they’ll just go ahead and do that. But trust land is land actually that is on the western half of the state of Oklahoma, really about from the Sac and Fox which are about halfway between Oklahoma City and Tulsa, west is going to be a lot of trust land. Restricted land is land held by the Five Civilized Tribes which as everyone who went to school in Oklahoma knows from 9th grade civics. It’s the Choctaw, Cherokee, Creek, Seminole, and Chickasaw. And these five tribes have restricted Indian land which is land that is held by the individual but there are certain restrictions against alienation. For instance, if you’re going to take an oil lease on it you would enter into a deal with the person who owns the land but then you have to go to state court and have a state court judge approve that land lease. So, that’s if the person is a full-blood. And there’s a lot of things like that. Probating that land you have to be aware of the laws that would deal with restricted Indian land. And it’s a very specialized area and it’s also an area where the laws really, some of the laws aren’t even so much as codified as they’re just sort of in existence. You actually have to refer to the laws of August 2nd, 1947 and pull up stuff like that to understand it. So, it’s a very specialized area with restricted Indian land titles. And I’m not going to even mention the Osages and headright issues which are sort of a hybrid of both. It’s very specialized but it’s important for the Five Civilized Tribes, the restricted land title is, because that’s their basis of jurisdiction. They don’t have reservations like for instance if you drive west to California from Oklahoma you’re on Interstate 40. As you approach western New Mexico you actually enter the Navajo Nation and you’re on Navajo land and you’re that way for a big chunk of New Mexico and Arizona. If you ever go to the Four Corners, you’re in the middle of the Navajo reservation; you’re not actually anywhere else. You’re not actually technically in a state, you’re in a reservation and the state laws would not be controlling there. If you go north to the Dakotas, you get close to the Black Hills you start hitting Sioux Indian Reservations, the Lakota, the Dakota, places like that. You know, Wind River in Wyoming, places really all through the western U.S. there are Indian reservations that are very distinct. Here you are in Indian land and you cross an imaginary line and you’re no longer in Indian land. In Oklahoma we don’t have that. One side of the road may be someone’s restricted Indian land or trust Indian land and the tribe would have jurisdiction over that. The other side of the road is going to be state fee-simple land and the tribe would have no jurisdiction over that. So it literally comes down sometimes to where people are standing as to whether or not they’re in Indian Country or not in Indian Country. It can be very, very precise, very….. I’ve seen cases in the north, in the Ponca tribe for instance, literally, where something happens on the road determines who has jurisdiction. If you’re standing on the blacktop you’re in state court jurisdiction, if you take a half step off and you’re standing on the
shoulder of the road you’re in tribal court jurisdiction. So, it’s an amazing field and one that is still very unclear as to exactly where jurisdiction lies in Oklahoma.

KEK: It sounds like it. It is just unbelievable. And tell me about the Colley case, that class action case that the office was dealing with at the time when you came here.

CSH: Well, Colley versus the United States was a class action that dealt with the Anadarko Basin. And what had basically happened was for, really, since the existence of Oklahoma, people had been drilling oil and gas wells in western Oklahoma around Anadarko, Oklahoma. And, if you were on fee simple land, if you were on state land you got your money. And you had the ability to sue the oil company to make sure that you got your money and you had the ability to watch them and things like that. If you lived in, on the western side of course it’s trust land, but if you lived on Indian land or if your well was on Indian land, the money was not sent to you, the money was sent to the Department of Interior through a subdivision called the Mineral Management Service. Now the Mineral Management Service was kind of an heir to the BLM which used to get their money. And before the BLM got it, it was sent to someplace else. But it would, basically there would be about a 30 day lag between the time the oil company paid the money and the time the individual saw it. Even then there was no real accountability, the money was...you know, often the contracts differed dramatically. If you were living on fee simple land you might be getting a dollar twenty an NCF, a thousand cubic feet of gas, on Indian land you might be getting 12 cents for the same NCF. Laying a pipeline, if you were, if the pipeline went across Indian land they might be laying it for pennies per foot where it might be hundreds of dollars per foot as soon as it left Indian land. The BIA was just doing an abysmal job of watching that and so the lawsuit, Colley versus United States was filed demanding an accounting of this. And it was filed in 1982, 1984 I think, no, 1982, it was before I started law school. And it was settled ten years later in 1992 after I had been at OILS for two years. We co-counseled with the Native American Rights Fund out of Boulder, Colorado. A good friend of mine, Steve Moore, was really lead counsel and I was head local counsel. And, it was one of those cases where the decision was made very early on that we were going to have much better results by negotiating a settlement with the government than we would ever get out of court and I think that was the wise thing because as you can see through the Cobell litigation, going to court has not been successful for the Native American Rights Fund, they might, should have had Steve Moore helping out on that case as well but they chose not to. But Colley, we really started serious negotiations when I came on board in 1990. And, basically they were issuing payment statements that literally were nonsensical, that literally could not be read or understood. Most statements, it’s called an EOP, an Explanation of Payment statement, it was just like a check stub you’d get. It would tell you how much, how many NCF had been taken from the well, what the price on the NCF was, your share, your interest share, and how much that came out in cash. It was pretty much a very simple thing to follow.

KEK: And who was, who was getting these statements? Your clients then, the individuals…
CSH: Yes, the individual Indians were getting the statements and they were being issued by the Department of Interior. The problem was the statements the Department of the Interior issued were completely nonsensical, they were just random numbers generated on a page and what finally happened was the Secretary of the Interior was, under, this would be under the original George Bush, the first George Bush, was called before a Congressional subcommittee and they projected one of the EOPs up on the wall behind him and they said, “Could you tell us what line 1 means?” And the Secretary of the Interior with his entire staff there could not explain what line 1 meant or line 2 or line 3 or line 4 or how they eventually got at the amount of money that they were paid. It was a complete and total disaster for him and he was humiliated. So, he came back and said, “Settle the lawsuit, settle it now.” And about six months later we had a full settlement. Very, very amazing. The Colley lawsuit was kind of the, I would call it the forerunner to the Cobell litigation which is the litigation that now involves all the tribal land nationally, that’s kind of raising the same issues that we raised very specifically with oil and gas issues just in one little area. But, it’s just a, you cannot believe the level of sheer incompetence that has occurred, it’s just literally billions of dollars have been stolen from Indian people by the government.

KEK: What’s happened to the money, can they explain that?

CSH: Well, it’s gone into oil company pockets. Big oil became big oil by not paying people to be perfectly blunt about it. Companies like Kerr-McGee, like Coke Oil, people like that got rich by stealing it, they’re the last of the robber barons and anyone who doesn’t believe that frankly is living in a fool’s paradise. They are not trustworthy people and you really shouldn’t believe them when they tell you anything because they lie and because it’s in their interest to not be honest. And the reason why everyone should be concerned with what comes out of the Cobell litigation, the reason why everyone should be interested in that is that Indian land leases constitute about 10 percent of federal lands. These same companies are on the other 90 percent of federal lands doing the same thing only they’re doing it directly to the federal government. If billions of dollars have gone missing to Indian people, then logically you can assume that trillions of dollars have gone missing to the people of the United States. We are funding the oil companies’ lifestyles here and there’s no reason why we should be, we really should be much more aware of that.

