



NATIONAL
NATIVE AMERICAN
BAR ASSOCIATION

THE PURSUIT OF INCLUSION:

An In-Depth Exploration of the Experiences
and Perspectives of Native American Attorneys
in the Legal Profession



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Introduction



Mary Smith

President

Native American Bar Association, 2013–2015

The National Native American Bar Association (NNABA), founded in 1973, represents some 2,640 American Indian, Alaska Native and Hawaiian Native attorneys throughout the United States. Yet the legal profession has never formally studied the perceptions, experiences and career trajectories of Native American attorneys. Other studies have included Native Americans in their research, but the limited number of Native Americans participating in these projects has relegated them to a footnote, if they are mentioned at all.

To address this lack of data, NNABA initiated this first-of-its-kind study of Native American attorneys.

In this study, every participant identified as American Indian, Alaska Native, or Native Hawaiian. Over 500 people responded to a detailed survey, and over 50 one-on-one telephone interviews were conducted. The respondents represent over 20 percent of the Native American attorneys in the United States.

NNABA's mission of ensuring the full inclusion of Native American attorneys in the legal profession has added much to the profession's diversity and inclusion. As this study demonstrates, there is still much work to be done. Overall, the findings offer a stark and searing portrait of an entire set of attorneys who have systemically been excluded from full participation in the legal profession. The causes stem from barriers in the pipeline to ineffective recruitment and retention efforts. Nonetheless, the research reveals a young population of Native American attorneys which provides hope for the future.

One of the powerful findings of this study is that Native Americans often feel invisible and share an overarching perspective that their experiences are not valid or real. As one respondent bluntly stated, Native American attorneys are simply “not visible.”

In addition to documenting the failure of traditional diversity and inclusion efforts to reach Native American attorneys, the study sheds light on unique challenges facing American Indians. These challenges come from the legal profession and from other Native Americans, including others in their tribe. From the decision to attend law school and the sometimes powerful pressure to return to practice within their tribe to the overt discrimination that some Native women attorneys experience, it appears that Native Americans are behind other underrepresented groups in terms of inclusion, retention, and representation.

It is clear that more—and different—steps need to be taken to improve the pipeline and to help Native American attorneys to succeed in the legal profession. While the survey findings are unlikely to surprise Native American attorneys, the study will be eye-opening to the legal profession at large.

This research provides the first comprehensive picture of the issues confronting Native American attorneys across all settings, including private practice; government practice in state, federal and tribal arenas; the judiciary; corporate legal departments; and academia. Ultimately, NNABA and others will use the findings in this study to develop educational materials and programs that will help improve the recruitment, hiring, retention and advancement of Native American attorneys in the legal profession.

This research stems from an intensive, several-year effort, which would not have been possible without the help and dedication of the NNABA Board, the NNABA Foundation Board, and the many others—both Native American and non-Native—who helped this research project reach the finish line. I am tremendously grateful to all who have supported this study. I applaud the passion, commitment and bravery of the respondents for sharing their stories and allowing their experiences to serve as a springboard for improving the profession at large.

This research is a snapshot of the present, but it does not have to be predictive as well. Real changes are needed both from an institutional perspective and on an individualized basis. If readers take only a few points from this research, they should realize that Native American attorneys are an important part of the legal profession, are a young population, and are often at the frontlines of pressing legal issues in their communities from protecting tribal sovereignty, to confronting higher than normal crime rates, and developing innovative economic development projects. Forty years from now, hopefully, a different picture will emerge with greater numbers of Native American attorneys not only surviving but thriving across all practice settings.

Native Americans in America

INTRODUCTION



Lawrence R. Baca

Former Senior Trial Attorney in the Civil Rights Division, United States Department of Justice. When he retired, after 32 years of service, he was a Deputy Director of the Office of Tribal Justice.

