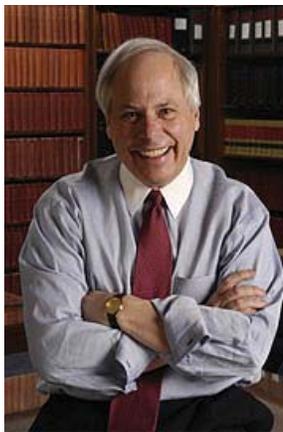


# Michigan Indian Legal Services, Inc.

## MILS REVIEW

*Providing civil legal services to low-income Indian individuals and tribes to further self-sufficiency, overcome discrimination, assist tribal governments and preserve Indian families.*

### LETTER FROM THE PRESIDENT by John R. Runyan, Jr.



President, John R. Runyan, Jr.

In this issue of MILS Review, I would like to introduce you to Norika L. Kida Betti, another of MILS hard working attorneys.

Norika grew up in Benzie county and graduated from Benzie Central High School. In fact, Norika is following in her mother’s footsteps. Her mother – Nancy Kida – was a staff attorney at Michigan Indian Legal Services during the mid-1980’s.

Following graduation from high school, Norika attended Kalamazoo College where she majored in Human Development and Social Relations. She then worked in Benzie County as an Americorps VISTA volunteer, coordinating after school programs for school-aged children.

Norika left Northern Michigan again to attend Vermont Law School, from which she graduated in 2013. She began working part-time as an attorney at MILS in January of this year; she is typically in the office on Mondays, Wednesdays and Fridays.



Norika Kida Betti

Norika is married to Marcelo Betti – also an attorney – who is associated with the Traverse City firm of Rosi & Gardner, P.C. In her spare time, she enjoys playing soccer and learning to speak Portuguese.



### MICHIGAN INDIAN LEGAL SERVICES MAKES A DIFFERENCE

In 2013, a tribal member was facing a garnishment case in tribal court. Health care providers were seeking payment of debts through her per capita payments. However, the client was supposed to be covered through the Indian Health Service’s contract health program. In working with the plaintiffs and the tribe’s contract health department, we were able to get all the bills properly taken care of by the Tribe, including the plaintiff’s attorney’s fees.

Providing assistance in both tribal and state court proceedings, an MILS attorney helped a tribal member father establish paternity for his child and continues to help the father with the enrollment process for his daughter.

On behalf of a tribal member, an MILS attorney wrote a demand letter for return of her security deposit after a landlord did not return it to her in a timely fashion upon

her moving from the property. The landlord responded and provided a partial payment, which the client agreed to accept.

An MILS attorney was able to help a Canadian Indian obtain her social security number and federal financial aid under the Jay Treaty. With her social security number, she became eligible to apply for employment and other federal benefits. She was intent on obtaining a college degree in Michigan in order to provide for herself and her young child. MILS was able to solve the problem because its experienced staff is familiar with the Jay Treaty of 1794 and its effect on federal law and policy. The Jay Treaty is shorthand for the Treaty of Amity, Commerce, and Navigation, Between His Britannic Majesty and The United States of America. The United States codified this provision of the Jay Treaty at 8 U.S.C. 1359.



As a limited action case, an MILS attorney successfully ghost wrote motions and affidavits for a native father trying to regain custody of his 13 year old daughter. A year before, the state court had placed the daughter into the care of the mother. There was an incident between the

mother and the child and the mother had kicked the child out of the home. When the father was trying to regain custody, his daughter was living in a homeless shelter. The state court switched primary custody back to the father and awarded the mother limited parenting time.

In 2013-2014, an MILS attorney represented a mother in a tribal court child welfare matter. The Court ordered the parties into peacemaking in order to resolve remaining concerns for the child to be returned home. Peacemaking is an alternative to suing courts to solve disputes, where all parties are heard and focus on the underlying problems in order to heal the community. The case has been successfully closed and the daughter has been returned to the care of her mother.