KEK: That is unbelievable. And who was supposed to be, I guess getting back to the Colley case, who was supposed to be the watchdog? Who was supposed to negotiate these leases and make sure the Indian people got compensated?

CSH: There were actually three different government agencies that were all under the Department of the Interior. There was the Bureau of Land Management, the BLM, there was the MMS, Mineral Management Service, and there was the BIA, Bureau of Indian Affairs. And all three of those agencies were torn by inter-departmental strife. They did not share information
well, no one knew what the other guy was doing; when you would ask the other guy what he was doing he would tell you to mind your own business. They simply did not cooperate and I have no idea, but I kind of doubt if they are cooperating now, very well. Everybody had their own little piece of the turf and they defended that to the very bitter end. Directly overseeing was supposed to be the Mineral Management Service. There were, since our lawsuit came out or since our lawsuit concluded in 1992, there have been two major scandals at MMS including one that just finished this year which demonstrated that people at MMS were engaging in sex, drugs, and rock and roll basically with the oil companies. Sex scandals with amazing reports of MMS people being bought off with prostitutes from the oil companies, there were cocaine parties where they would just, again, get blitzed with the people they were supposed to be overseeing. Terrible, terrible, stories like that and it happened twice in an 8 year period and no one really seemed to notice. No one really paid attention to what MMS was doing or up to which again, might be one of the reasons why we’re suffering from the current financial crisis that we’re in. We are not paying attention to where our money is going.

KEK: And who was supposed to be overseeing MMS?

CSH: Well, that would be the Secretary of the Interior.

KEK: And since these, I’ve definitely heard of this latest scandal, since this latest scandal have you heard of any type of additional oversight or anybody being called to task about their activities?

CSH: No, no, they really swept it under the rug. They had people retire, and I knew all those guys who were retiring. I think there was one criminal prosecution referred to the U.S. Attorney out of all of this but they were all just doing terrible, terrible things. And completely violating their trust in office but when you look at the last 8 years of our federal government, you kind of go, “Well,” I don’t think people were really paying attention to these guys. They were just doing what everyone else was doing I think. So, it’s pretty sad.

KEK: It is.

CSH: One of the final stories out of the Bush White House was it came out that the Secretary of the Interior who was really a fill-in position, he was there for less than a year, had spent a quarter of a million dollars refurbishing his bathroom because he wanted to put in a walk in, it had to be a nice walk-in thing, it had a washer and dryer and a refrigerator and a separate stand-alone freezer in his bathroom. How many people who are the, I was just curious as to how often the Secretary of the Interior needed to do a load of laundry at his office or for that matter, why would he need a freezer? What was he freezing is the question? But if you’ve got a Secretary of the Interior who is busy redesigning his bathroom, his office bathroom, this was all just in his office, you kind of have to wonder how much attention he’s going to be paying to the Mineral
Management Service which is located in Lakewood, Colorado. He’s probably not really concentrating at that point I would tend to think.

**KEK:** I think that would be a fair assumption. Well, who were your clients in the *Colley* case; you said it was a class action case, who was part of that class?

**CSH:** Well, the class was 8 to 10,000 people, basically all the Indian people who had mineral interests in the Anadarko Basin area which is about an 8 county area in western Oklahoma. It was mainly Kiowas, Comanches, and Cheyenne-Arapahos, and then Caddos, and Wichita-Delawares were also involved. But, most of our class was either Kiowa, Comanche, or Cheyenne-Arapaho.

**KEK:** What do you think you learned from this case? Obviously, I’m assuming this is the first big case that you had when you got in here, in the office.

**CSH:** Well, I think there were a couple of lessons that we can take from *Colley*. One of which was a lot of times you can get more through negotiation than you can get through actually going to court. If you look at our profession on television, which is the cultural touchstone that most people have, lawyers are always in court. We’re always actually litigating against someone and that’s the dramatic issue, the confrontation, single combat, that’s really what people think of when they think of lawyers. But the reality is you can get more by talking to the other side and saying, “Look, we’ll give this up if you give that up.” And *Colley* really emphasized that I think because we were able, as a result of the *Colley* litigation, we were able to get MMS to agree to something called the Office of Royalty Management Assistance which is located here in Oklahoma City now. And they basically tasked MMS employees to come to Oklahoma City and to actually work on these issues. Prior to this what would happen is the BIA would have a meeting and people would go to the meeting and they would complain. And, they would complain loudly and they would raise their voices, it would get heated. And, at the end of it, the BIA would say, “We’re really sorry this happened,” and everyone would go away and the BIA wouldn’t do anything. And in a year they would have another meeting, and the same thing would happen over and over again. And it was a classic win, win for the BIA. They could send some flunkie out to the field, he would get yelled at and everybody would feel like, “Well, that helped,” but it wasn’t changing anything. So, one of the advantages of the Office of Indian Royalty Assistance was that people now have a person where they can literally, if they want to, they can go harass them every day. And that helps, having someone and they’ve achieved significantly reduced factors and things like oil companies ripping them off, and to their credit during the last administration, the Bush years, the oil companies basically felt like they could do anything they wanted to. And they as much would tell you, “Yeah, I can do whatever I want to.” And these guys kept after them and forced them into settlements even though they were receiving pressure not just from the oil companies but from their own people telling them, “Don’t do this, don’t push this, we’ll reassign you to Alaska in January.” Things like that. But
they kept after it and they were a very dedicated group of people which of course is even more amazing when you consider the organization which was kind of overseeing them. When you have a culture within the corporation like you have at MMS and then you find this one little group of people who are actually doing their jobs and working hard, it’s all the more amazing. When you think about how these people over here at MMS were actually working to actively undermine them so, my hat is off to that. But, we got that through settlement. And I think that’s one of the big lessons that I learned through Colley which is sometimes you can get more through serious negotiation than you can through going to court. My executive director at the time here was a very nice person named Susan Work and Susan would at least once a week say, “You need to schedule this for court, we need to go to court.” And I would say, “Susan, we’re not going to do that, that would be a bad thing.” And it was always a level of tension between us because she really wanted us to go to court. If we had gone to court, we would have won and they would have given us a little bit of money and forced them to correct the explanation of payment form and we would have gotten nothing else and everything would have been back to business as usual within 6 months. And it would not have served our clients at all. So, that was one lesson. The other lesson I learned was when someone tells you something, you don’t necessarily have to believe them because they may well not have full comprehension. Part of our group, our client group, that made a lot of noise was an organization called the Indian Royalty Owners’ Association and they would make demands on us that, in retrospect we really shouldn’t have even paid attention to but we would try to work with them and they would threaten to hold up the settlement, threaten to do things like that. Well, finally at the end of the process we’re in federal court and the federal judge asks the head of the Indian Royalty Owners’ Association just how many members he had. And he said, “Well, I represent 8,000 royalty owners.” The judge, just in kind of an afterthought, said, “Yeah but, how do they become a member?” And he said, “Oh, well, membership there’s 8 of us in the membership.” And so this organization that everyone had been giving a lot of deference to turned out to be this guy and most of his immediate family. But they did have a snappy name and after that we all pretty much ignored them and their recommendations were not accepted. But it was kind of humorous and from that I learned that if someone tells you they’re representing somebody, it might be a good idea to find out just how they ended up representing the person because we really don’t know.