Native Americans are perhaps more affected by the law than any group in America. Title 25 of the United States Code refers to “Indians.” American Indians/ Native Americans are the only race in America that has a title of the U.S. Code dedicated solely to them and their relations with the rest of America. Indians are mentioned three times in the Federal Constitution by race (Indians or Indian tribes), in the Commerce Clause, the Apportionment clause, and the 13th Amendment.

Though the Tribes, unlike the States, were not signatories to the Constitution, the U.S. Supreme Court found that the tribes were controlled by its grants of authority to the federal government. In some instances, the Court has ruled that even though there is no language in the Constitution that granted the power to Congress to pass such legislation over internal tribal matters, the power exists because it must exist. See *Kagama v. United States*, 118 U.S. 375, 385 (1886).

It is in this legal universe that the necessity arises for Native American lawyers and judges. It is imperative to the national justice system that Native Americans be fully part of the process. When an Indian person is confronted by the American justice system, whether as plaintiff or defendant, victim or accused perpetrator, it is of vital importance to Indians and non-Indians alike that Native Americans are seen as a part of that system as lawyers and judges, as advocates and decision makers alike.

It is crucial to the acceptance of a justice system that any people see themselves as participants in it, not just the recipients of its outcome. Fundamental fairness in any legal system must also have the appearance of fairness that comes with inclusion of all races.

Inclusion for Native Americans has been slow in developing.

There have been only three American Indian federal district court judges in the history of the country. The first American Indian federal district court judge was Frank Howell Seay (Cherokee), appointed by Jimmy Carter in 1979. Billy Michael Burrage (Choctaw Nation of Oklahoma) was the second American Indian federal district court judge. He was appointed by Bill Clinton in 1994. And Diane Humetewa (Hopi) is the third American Indian federal district court judge and the first American Indian woman, appointed by Barack Obama in 2014. She is the only Native American sitting federal judge in 2014.

There have only been three American Indians who have been appointed United States Attorney in the history of America. The first American Indian United States Attorney was Terry Pechota (Rosebud Sioux) in 1979–1980 in South Dakota. The Second was Phil Hogen (Lakota) 1981–91, also in South Dakota. Diane Humetewa (Hopi) was the third American Indian United States Attorney and the first American Indian woman to be named as United States Attorney. She served in Arizona from 2007–2009.

The power to set standards for admissions, the authority to require people who claim to be Native American to exhibit some demonstration of their tribal connections, exists at the highest levels of law schools. Yet, only three American Indians have served as Dean of a law school. Rennard Strickland, Osage and Cherokee and a citizen of the Cherokee Nation, was the first American Indian lawyer to be the dean of a law school. He served as Dean of the School of Law at Southern Illinois University from 1985–88, Dean and Professor, Oklahoma City University, School of Law, 1995–97 and Dean, University of Oregon, School of Law, 1997–2002. Kevin K. Washburn, Chickasaw Nation, in 2009 became Dean of the University of New Mexico School of Law where he served until 2012. Kevin is currently Assistant Secretary for Indian Affairs, United States Department of the Interior. Stacy Leeds, Cherokee Nation, is the first American Indian woman to serve as Dean of a law school. She has been Dean of the University of Arkansas School of Law since 2011.

It is clear that progress is needed.

It does not require many words to speak the truth.

– Chief Joseph, Nez Perce

Demographics of Native Americans in America

In 2007, the United Nations adopted its Declaration on the Rights of Indigenous People which “emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations,” “prohibits discrimination against indigenous peoples,” and “promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development.” The United States officially gave its support to this resolution in 2010 even as it continued to grapple with honoring its provisions within the United States.

While there are many definitions and descriptions as to “who is Native American,” this study relies on the simple yet profound description as adopted by the National Native American Bar Association (NNABA) which elegantly states that: “As the name Native American implies, NNABA represents the interests of all populations indigenous to the lands which are now collectively the United States: American Indians, Alaska Natives, and Native Hawaiians.”¹ In this study, the terms “Native American,” “American Indian,” “Indian,” “Alaska Native,” “Native Hawaiian” and “indigenous people” are used somewhat interchangeably.