Parents established paternity for their child through an affidavit of parentage after the father consulted an MILS attorney.

An MILS attorney provided assistance to a father facing termination of parental rights in a tribal court including ghost drafting a motion for court-appointed attorney. The court appointed an attorney and the client's rights were not terminated.



## **BOARD OF TRUSTEES ADDED NEW KINDS OF CASES TO CASE ACCEPTANCE POLICY**

By Cami Fraser

You spoke and we listened! With your help, MILS underwent a needs assessment to find out where the unmet legal needs are in the Indian communities in Michigan. Thank you to all those who helped us by filling out surveys and talking with us!

Using the collected information, the MILS Board amended our case acceptance policies to include several new types of cases. We can now handle the following:

- Michigan Indian Family Preservation Act cases for individuals that do not have court appointed attorneys;

- expungement of tribal and Michigan criminal convictions;
- restoration of driving privileges at the administrative level;
- expungement from the Michigan Child Abuse and Neglect Central Registry; and
- expungement of tribal and Michigan juvenile delinquency convictions.

We look forward to providing these services to our client community!



## WHAT'S IN A NAME?

By John R. Runyan

The controversy over Washington D.C.'s choice of nickname for its professional football team has prompted me to do some research.

The original owner of the franchise, George Preston Marshall, was an intractable racist, who refused to sign African-American players to his roster until 1962 when he drafted a Syracuse All-American, Ernie Davis. Marshall only did so because of an ultimatum issued by Interior Secretary Stewart Udall and Attorney General Robert F. Kennedy, who threatened to revoke Marshall's thirty year lease on the year-old D.C. Stadium (now RFK Memorial Stadium), which had been paid for by taxpayers and was owned by the federal government. Davis, interestingly enough, never played a down for Marshall's team, refusing to "play for that SOB," and was traded to Cleveland for All-Pro Bobby Mitchell, who was the first African-American to play professional football in the District of Columbia.

Marshall and three other partners were first awarded an NFL franchise for Boston in 1932. The team was known as the Boston Braves as they played on the same field as baseball's Boston Braves. In 1933, Marshall moved the team, which had four Native American players, to Boston's Fenway Park and renamed them the "Redskins."

When the team traveled to Chicago's Solider Field to play the Bears on October 1, 1933, they were barely recognizable. Marshall ordered the team to smear themselves with face paint before going out on the

field. Their half-time band – one of only two officially sanctioned by any NFL team – marched in tribal regalia and their coach wore feathers on the sideline.

Marshall moved the team to Washington, D.C. in 1937. In 1992, a group of American Indians led by Suzan Harjo brought a challenge to the United States trademarks associated with the Redskins name under statutes which prevent registration of disparaging terms. Although the Trademark Trial and Appeal

Board ruled in favor of the petition and cancelled the trademarks, the District of Columbia Court of Appeals reversed, primarily on the ground that petitioners had waited too long to bring their challenge. The United States Supreme

Court declined to hear their appeal. *Pro-Football, Inc. v. Harjo*, 565 F.3d 880 (D.C. Cir.) cert denied, 558 U.S. 1025 (2009).

In 2013, ten members of Congress wrote a letter to current majority owner, Dan Snyder, asking him to consider changing the name of the mascot. On May 21, 2014, fifty senators, including Senators Carl Levin and Debbie Stabenow of Michigan, wrote to NFL Commissioner Roger Goodell, urging the NFL "to formally support and push for the name change for the Washington football team." On June 18, 2014, the United States Patent and Trademark Office cancelled the Washington Redskins trademark license for a second time, because the name is "disparaging to Native Americans." Snyder has promised to appeal.