KEK: Absolutely. Now you said earlier that, you made a comment that anyone practicing law west of the Mississippi should have some background in Indian law. And certainly from your comments about determining jurisdiction, you said, “If you’re on the blacktop you might be in state court, if you take one step off you’re in Indian country.” Why do you think it’s so important for attorneys generally, especially in this area of the country to have some sort of background in Indian law?
CSH: In Oklahoma it’s absolutely crucial for a couple of reasons. One is that you can’t tell by looking at a person whether or not they’re Indian. Being an Indian is a political status, it’s not a racial status, it’s not an ethnic status, it’s not a cultural status. I can grow what hair I have left as long as I want and I can put them in braids and I can believe that I’m an Indian but that doesn’t make me an Indian. The only thing that would make me an Indian is if I had tribal membership. That means that the tribe has to recognize, you can’t say, “Oh yeah, I’m Cherokee.” The Cherokees say who is Cherokee. And if you’re not Cherokee, you’re not, period. So you have a lot of people who want to be Indian but who are not. You have people who may appear to be Indian but who are not. And by the same token you may have people who do not appear to be Indian but who are because tribes have different ways of establishing membership. So, it’s totally a political status. You can’t tell when someone walks into your office if you’re practicing law, if someone is an Indian. But if they want to do say, an adoption, I want to adopt my nephew. Well, if those people are Cherokee that means that child falls under something called the Indian Child Welfare Act. And there are different standards of, there’s different burdens placed upon different people. Consent is done differently, it has to be done in front of a judge, you have to give notice to the tribe. There are all sorts of factors that you have to establish in every case. In a divorce action in Oklahoma, one of the requirements for the dissolution, excuse me, we don’t do divorces, we do dissolution of marriages, one of the requirements is there has to be statement in there that the Indian Child Welfare Act does not apply to this case. The Indian Child Welfare Act under the terms of 25 U.S.C 1903 doesn’t apply to any divorce. It says basically any custody dispute between biological parents, the act does not apply to. So, that statement really makes no sense whatsoever but you have to know that and you have to ask, “Are you Indian? Are you a member of a tribe?” So, if you’re practicing any kind of juvenile law, any kind of family law, you have to know whether or not that applies. And the only way you know that, the only way you know who to ask or how to ask, is by knowing something about Indian law. That’s just one example. People who are doing probate or do land research, they have to understand trust and restricted land. Like I said on trust land, you cannot adversely possess trust land. You may be able to adversely possess restricted land but it does raise all sorts of issues. You can’t just enter into a lease in eastern Oklahoma and think that you’ve got something, you may not be actually exchanging property or anything else that way. So, it’s really important that attorneys understand that. It’s important that attorneys understand tribal sovereignty and sovereign immunity. We had a guy, I spoke to a gentleman yesterday, an attorney whose client was involved in a car accident in the Wewoka Casino parking lot and now the client is being sued by the other party. Well, he’s being sued in tribal court. Basically, he was calling me saying, “Is there any way I can get out of tribal court?” The answer is, “Probably not, you’re on tribal land.” I had to look up the standard because our current Supreme Court is not particularly supportive of Indian law issues, it always kind of swings back and forth. But right now we are definitely at a non-supportive end of the pendulum. And the case on point is Straight versus A-I Contracting out of North Dakota and that case doesn’t help any so he’s definitely in tribal court
which, he’s uncomfortable being there but he doesn’t really have a choice. If he’s going to represent his client, he is going to have to do it in tribal court.

**KEK:** And how, how, obviously in the case you just talked about there was no choice, it was by default, because it was on tribal land, the case was in tribal court. How does one choose to be whether in tribal court, state court, or federal court? Or is it not always a choice, is it determined by statute or by tribal court or by location?

**CSH:** Sometimes it’s a choice and sometimes it’s not. A lot of times you’ll have a case that there may be concurrent jurisdiction between the tribal court and the state court and you can decide whether or not to go there. And there are 24 tribal courts in Oklahoma so there’s a lot of tribal court jurisdiction, there are a lot of tribal courts. One of the things at OILS that we really want to emphasize is that tribal courts are often more convenient for us than state courts. We often have an easier time scheduling things, you find a little bit more, I think, of the way it used to be back when lawyers were important to people and people liked lawyers. Well, you still have that in tribal courts so it’s not like, “Yeah, what do you want?” from the court clerk. It’s much more respectful I guess. And it’s often less expensive than state courts. Now, you have to countermand that by understanding that each tribal court in Oklahoma has its own tribal code and you have to understand what the tribal code is. You can’t go into tribal court and say, “Well, judge under state law I’m doing this” because state law doesn’t apply to tribal court. You have to follow the tribal court code which leads to interesting issues. For instance, Oklahoma doesn’t recognize private termination of parental rights except under certain cases in deprived actions or adoptions obviously. But in tribal courts there are still some tribal courts that still have that cause of action. So, you may not be able to terminate someone’s rights in state court, but you may be able to do so in tribal court.

**KEK:** And once those rights are terminated in tribal court, full faith and credit…..

**CSH:** Full faith and credit, yeah, that’s 25 U.S.C. 1911(e) of the Indian Child Welfare Act. You have to give full faith and credit, the state has to give a tribe full faith and credit to the extent that the tribe gives the state full faith and credit. A tribe can choose not to give full faith and credit but the state cannot, the state must give full faith and credit.

**KEK:** Now you mentioned some differences between state court and tribal court, what other, or how else is it different, how else is law practice different in a tribal court setting?

**CSH:** Well, it’s not significantly different. All the tribes really, have adopted an Anglo judicial system so it’s not like you go into court and people are, to use Browning Pipestem’s example, people are poking you in the eyes or anything. You have to know the rules. It’s often a more relaxed atmosphere; the bar tends to be pretty small. I tend to joke that it’s almost incestuous, it’s so small. The last statistics that I’ve seen from the Oklahoma Bar Association put less than 400 attorneys in the entire state that regularly practice Indian law, and this is their first, second,
or third choice in practice. That’s a small group and I can tell you that it’s actually probably smaller than that. I would say no more than 150 to 200 attorneys regularly go to the tribal courts.

We tend to see the same faces over and over again. That’s why when attorneys who are not normally in tribal court go there everyone is so excited because we need fresh blood. But, it tends to be the same people maybe performing different roles in different courts. A person might be a judge in one place and a prosecutor in another, a public defender here and a prosecutor there. So it becomes kind of interesting, the mix. But other than that really I can’t say that there is much difference in practicing. The Rules of Evidence are pretty much the same, the civil procedure issues, there are going to be variances but not significant variances. If you’re capable of practicing in Oklahoma courts you’re certainly capable of practicing in the tribal courts as well. Some of them have bars that are very active. There’s my membership in the Muskogee-Creek Bar. Now the only thing that the Muskogee-Creeks really do is they do put on a nice dinner once a year. That’s about the only bar action you get there. The Chickasaws have an excellent bar conference that they do every year, they are really good. Other places, the Osages have a bar that you have to pay to join but that’s just really a moneymaking deal for them, they don’t do anything for the bar. And other places just say, “Well, if you’re licensed in Oklahoma, you can practice in our court.” So, there’s not a lot of variation and people shouldn’t feel like, “Oh, I can’t go to tribal court,” because they actually could and they could practice there. And, the thing that amazes me is that Indians, tribal members, make up about, roughly about 10 percent of Oklahoma’s population. I don’t understand attorneys, especially attorneys in private practice who are basically just automatically rejecting forums for one in every ten potential customers of theirs. And of course that number dramatically increases when you go into rural areas. I don’t think that small town attorneys should ever turn away a customer just because, a client, customer, just because they’re in tribal court, that’s a moneymaking deal for them.