According to the U.S. Census Bureau’s American Community Survey in 2011–2012, Native Americans (American Indians and Alaska Natives including those of more than one race) number 5.1 million people or roughly 1.6% of the total U.S. population. This number is on the rise and is projected by the U.S. Census Bureau to be about 8.6 million or roughly 2% of the total U.S. population by 2050. Between the 2000 and 2010 Census counts, the population of Native Americans increased by 1.1 million, a 27% increase in comparison to a 10% increase in the overall population. Among lawyers, Native Americans comprised approximately .2% of all attorneys in 1990 (1,502 attorneys), and approximately .3% of all attorneys in 2010 (2,640).²

Native Americans are 1.6% of the U.S. population but only .3% of U.S. attorneys in spite of the fact that 65,356 Native Americans 25 and older had a graduate or professional degree in 2011 according to the U.S. Census Bureau. While the overall numbers of Native Americans may be smaller than other racial/ethnic groups, the extent of their underrepresentation in the legal profession is stark beyond measure. This “first of its kind” study was designed to bring to light the experiences of Native American attorneys who have been an ignored aspect of diversity and inclusion efforts in the legal profession.

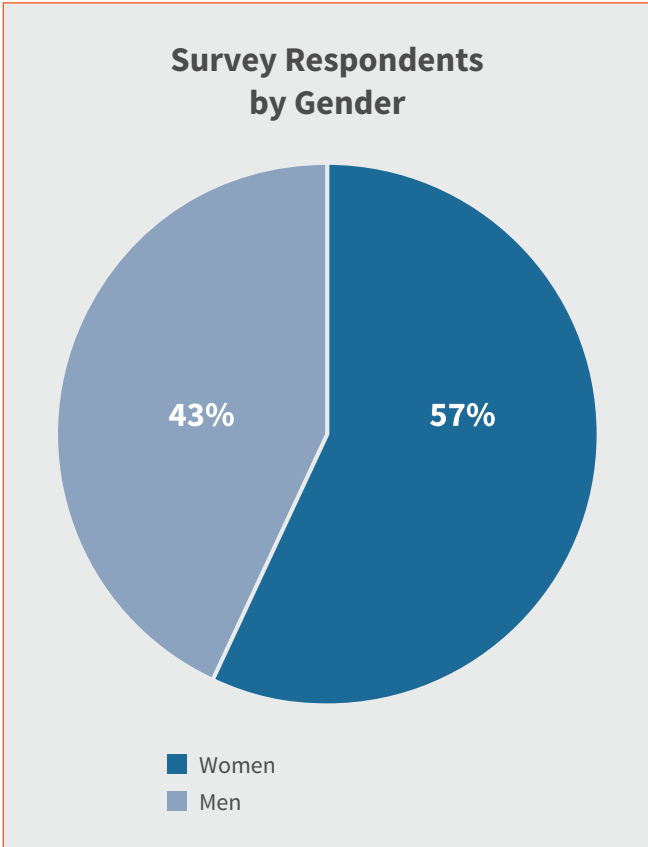
This study is about Native American attorneys and their pursuit for inclusion in the legal profession. This study is also about the profession itself and the choices its leaders will make about how to be more inclusive and how they will address the issues that have historically been unaddressed about Native American lawyers.

I am not surprised to hear how badly many of us are treated in our workplaces and in the profession. It is sad that when [Native American attorneys say] they are experiencing fairness and inclusion, I am shocked. This report is important because it will describe what we are experiencing, but we don’t really need this report, do we? We just need to be able to look around the profession and really see with eyes wide open. We are not visible. This report may be viewed as some revelation of our experiences that have been hidden from people, but it should be seen as what is plainly in front of people if they just choose to see. What’s happening to Indian lawyers is not difficult to explain or understand, but it seems to be a difficult choice for the majority to just make the decision to actually see us.

