

## **Why Does the Tribe Use the UW Tribal Court Public Defense Clinic?**

*Submitted by Wendy Church, Tulalip Tribal Court Director*

The Indian Civil Rights Act (ICRA) of 1968 is similar to the Bill of Rights under the United States Constitution which protects the rights of individuals charged with crimes in federal and state courts. However, there are differences between the Bill of Rights and ICRA. ICRA § 1302, Constitutional Rights, Section 6 addresses legal representation. It states that no tribe shall deny “...at *his [accused tribal member’s] own expense to have the assistance of counsel for his defense*”. This means that tribes do not have to provide defense attorneys to its tribal members. Early on - especially in 1968, tribes lacked the financial resources to cover the high cost of providing attorneys. Attorney fees are typically charged by the hour, and would be a significant financial burden to the tribe should the tribe elect to provide private individual attorneys to all indigent tribal members charged with a crime.

This reality required the Tulalip Tribes to find a creative way to provide legal representation for eligible tribal members charged with criminal offenses within the boundaries of the reservation. In 2002, the Tulalip Tribes partnered with the University of Washington Native American Law Center’s Tribal Court Public Defense Clinic. The Public Defense Clinic was established specifically for the Tulalip Tribes and is supported in part by money derived from the Tribes’ gaming funds.

The UW’s Tribal Court Public Defense Clinic Director, Ron Whitener (a member of the Squaxin Island Tribe) has been practicing Indian/Tribal law for over 15 years. He is admitted to practice in Washington State and several tribal courts, including Tulalip Tribal Court. This year, in recognition of his work here at Tulalip, Ron was awarded the Shanara Gilbert Emerging Clinician Award, a national award for clinical teaching. Ron oversees the Public Defense Clinic along with Molly Cohan and Brenda Williams, who bring over 30 years of criminal defense experience. Ron, Molly and Brenda supervise law school students, who must pass the Tribal Court’s bar exam, in representing the accused in Tribal Court. These students have experience in other tribal or state court systems as well as private firms. They are capable and dedicated defenders.