**KEK:** Absolutely. And along those lines as well, you mentioned you’re a member of several of these bar associations, so attorneys have to take another bar exam in tribal court or do they have to just apply to these various……

**CSH:** No, they just have to apply to those bars. There are some tribes in other states that require you to take a bar exam, the Navajos are the biggest example. They make you take a bar exam in Navajo law but most tribes, all the tribes in Oklahoma just say you have to be licensed to practice in another jurisdiction. And it actually raises kind of interesting issues. There have been one or two cases where an attorney has been disbarred in Oklahoma or a case where they were disbarred in Kansas and then they’ve tried to maintain practice in tribal court and the tribal court has had to say, “No, you can’t practice here because once you lose your license elsewhere you don’t get to come here and practice.” In fact, there was one case where a gentleman in Oklahoma was disbarred by the OBA and he was still trying to be a judge on the Supreme Court at one of the tribes and would not resign because he didn’t really see a correlation. And that stalemate lasted, the Supreme Court didn’t have any cases, there was nothing on appeal at the
time, and that stalemate lasted about four months until the General Council meeting when they voted the Supreme Court out of existence and put in a new Supreme Court. And I think all of those guys came back except him so it was like, I think we’ll do a new Supreme Court here and you’re not on it. But, things like that do occasionally occur.

**KEK:** Very interesting. Well, I see we’ve gone way over the halfway point so I think we’ll take a break and then we’ll continue on with our second half.

**CSH:** Okay.

**KEK:** Hi, this is Karen Kalnins again, I am a reference librarian at the Oklahoma City University Law Library and it is still Thursday, March 5, 2009. It’s about 11 o’clock in the morning and I’m still here with Mr. Steve Hager at the Oklahoma Indian Legal Services here in Oklahoma City, Oklahoma. And in the first half of the interview Mr. Hager kind of detailed why he got into the law and some background about Indian law. And I wanted to have him describe for me sort of the mission of OILS, of the Oklahoma Indian Legal Services.

**CSH:** Well, OILS was a, we’re a legal aid office which means we’re funded from the Legal Services Corporation primarily in Washington, D.C. As a legal services corporation-funded office we’re a private non-profit but we have very distinctive obligations to our funding agent, to LSC that we have to follow. Basically we have rules that we have to keep in touch of, we cannot charge our clients, we do not charge our clients for the services that we render. By that token they also have to fall within income guidelines that are changed every year. So that, we are actually providing services to, generally, pretty much the working poor in Oklahoma. Now, because we’re funded under what’s called “The Indian Line” it also has to be, our clients have to be members of federally recognized Indian tribes. And that gets into kind of a gray area because there are a lot of people who want to be Indian who really aren’t. So, we just say, they have to be one of the 540-something federal tribes. And then we go from that into specific areas of service. We do five main service areas, we do family law issues which includes Indian Child Welfare Act cases, being Guardian ad Litem for children in tribal courts, as a matter of fact Stephanie Hudson in our office was the 2008 Guardian ad Litem of the year for the Oklahoma Bar Association for her work at the Chickasaw Tribal Court which is quite impressive. So we do a lot of Indian Child Welfare Act cases, we do a lot of property and probate cases, real property. That’s a very big area of concern because as I described earlier, in eastern Oklahoma, when this land, this restricted land base, that’s the basis for jurisdiction for the tribes and if that land goes out of restriction then they’re in a world of hurt so we do a lot of probate work there, we do a lot of housing issues, that’s our third area. We do sovereignty questions, those questions still come up occasionally, what are the limits to sovereignty, what can tribes do, things like that. And then we do individual rights as well. Those tend to be more problematic but we still see occasionally individual rights cases where someone has been discriminated against because they’re Indian. There are a lot of people who will say, “I was discriminated against because I’m Indian, “ but
there is a difference between believing that and being able to demonstrate it. And sometimes, I think the record is still a person who applied for services who was 1512th Cherokee which means there was a Cherokee person in their lineage about the time of the Civil War, no, no, about the time of the Revolutionary War there would be an actual Cherokee person in their lineage. And they were convinced that they had been fired from a job because they were Cherokee, not because they had missed two weeks of work without calling in, it was because they were Cherokee. Obviously, we didn’t take that case but you do see other cases where very clearly people are being discriminated against because of their tribal membership or because they’re Indian. So, we still take some of those cases. But those are our five main areas of concentration. By far the biggest are going to be natural resources, which is the probates and things like that and the Indian Child Welfare Act issues. What else can I tell you, we do a low-income tax clinic. The IRS loves our low-income tax clinic; we do a great tax clinic. We have an office in Ada that at one time was doing just domestic violence issues in the Ada area, Very, very difficult work that was under a Violence Against Women Act grant, they tend to move their money around so that grant is no longer with us. As a matter of fact a couple of years ago VAWA pretty well just discontinued almost all funding to Oklahoma for direct representation in domestic violence cases which is pretty outrageous in my mind. It’s not so much that we didn’t get funded; it’s that they didn’t fund anyone else either. I don’t know what people are expected to do in that situation. But we still have that office in place at least for the time being just doing Indian law stuff. I guess that’s really the extent of our work here. We get some funding from the Bar Foundation, some funding from the state of Oklahoma, but most of our funding comes from Legal Services Corporation in Washington.

KEK: And how many attorneys work here?

CSH: There are eight attorneys at the two offices, seven up here in Oklahoma City and one in the Ada office. And then we have about another six or seven support staff. So, it’s a small office, although technically we would be the second largest Indian law firm in the state. There aren’t very many big Indian law firms in Oklahoma so we’re number two.

KEK: You’re number two, who’s number one?

CSH: That would be Indian Country Advocates, Charles Trip’s and Troy Little Ax’s law firm in Stillwater. And I think they just hired that last person so they would be ahead of us. I don’t think they can really justify it.

KEK: And where do your clients come from, do they come just from Oklahoma City or from all over?

CSH: No, we do the entire state of Oklahoma. We have clients scattered to the winds, everywhere. There are certain areas where there are more clients than others. For instance, Anadarko and if you go to western Oklahoma….., but most of our clients are going to be in the
Anadarko area or in the El Reno area near the Cheyenne-Arapaho headquarters there’s a place called Concho which is just north of El Reno. That’s where the big concentrations are going to be. Oklahoma City and Tulsa both have large Indian populations. Places like Ponca City which have several tribal courts concentrated around them. We do a lot of work in Ada obviously because of our office. Of course, Tahlequah, Miami, places like that will also have big concentrations but it can be anywhere in Oklahoma, we go pretty much everywhere.

KEK: So, do you have to travel quite a bit?