– Native American Attorney, 2014

Methodology and General Sample Demographics

Quantitative Survey and Survey Sample Demographic



The survey was distributed via several attorney networks with a goal of accomplishing 20% participation by the approximately 2,600 Native American attorneys in the United States which would net a sample with a 99% confidence interval and a confidence interval of +/- 5 points. When the survey closed, 527 Native American attorneys (approximately 20%) had taken the survey. Women comprised 57.18% of respondents, and men comprised 42.82%.

From a generational perspective, Traditionalists (born before 1946) made up 4.59% of the respondents, Baby Boomers (born between 1946 and 1964) made up 32.91%, Gen X (born between 1965 and 1980) made up 47.7%, and Gen Y (born after 1980) made up 14.8%. The Native American attorney population in this study being considerably younger than the legal profession as a whole is consistent with the U.S. Census Bureau finding that the median age for Native Americans was 31.3 in

comparison to the median age for the U.S. population as a whole which is 37.3.

The majority of respondents, 68.78%, were between the ages of 25 and 34 when they graduated from law school with 16.5% graduating when they were 24 or younger. Another 12.69% of the respondents graduated from law school between the ages of 35 and 44, and 2.03% were over the age of 45 at graduation. Based on law school applicant age data from the Law School Admissions Council (LSAC), the average age at which the attorneys in this study graduated from law school is about 3–5 years older than the national average.³

Based on self-reported data, 28.32% of the study participants graduated from a Top 20 law school (at time of graduation), and 29.82% graduated from a law school ranked between 21 and 50 (at time of graduation.) About 22% graduated from law schools ranked 51 or lower, and 20% did not know the ranking of their

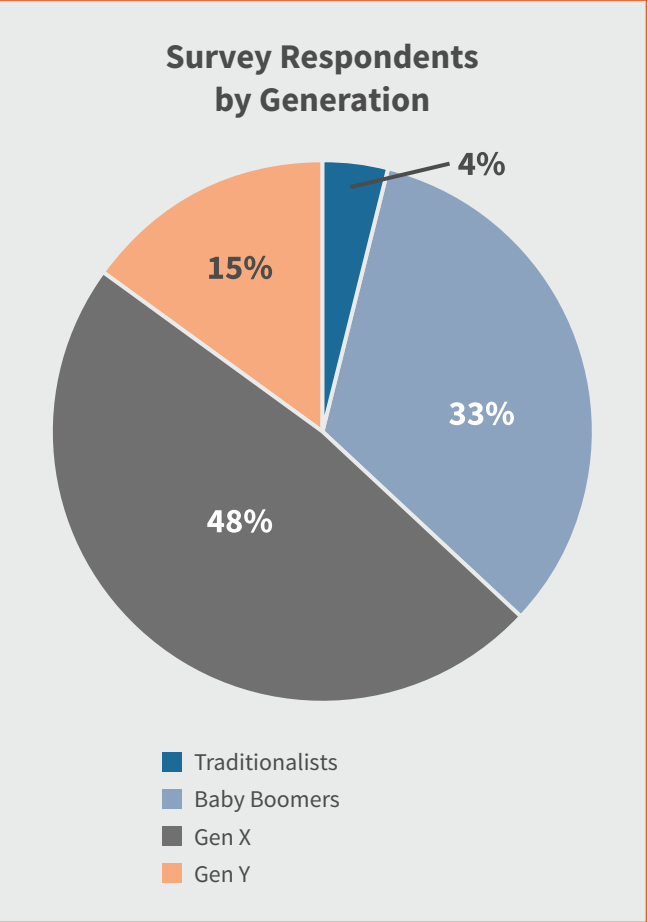
law school at the time of their graduation. About 22% graduated in the top quartile of their class with 7% graduating in the top 10% of the class.