## MILS PROVIDES SERVICES IN THE TRIBAL COURTS

By Cami Fraser

Michigan Indian Legal Services attorneys have provided representation in 148 separate tribal court cases over the last five years! In that time, we have represented individuals in nine of the twelve tribal courts in Michigan (and eleven out of the twelve tribal courts in the past seven years). We have represented parents in 43 separate child welfare cases in six different tribal courts: Lac Vieux Desert Band of Lake Superior Chippewa Indians, Hannahville Indian Community, Keweenaw Bay Indian Community (KBIC), Little Traverse Bay Bands of Odawa Indians (LTBB), Grand Traverse Band of Ottawa and Chippewa Indians (GTB), and the Little River Band of

Ottawa Indians (LRB). We have represented nine people facing garnishment of tribal wages or per capita payments in the Pokagon Band of Potawatomi Indians, Nottawaseppi Huron Band of Potawatomi Indians and GTB tribal courts. We have represented six different families being evicted from tribal public housing. We have also represented twelve juveniles in delinquency cases at KBIC, GTB and the Saginaw Chippewa Indian Tribe. In addition, we have provided representation for individuals in 59 different criminal matters at LTBB, GTB and LRB.



## MILS CLINICS HIT THE ROAD

By Doug McIntyre

Over the last few years, MILS has engaged in a broad outreach program through the MILS Traveling Legal Aid Clinic. These Clinics serve a dual purpose of providing an in-person attorney for clients who may otherwise be hesitant to call as well as keeping MILS staff active in the various communities it serves. the Traveling Legal Aid Clinic has made stops at nearly all of the Michigan tribes and to a number of urban organizations since January of 2012. Below is the list of Legal Clinics held over the last year:

August 8, 2013—Keweenaw Bay Indian Community  
August 9, 2013—Lac Vieux Desert Band of Lake Superior Indians  
August 30, 2013—American Indian Health and Family Services, Inc.  
October 28, 2013—Lac Vieux Desert Band of Lake Superior Indians  
October 29, 2013—Keweenaw Bay Indian Community  
February 13, 2014—South Eastern Michigan Indians, Inc.  
May 8, 2014—Lac Vieux Desert Band of Lake Superior Indians  
May 9, 2014—Keweenaw Bay Indian Community  
May 15, 2014—American Indian Services, Inc.  
May 19, 2014—Pokagon Band of Potawatomi Indians  
May 20, 2014—Nottawaseppi Huron Band of the Potawatomi



As MILS approaches its 40th anniversary, we hope to continue to strengthen our deep connections with the various American Indian communities we serve. We hope to see you at the next Legal Aid Clinic!



# MICHIGAN SUPREME COURT OVERRULES THE “ONE-PARENT” DOCTRINE

By Norika Kida Betti

Each parent in a child protection case is now entitled to his or her “day in court” before the court can interfere with the parent’s right to raise his or her children. Until now, a Michigan court could invade the rights of both parents based on the actions of only one parent. However, the Michigan Supreme Court recently decided that this so-called “one-parent doctrine” is unconstitutional. (In re Sanders, MI Supreme Court Docket No. 146680). The court described the one-parent doctrine as permitting “a court to interfere with a parent’s right to direct the care, custody, and control of the children solely because the other parent is unfit, without any determination that he or she is also unfit.” In other words, as long as one parent was



deemed unfit, the court could remove the children from both parents and require both parents to complete services and other requirements.

In Sanders, the mother pleaded to being an unfit parent and the children were removed from the home and placed with a relative. The father refused to plead and demanded a trial of his parental fitness. The trial court never held a trial for the father and rejected the father’s request to place the children with him or his chosen relative.

The Michigan Supreme Court’s decision, supported by five out of seven of the justices, made it clear that before a court can interfere with a parent’s right to make decisions concerning his or her child’s custody and care, the court must find that the parent is unfit in a manner that protects the parent’s constitutional rights. Depending on the importance of the infringed

right, different levels of constitutional protections apply. In this case, the Michigan Supreme Court upheld the longstanding notion that a parent’s right to raise his or her children is very important and therefore the trial court must hold a trial before it can interfere with this fundamental right.