CSH: Oh yeah. All the attorneys here, there are different theories to legal aid offices and some organizations have a whole bunch of small offices kind of scattered over a geographical area and then others kind of believe in one centralized location that attorneys kind of depart from. And we’ve taken sort of a combination of the two. We have the Ada office but most of our people are here in Oklahoma City, we go out and cover the state. We have tremendous travel costs but that’s sort of offset I think by the advantages of being in a centralized location because we can pool our knowledge and we have a clearer understanding. One of the things I’ve seen sort of in the satellite office theory is that you have people who don’t feel a connection to the organization. And we were speaking on the break about the stability of our office and how our attorneys here tend to stay for very long periods of time. I think the standard in legal services-funded offices, just in legal aid offices, is that an attorney stays eighteen months and there are people who stay much longer than that and people who don’t make it through the week. But we tend to be very, very, stable. I think part of that is because no one feels isolated here, there are people you can talk to, and knowledge you can draw on as opposed to being sort of just on an island somewhere having to figure everything out, reinvent the wheel over and over again. And I can see where technology could assist in that, but face-to-face interaction I think is very important especially for young attorneys. And in a lot of legal aid offices you just don’t get that. And then you kind of degenerate into turf wars of, “How dare you take a client from my city and give him services because he’s my client and I wouldn’t give him services but that’s for me to make the decision on, not you,” and things like that. So, it works better just having that so, we travel. Well, for instance this week I’m on the road two days, next week I’m on the road two days, and then one day, and then three days, and it just goes like that. I’m out of the office a couple of days every week. There are other attorneys, Josie Stanley is an attorney in our office and I don’t think I’ve seen her in a week. She’s been on the road. Of course technology enables us to work at home and that’s been one of the major revolutions is that we’re no longer tethered to our desks, you just throw the laptop in the backpack and go, it’s made things much easier.

KEK: Yeah, especially in this type of setting where you have clients literally all over the state.

CSH: And I’ve been experimenting with sort of long distance connections and I’ve found a couple of low-cost alternatives. Of course you can always find expensive alternatives that can get you in touch with other people. I’ve discovered a few places that I think are very useful
because if I can get an Internet connection, I can get into our system and do my timekeeping and stuff from any location. So, things like that are really helpful when you’re on the road constantly. If I could get the tribes to spring for Wi-Fi connections I’d never have to come to the office.

KEK: That’s right, you could just camp out somewhere.

CSH: I would just sit in my car and go from there. But most people are still lacking in Wi-Fi so, it’s difficult. But, it’s coming, it’s coming.

KEK: What types of cases do you focus on here?

CSH: My particular focus is the Indian Child Welfare Act, I would say probably about 80 percent of my cases are dealing with Indian children. I do a lot of Guardian ad Litem work in tribal courts, a lot of adoptions and things like that. Interestingly enough, we divide the state into regions so each attorney is assigned to a region and the cases sort of vary from region to region. The attorneys in eastern Oklahoma do a lot of probate work because that’s where the Five Civilized Tribes are. It’s more kind of a mixture in western Oklahoma, they see many more different types of cases there and with me it’s more family law. It shifts from time to time. Housing issues come up sometimes, there will be a rush of housing issues and now I’ve got a couple of housing cases so that area is starting to heat back up. But for me mostly it’s definitely the Indian Child Welfare Act.

KEK: Which region are you assigned to?

CSH: I’m assigned to the north central region. I go north from Oklahoma City to the Kansas border, and then sort of gerrymandered over to the Miami area so I go north kind of in a block and then just at the top I run all the way over to Missouri so it’s kind of weird but mainly it’s going to be in the north central part of the state.

KEK: And, what keeps you going, what keeps you here in the office doing this kind of work because certainly with your experience and background you could go and do something else or work privately for yourself?

CSH: Well, I’m amazingly lazy and I don’t like change, that’s a factor. No seriously, that was a joke. It’s very interesting work that I do and there’s something to be said when you come into the office and being in legal aid there are always money issues, and it’s not a high paying field. But, it’s very satisfying work and it’s very interesting work and there’s always something and I have to say that not just in my office, but in the whole of Indian law, there’s a fairly high concentration of characters. Strange, sort of slightly off-kilter people who are interesting to be around and to hang out with and that actually kind of gives you something to look forward to. Part of it too is that the office environment that I work in, my executive director is Colleen Meek
who actually, I went to law school with Colleen and she is a tremendous boss, she may well be the best executive director in Legal Services Corporation. Of all the 100 and something programs funded by LSC she’s certainly near the top if not at the top. She creates a very positive environment to work in and when you’re dealing with attorneys that’s very difficult because frankly, what’s the old joke, “What do attorneys use for birth control? Their personalities.” That’s unfortunately true a lot of times and to keep everyone sort of in check and to working towards the same goals and stuff is something that I couldn’t do. I have absolutely no compunction whatsoever about tooting my own horn but I’m not so stupid as to believe that I could even come close to doing what Colleen does because I don’t have that type of personality or ability or empathy even. And she’s just a really excellent director; she does a good job of kind of overseeing the program and keeping it a positive environment. And that’s I think one of the big drawbacks and this goes directly to legal aid offices is that we have a lot of people who don’t really think of attorneys as important parts of the program in other programs. Attorneys just kind of come and go and there’s always somebody in and out. Well, the only thing we really offer is knowledge. People are mistaken when they think we’re offering services, if you don’t have knowledgeable people you don’t have services and so maintaining an informed, caring attorney base is really the job, I think, of management. And a lot of places just fail miserably in that.

KEK: Well, and keeping people motivated and here and obviously there’s been success here because as you said you’ve been here 19 years.

CSH: Yeah, I’ve been here 19, Colleen’s been here 20, we’ve received a significant funding increase toward the end of 2000 and that’s when we really expanded our office and we’ve had some turnover. From 2000 on we’ve probably had four, maybe five, attorneys come and go. But, the last turnover we had was probably two years ago, was the last time we changed an attorney position. And the person who left then didn’t leave, I mean, she was leaving the state; she wasn’t going to be here any longer which is a good reason to leave. If you’re not going to be in the state, it’s hard to work. Although it might take us a couple of months to notice because we do have a lot of flexibility here. But we’re just really stable and most of attorneys have been here for at least five years now, except for one attorney, all of our attorneys have been here five years which is amazing in legal services and it’s amazing in most law offices I think. But, we’re just very stable.

KEK: That’s great, that’s great. Now, I feel like we danced around this a little bit in the first half of the interview but can you explain for the record, for those people that are not familiar with, how, what it means when you are driving on the highway and the sign says, “You are entering into Cheyenne and Arapaho Nation,” how, then how, what types of, what does that mean?

CSH: For most people?
KEK: Yeah.