Consistent with the respondent population being younger than the profession as a whole, about 43% of the respondents had practiced for less than 10 years. Specifically, 20.35% of the survey respondents had practiced for less than 5 years; 22.33% had practiced between 6–10 years; 17.37% had practiced for 11–15 years; 12.16% had practiced from 16–20 years; and 27.79% had practiced for more than 21 years. A much larger percentage of women had been practicing 15 years or less (70.59% of women vs. 45.18% of men), and a much larger percentage of men had been practicing for more than 15 years (54.82% men vs. 29.41% women).

The survey respondents overwhelmingly had shared or primary responsibility for children under the age of 18 (29.82% with primary responsibility, 39.58% with shared responsibility and only 27% with no responsibility), and the numbers of respondents who reported having some responsibility for other people’s children, parents and other adults was generally higher than what is found in the profession as a whole. Almost 25% reported having some or more responsibility for other people’s children, 48% reported having some or more responsibility for their parents and about 25% reported having some or more responsibility for other adults. For many respondents, this shared responsibility for people in their tribes/communities who may or may not be directly related to them was culturally and personally important to them. In addition, about 62% of the respondents were the sole or primary income provider for their household.

Additional demographics about the population include diverse personal backgrounds in regards to marital status: 12.24% reported being single/never married with women being twice as likely to be single (15.84%) as men (7.32%); 75% reported being married/living with a committed partner with women less likely to be married (71.04%) than men (80.94%); 10.2% reported being divorced or separated, and 1.28% being widowed. In addition, 2.33% of the respondents identified as bisexual, 4.13% as gay/lesbian, 93.28% as heterosexual, and .5% as transgender.

While the survey, for confidentiality reasons, did not specifically inquire about the geographical location of the respondents, the research firm was able to surmise through additional data that the majority of the respondents represented the 14 states identified by the U.S. Census Bureau as having more

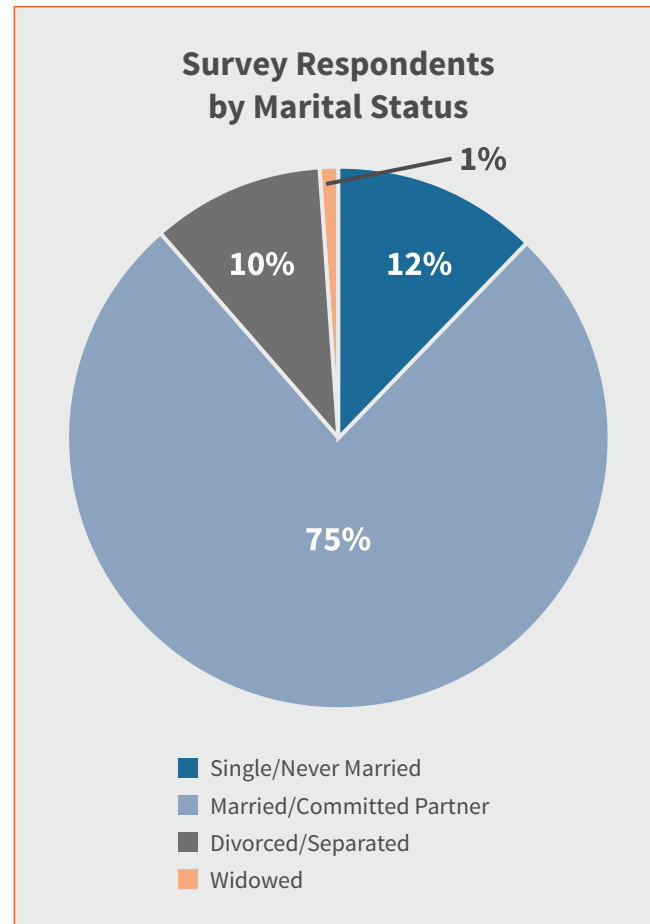


than 100,000 Native American residents: California, Oklahoma, Arizona, Texas, New Mexico, Washington, North Carolina, New York, Florida, Michigan, Alaska, Colorado, Oregon and Minnesota.