For our clients, this means that in state court child protection proceedings, each parent is now entitled to a trial to determine his or her parental fitness before

the court can remove the children from the home or order the parent to comply with services. However, in emergency situations the court may temporarily remove children from the home before finding that the parent is unfit as long as the court finds that certain conditions exist.

In cases where the Indian Child Welfare Act (ICWA) or the Michigan Indian Family Preservation Act (MIFPA) apply, the court may remove children who reside on the reservation, but are temporarily located off the reservation, only to prevent imminent physical harm. If children are removed on an emergency basis, the court must hold a removal hearing within 14 days after the emergency removal. At the removal hearing, the court must find by clear and convincing evidence that active efforts have been made to prevent the breakup of the family and that those efforts were unsuccessful. In addition, the court must find that the child is likely to experience serious emotional or physical damage if he or she remains in the home. When making these determinations, the court must consider testimony from a qualified expert witness who knows about child-rearing practices of the child’s tribe.

The one-parent doctrine has been a source of much debate in Michigan for many years. This decision by the Michigan Supreme Court will change the way child welfare cases proceed through the court system and help ensure that parents are given a fair trial before their rights as parents are invaded.





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or click here:

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## MILS ALUMNI REUNION

By Jim Keedy



Barry Levine (1985)

This past January 2nd, former MILS staff members and current staff gathered at Harrington's By the Bay for a reunion luncheon. Alumni attending included former staff members from the 70's and 80's Greg Blanche, Bill Rastetter, John Peto-skey and Barry Levine; from the 80's and 90's Jim Bransky and Bill Brooks. Current staff Jim

Keedy, Cami Fraser, Tammy Turner and Little Tra-verse Bay Band's Office of Citizens Legal Assistance Attorney Cherie Dominic were also in attendance.

It was great that so many were able to attend on short notice. We all agreed that we should try to meet more often. So here is a shout out. All former MILS staff



From left to right: Jim Bransky, Bill Brooks, John Mitchell and Jim Keedy (August, 1992).

and board members please send us your contact information and we will notify you of the next gathering.

In the spirit of times past here are a couple of photos from the vaults. If you have any photos from MILS past please email a copy to [register@mils3.org](mailto:register@mils3.org). and we will feature them on our Facebook page or in a future edition of the newsletter.



MILS offers our newsletter by email. By saving material, labor and postage costs on our newsletter, we can devote more space to news and useful information about Indian law.

Please email us at [newsletter@mils3.org](mailto:newsletter@mils3.org) and tell us if you can receive our newsletter by email. We are always looking for article ideas. Please tell us if you would like to see an article about a particular topic. "Letters to the Editor" are also welcome.

Michigan Indian Legal Services is a nonprofit organization that provides free legal services to those who qualify. Your support of MILS is critical to our ability to provide legal services that would otherwise be unavailable to Michigan's Native American community. Michigan Indian Legal Services is a nonprofit organization that provides free legal services to those who qualify. Therefore, we do not collect any money for services provided to our income eligible clients. MILS relies solely on grants and various funding sources, including individual donations to continue to provide our legal services.

You can help! Please consider making a tax-deductible contribution this year by sending any amount to:

Access to Justice Fund  
Michigan State Bar Foundation  
306 Townsend Street  
Lansing, MI 48933

Your continued support will assure MILS' ability to provide free legal services to those that need it most. Michigan Indian Legal Services participates in the Access to Justice Campaign to increase resources for civil legal aid to the poor in Michigan. The ATJ Campaign is a partnership of the State Bar of Michigan, the Michigan State Bar Foundation and Michigan's civil legal aid programs. Tax deductible contributions to the ATJ Fund are received and administered by the Michigan State Bar Foundation according to the Access to Justice Fund Guidelines located at [www.msbf.org/atjfund](http://www.msbf.org/atjfund).

My gift of \$ \_\_\_\_\_ is to support Michigan Indian Legal Services.

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