CSH: It doesn’t mean anything because Oklahoma doesn’t have reservation lands. There is nothing that, if you’re driving on the highway and you pass a sign that says, “Entering Sac and Fox Country,” or “Entering Cheyenne-Arapaho Land,” or something like that you’re still on a state highway, you’re still driving and that’s it. It’s not going to make any difference. If you’re a tribal member it means that you’re now subject to an extra layer of jurisdiction. There are some interesting questions, one of the things that tribes are doing especially with the advent of casinos, is they’re beginning to sue people civilly. Tribes lack jurisdiction, criminal jurisdiction, over non-Indian people. They cannot, if you are non-Indian, a tribe cannot arrest you, a tribal officer cannot arrest you unless they’re cross-deputized. In which case, they are arresting you under the state’s authority not the tribe’s authority. So, people that think they can’t be arrested are often sadly mistaken there when they find themselves sitting in a much less pleasant facility than what the tribe offers. The thing about tribal jail cells is, remember the Andy Griffith show? They had flowers; tribal jail tends to be kind of, if the tribe even has a holding facility, it tends to be kind of like that. It’s very small town and not totally unpleasant. But because of cross-deputization, if you’re not Indian, you don’t go there, you go to the state lock-up which is generally; the county jails tend to be sort of disgusting and icky. So, people need to be aware of that. They can’t just go on Indian Country and do whatever they want to because almost all the tribes have cross-deputization agreements with the sheriff’s department and someone will come and arrest you. But as far as if you go to a tribal casino, does it make a difference? Sometimes it does. There was just a case last week on a slip and fall at the Cherokee Casino and the question becomes, does tribal sovereignty create a problem? Well, the Oklahoma Supreme Court said, “No, once you insert yourself into commerce, you can no longer use tribal sovereignty.” And there’s really an issue that’s kind of been hiding in that whole thing which is that the tribes aren’t the ones asserting…., the tribes all have insurance. They’re not the ones asserting sovereignty, it’s the insurance company that’s asserting sovereignty and the insurance company doesn’t want to pay the settlement so they say, “Oh, tribal sovereignty.” So, again, it’s kind of the white guys who are getting the tribes into trouble here because their sovereignty is going to end up being diminished because the insurance companies don’t want to pay out on legitimate cases that occur on tribal land, kind of an interesting turn there. But for most people, it’s not going to make a difference. If you pass the sign that says, “Now entering Sac and Fox Reservation,” or however they have it there on I-40 and you have a traffic accident, you don’t have to go to Sac and Fox court. Even if you are on the reservation, on Indian land, and you have a traffic accident, if you’re non-Indian and the other person is non-Indian, you don’t go to tribal court, you go to state court. So, it’s not going to make any difference there and it tends to come out in kind of weird side ways. I say things like that and then something happens and I say, “Yeah, you have to go to tribal court” and people get angry with me. So, sometimes it can affect you if it’s under very specific circumstances. For 99.99% of Oklahoma’s population, it’s never going to make a difference, ever. So, it’s nothing to fear.
KEK: Well, thank you for explaining that, I appreciate that. Now, Mr. Hager, what has been the best piece of advice that you’ve gotten over the years?

CSH: Well, I think it’s really to not take things just so seriously. Lawyers are very, we are kind of very serious people and often we’re serious for no good reason. I guess that’s kind of a bad way to put it but we should be more I think accepting of human nature and recognize that a lot of times we’re going to have to deal with issues that are going to be flexible and are going to change in ways we don’t want them to change. But, we have two choices there. One is that we can be really, deeply offended and be angry about it and end up with an ulcer the size of a softball. Or, you can go, “I can’t believe this.” Before you came this morning I was on the phone with a client and God bless her, she’s not actually a client, I represent her children. But she’s in a custody dispute with her ex-husband, they have been in custody disputes for many, many years. They have Facebook pages where they write nasty things about each other, then they call the other person to make sure that person checks their Facebook page so they can see the nasty things they wrote about them. And she was calling me this morning to try to get me involved in a case with another ex-wife of his and the custody dispute he’s having over that child that she’s involved in and I’m just like, “I’m not interested in this, I’m not going to talk about this.” You have two choices there. One is that you could look at that and see the humor in that situation, which it’s not funny to the people who are in it, but we’re not in it. Or, you can stew about it all day and have a totally wrecked day. I’ll probably stew about it all day but I shouldn’t, I should be more flexible. It’s like the old joke, a guy is sitting with his lawyer and the jury is out. And the jury comes back in and finds him guilty and the guy turns to his attorney and says, “What do we do now?” And the attorney says, “Well, you’re going to jail, I’m going to go have lunch.” That’s really the attitude I think lawyers should seek. And, time and time again, every time I’ve tried to be serious, something has happened that has reminded me that life is terminal but it’s not necessarily serious. So, we should be more flexible. I can be a jerk many times, my wife will tell you that I’m often a jerk, but we really should strive to be able to kind of laugh at ourselves and to recognize the humor and just the bizarreness in our day to day lives. I think that’s the best advice I’ve got which is just to take it easy and relax a little bit more.

KEK: And what kind of advice would you give to a new law school graduate?

CSH: Oh, for God’s sake don’t do this. No, no. The thing I would tell new lawyers is that, “Talk to people.” Talk to your clients, even the ones who are kind of obnoxious. I knew when she called this morning that it was going to be a bizarre phone call but I talked to her anyway and she may be thinking right now, as a matter of fact I’m sure she’s thinking right now, “That guy is just a jerk.” But she’s not thinking, “Boy, I wish that guy would talk to me.” And if you look at the malpractice rates and stuff, almost all of them start with a lawyer not responding to something or refusing to talk to people. I would say talk to people and the other piece of advice I’d give is just be honest with people. If you haven’t filed something, say, “I haven’t filed that yet.” And don’t say, “I’ll file it by the end of the week,” if you’re not going to file it by the end
of the week. We want to make our clients happy but sometimes it’s better for the client to be unhappy for a day or so than to be suing you for malpractice in six months because you said something and they relied on it. So, just talk to people and that would be my main advice, just talk to people. And often you create, when you talk to people you find stuff out that turn into really interesting stories later on.

KEK: Good advice, good advice. Now, is there anything Mr. Hager that I haven’t asked you that you would like to say or that you would like to talk about?

CSH: Well, no. I tend to think that we become sort of numbed to just the day to day stuff that happens in the law. But, I think there are a lot of interesting things that go on and that we really should remain open to them and try to see all sides of the issue. The best lawyers I know are people who are really able to go, “Oh, that’s interesting,” and sort of listen to both sides of a topic. And strangely enough, sometimes they are not the best judge because they’re too wishy-washy but I think lawyers should be able to kind of argue on any position, but at the same time, not necessarily believe any of them. I think of it as the Rachimon approach to law, a Kirasawa movie where you have all these different viewpoints as to one action and they’re all probably equally valid and equally invalid. I think that’s kind of where we should be looking at as lawyers, is recognizing that it’s almost impossible to really know objectively what is going on and what is happening and all we can do is try to make sense of the insensible.

KEK: What kinds of skills do you think someone needs to have to work in a legal services office?

CSH: Well, I think they have to be interested in people. That sounds so stupid and vague, “gotta be interested in people,” as opposed to plants or minerals I guess, but you have to flexible, you have to not be, you have to understand that not everyone lives life like you would and that some people are doing things that you are going to look at and go, “Oh, that’s kind of icky.” But, you can’t judge people, you have to be willing to accept their thoughts and their positions and their lifestyles and go from there. And I think that’s important. The other thing is that I, and this is going to sound kind of weird but you can’t be gung-ho because people who come into legal services and they want to make the world a better place or change things or do something like that, well and even I said at the beginning of the interview that’s why I became a lawyer because you can’t be gung-ho because people who come into legal services and they want to make the world a better place or change things or do something like that, well and even I said at the beginning of the interview that’s why I became a lawyer because you can influence change. I didn’t say you could change things because you can’t really, some things are…, and you really can’t change people. You just have to say, “Okay, this is who this person is and what can I do for them?” But the people who are really gung-ho and who come into it and by God they’re going to…, they’re gone in 18 months. I’m pretty unabashedly progressive, I think that’s the new word, we don’t say liberal anymore, but I’m a legal aid attorney, I’m pretty progressive, I believe that we should in fact have health care for everyone. I don’t think people should be dying in the street, I think if you’re mentally ill the government should step in and assist you to get whatever drugs or care you need. I think it’s
stupid that we have millions of people in prison for drugs when you should be putting the same funding into treatment facilities, that’s who I am. None of that really has anything to do with what I do but that’s what I think. But I don’t think that my job here at legal aid is going to stop any of that and if I did think that, in 18 months, I would be completely disavowed of that notion and I would be quitting and probably voting Republican for the rest of my life. You have to be professional in this. You have to understand what you can do as a lawyer and what you can’t do as a lawyer and you just have to go from there. But the most important thing to be a legal aid attorney is to understand what job you’re doing and to be willing to do that work because it’s not easy or pleasant all the time. There’s a lot of ugly things that happen, it’s really easy to become cynical and depressed over it or you can say, “I’m going to lunch.”

KEK: Tell me about your professional activities outside the office, do you participate in any bar functions or……?

CSH: Well, I’m a member of the Oklahoma Indian Bar Association which, my main, I would say my main function there is just to buy their T-shirts and wear them proudly. So, we have that. I’m a member of the Law Office Technology, within the bar, I’m a member of the Law Office Technology Section, which, if you’re ever at the bar meeting, they have the best giveaways. And also the Indian Bar Association, I’ve been the Chairman of the Indian Bar Section, the Indian Law Section, twice. I work with CASA, I do training for them on the Indian law issues because it’s important they understand that. We do a lot of community education stuff. I write a book called the *Indian Child Welfare Act Case and Analysis* and we kind of self-publish it on CD-ROM every year and I’m in the middle of it now. There’s 41 cases, every year there are about 41 published appellate decisions on the Indian Child Welfare Act and the law, it’s just amazing. Right now, over the past year or two years we’ve seen amazing development in termination proceedings under the Indian Child Welfare Act. This is a law that’s been in place for 30 years, it was passed in 1978, 31 years now. And, every year there are still 40 published appellate decisions and you’re dealing with a subset of less than three percent of children in America. And you have 40 published opinions every year which is just an incredible number and there’s another 400 or so unpublished opinions on the Indian Child Welfare Act. So, every year I do the book, it’s now running at about, with all the parts to it, it’s running at about 600, 700 pages long. I update it every year and put the cases in, the actual book is probably about 200 pages of analysis and then the rest are just things that you need to have. But that’s very complex and that takes a lot of time. So, I do that and I’m working with the Family Law Section this year of the Oklahoma Bar and going to put in their deskbook, we’re going to have a section on the ICWA for the first time which is kind of nice. I wrote a chapter in *Child Fatality Review*, that was kind of exciting. I have an article coming out in the ABA……, I know it’s in the ABA and if I thought hard enough I’d probably remember the Section that it goes to but it’s one of their newsletters, it’s a much more impressive newsletter than I understood it was when I got involved because somebody just said, “Hey, will you write something?” And I said, “Sure, yeah,” and now I’ve
got this article coming out in it and I’ve probably need to update my resume and put that in there because it is kind of a big deal. And I tend to find myself agreeing to stuff and then later on finding out that unlike me, these guys are really serious about what they’re doing. And that’s how I got into Child Fatality Review, a friend called and said, “Would you write something?” And I said, “Oh, yeah.” I’ve been working on saying no to people but it’s not been very successful unfortunately because it seems like a good idea when it’s two months down the line and then when it’s a week away and I’m putting in 20 hour days on it, I tend to think, “Why did I agree to this?” I’m already starting to feel that about the Family Law Section stuff because that’s coming up at the end of the month and that means I need to update the handbook, and have to plug in 41 cases and go through all of that. Right now I’m updating, kind of the baby steps into rewriting the Indian Child Welfare Act book is, I’m updating the tribal list. There are 541 tribes in the U.S. and under the Indian Child Welfare Act there’s supposed to be a published list of contacts at the tribes. Well, the problem that we find is that they publish the contact lists under regional offices. So, if you don’t know that a particular tribe is under the Aberdeen office, you have to comb through 541 different tribal names in hopes that you find it and they’re not even, it’s a nonsensical system that the government uses to make it more difficult. So, in my book I actually do this crazy thing where I list things alphabetically by state so if you know they’re a tribe from South Dakota you can just go to South Dakota, pull up all the tribes that are listed there. So, what that means, is I have to go through the listing of the tribes and see if tribes have done things like change their names, which sometimes tribes do especially in California where they’ll have very detailed descriptions of the tribe and then later on after several years somebody will go, “Why are we doing this? Stationary costs a fortune with this, let’s just change our name …” And, they change their name to a two word name and then you have to go back in and people start looking for that tribe and they can’t find that tribe because it no longer exists. So, you have to make sure that you have the new name and the old name in the same place so people can find it. But, it gets really complex. That’s kind of the easy way to ease into it because then you get into cases, you have 40 opinions to plug in, and a lot of it is, you can just plug it in to a footnote. That’s kind of what I do outside of my actual casework.

KEK: It sounds like a great deal of work.

CSH: Well, it is but, I do it more for me than anybody else because the laws change so rapidly and so completely and so stupidly sometimes in this particular field that if you don’t stay with it every year….. A good friend of mine, a guy named B.J. Jones. He’s a judge up at Turtle Mountain and he’s a professor at the University of North Dakota which kudos to him just for that, he’s in North Dakota. But he’s a guy from New Jersey and he’s been living in North Dakota for a long time, so now he sort of speaks with a reservation overlay to a New Jersey accent, it’s fascinating to listen to, he’s a great guy. And he writes a book, he and I actually wrote our books on Indian Child Welfare Act at about the same time, the difference is because he was a professor, he got his published by the ABA and I publish mine on a CD-ROM out of my
office. But, he publishes this book and it’s a very nice book, he’s a great guy, smart man, and it’s a very good book, publishes it, and then he goes back in two years to the ABA and says, “Well, we need to update it because the laws have changed.” And they say, “We can’t update it, you only sold about 5,000 copies.” And he said, “What are you talking about? I sold a copy of my book to every one who practices Indian law in the United States.” Pretty much everyone has a copy of his book. But, they were expecting to sell like 95,000 copies or something and he didn’t hit his publication goal and so, long story short, he had to wait ten or eleven years to publish his update. And I had literally published nine or ten updates in the time between his edition and he just published his update last year which I still don’t have a copy of because they charge 65 dollars for a paperback and that’s ridiculous.

**KEK:** That’s right and you’re a legal services attorney.

**CSH:** So, I’ll trade him one of our CD-ROMs and a T-shirt for a copy of his book the next time I see him.

**KEK:** But that illustrates how, like you said, how rapidly the law changes in this area and you can’t wait ten years to publish an update, it has to be published……

**CSH:** That’s 400 opinions that have been issued. But the trend I started to talk about right now is people have come around to, if you look at 25 U.S.C. 1912(f), it deals with termination of parental rights and the burden of proof in a termination of parental rights in Indian Child Welfare Act cases is beyond a reasonable doubt. Well, the interesting thing that we’ve seen over the last couple of years is that states have begun bifurcating the burden of proof. And they say, the only thing you have to prove beyond a reasonable doubt is the last line of that section which says that you have to show through expert testimony that the child would be subject to severe emotional or physical damage if left in the custody of the parent. They’ve separated out the burdens and they say okay, you have to show termination, usually by clear and convincing evidence under the state grounds. And then you have to show this by beyond a reasonable doubt which actually serves the function of greatly lessening the impact of the ICWA because other states and until about two, three years ago everyone used to say, “Okay, if you’re going to terminate, the burden of proof in a termination of an Indian child is beyond a reasonable doubt, period, end of story.” Now, you’ve got this bizarre, bifurcated thing, and if you’re dealing with a jury….. I deal with lawyers, I lecture lawyers all the time about the Indian Child Welfare Act, most of them don’t understand it, how are you going to get 12 people who were not smart enough to get out of jury duty to understand it? And I include myself in that category, I had to do the federal jury duty and I said, “I’m a lawyer.” They said, “Yeah, so.” You don’t want me on the jury, I’m a lawyer and I kept saying that and they kept saying yeah, that’s okay. I finally actually got out of it because as luck would have it, they brought me into a case that actually involved an Indian guy. And I said, “Well, Judge, I don’t think I should be on the jury because the prosecutor there, I’ve worked with as a federal guardian ad litem for Indian children. So, I don’t think it would serve
the functions of justice to have me on this jury.” And they let me go home. And there’s a real panicked feeling you get when you’re thinking, “Oh yeah, I’ll be out of here in half an hour,” and three hours later you’re going, “I’m not going home today.” That was a total digression.

KEK: You were talking about the bifurcated system.

CSH: You now have this bizarre bifurcated system and you have juries now that are expected to understand that they’ve got to prove this part of the termination this much and this part they’ve got to prove this much. Now, that’s guaranteed and this is another example I think of court systems who are kind of opposed to the idea of the ICWA wanting to set up a system that is completely and totally, it not only sort of violates the intent of the ICWA, it creates more work for them because they’re thinking yeah, we’re going to lessen the burden of convicting someone under the Indian Child Welfare Act, of terminating parental rights under it. But what they really do is create a new level of appeal for people who are saying, “Well, clearly the jury didn’t understand different burdens for different factors.” And so we see even more cases come out on appeal because now people are saying the jury is not comprehending what’s going on here when they’re terminating. They’re not doing it by the right burdens. It’s just crazy, if people just did what the ICWA tells them to do, you would see a dramatic decrease of appellate decisions. It’s almost always when people are trying to get around the act that it turns around and causes them massive trauma later on.

KEK: And has the U.S. Supreme Court ruled on this bifurcated……?

CSH: No, in 31 years there’s been one Supreme Court decision, *Mississippi Band of Choctaw Indians versus Holyfield*, that’s it, they are not taking, they have viciously rejected any attempt to bring a case to the Supreme Court. They don’t want to deal with it, and frankly we probably don’t want them to deal with it because we don’t know how they would rule right now. The ICWA is so radioactive in a lot of appellate court minds, in California you have six appellate jurisdictions, okay six appellate level jurisdictions overseen by the California Supreme Court. Three of those jurisdictions have found something called the Existing Indian Family Exception where they basically establish a sort of a cultural test of being Indian enough for the Act to apply to. Three jurisdictions have rejected it outright and said, “That’s crazy, that’s not what the law says, that’s not the point of it.” So, literally depending on where you are in California, in one place you’re going to clearly be accepted as an Indian, in another place, you’re going to be said, they’re going to say, “You’re not Indian enough to trigger the act.” This has been going on for ten years now. The California Supreme Court has never taken cert on any of these cases and they are literally running, if you count the unpublished opinions, they literally are running 150, 200 cases a year on appellate level. And they are refusing, they will not take an ICWA case, that’s just how a lot of courts look at ICWA, they’re scared to death of it.
KEK: But that’s terrible because it causes this total unclarity and like you said, it depends on where you live as to what sort of outcome……

CSH: The California Legislature has passed law after law but because they put it on a constitutional basis, as soon as they pass a law, the three jurisdictions that have upheld the Existing Indian Family Exception find it unconstitutional, so the level of constitutionality the California Supreme Court refuses to touch. No one will touch it. Why? Because people are just terrified of Indian law issues, they don’t want to have anything to do with it. In California it’s particularly problematic because Indian tribes now, which have been really kind of abused and mistreated for many, many years, California is under something called PO 280 where the state has jurisdiction over tribal land in many cases and the tribes have really been pushed around. Well now the tribes have casinos and because the tribes have casinos, the tribes have money. And when they’re not busy throwing their cousin out of the tribes so their per diem goes up, they have been giving their money to politicians. So, now the tribes have clout which really scares a lot of people because they’re thinking, “Gee, we’ve been mistreating these guys for a 100 years, I wonder what they’re going to do to us now that they have money and politicians.” So, you have this level of complete fighting and not to mention, Orange County which is sort of Ground Zero for a lot of really bad Indian law decisions out of California. Their airport is called John Wayne Airport, John Wayne International, it’s not a pleasant place to be if you’re an Indian person. And so, stuff like that, California is a nightmare. The Supreme Court will not, I don’t foresee them taking an Indian law case ever, so you have states that vary between generally the pretty good, which is Oklahoma. Sometimes Oklahoma goes, the problem with Oklahoma is that when our courts go off mission or go offline, they really go offline. They do something that’s just going to be totally, completely, just crazy wrong. But usually they get it right, they get it pretty right. Then you have states that have six Indians in the entire state doing an ICWA case, they don’t have anything…. Then you have other cases, there’s a great thing I was reading in the new cases from Utah which is just a, the judge just basically comes right out and says, “You know, none of us know what we’re doing with the ICWA, it’s a nightmare, we hate it, but here we go, and here’s our opinion.” That’s how they start their opinion. I’ve always believed, I had a good friend who went to med school over in Tulsa and she said one of the first lessons they taught you was never, ever say, “Whoops.” You always say, “There.” So, if you’re cutting someone open, if, when you’re in surgery you cut someone open and you screw up, you don’t ever say, “Uh-oh,” you say, “There, we’ll need some suction in here,” or something. And I think too often lawyers are unwilling to say, “There,” instead of “Whoops.” And this guy just comes right out and says, “Whoops, we screwed up totally, it’s a horrible thing.”

KEK: Well, wonderful, wonderful. Mr. Hager, do you have anything else?

CSH: No, I don’t think so.
KEK: Thank you so much for your time today; this has been a wonderful interview, very informative.

CSH: Well, the work we do is really interesting here and OILS is, I just love being here and I really like the people that I work with. And the work we do I think is important and it’s very interesting stuff so I encourage more people to practice Indian law if they possibly can.

KEK: Well, hear, hear. Okay, well, thank you again so much for your time today.

CSH: Thank you for talking with me.

KEK: Great.