The survey respondents represented about 40% of the 566 federally recognized Indian tribes and about 30 additional tribes that are not currently federally recognized.

Focus Group and Interviews

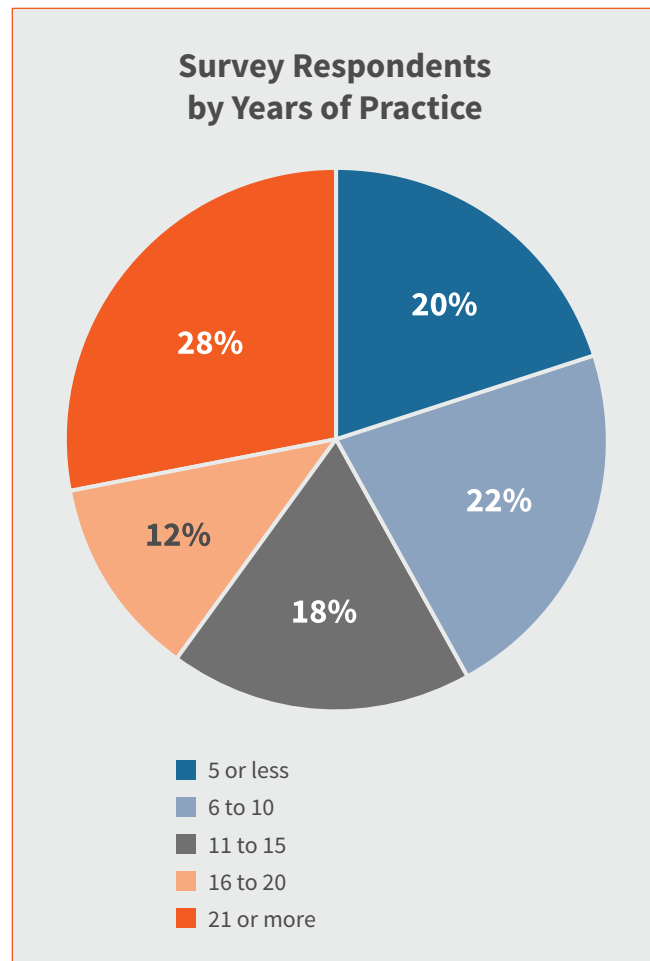
The qualitative component began with one focus group that consisted of a facilitated discussion with Native American attorneys regarding the key issues they felt should be addressed in the study. This was followed by 54 individual self-selected and



confidential telephone interviews consisting of 23 interviews with men and 31 interviews with women. The attorneys volunteered for the interviews and shared their perspectives, observations and experiences on being a Native American attorney in the United States.

Integrated Research Report

This research report is an integrated analysis of the quantitative survey data, the qualitative open-ended verbatim responses in the surveys and the qualitative in-depth information provided by the focus group and interviewees.



The Complexity of Simply Being an Indian

People need to understand who we are today, and the struggles we've had to go through just to remain who we are, just to live our culture. We're part of mainstream America but we still have to live in two lives.

– Chief Steve Adkins, Chickahominy, February 26, 2014

Native Americans have a unique place in American law and society as being the only group of people mentioned by race in the U.S. Constitution and the only group of people to have an individual Title in the United States Code (Title 25). While categorized in different ways within laws and social linguistics, Native Americans are generally referred to as a race/ethnicity under the rubric of racial/ethnic minorities in the United States. Yet, unlike other racial/ethnic minority groups in the United States, “being an Indian” often involves other validations that both illustrate the depth of identity that “being an Indian” has for Native Americans as well as the diffusion of accountability for who gets to “be an Indian” for purposes such as being identified as a “minority” on educational and employment applications.

A general definition of who is an Indian can be found in the Smithsonian Handbook of North American Indians.⁴ There are three components: the individual (1) would have ancestors who were in America before the arrival of Europeans; (2) would be recognized by the community as Indian; and, (3) hold himself or herself out to be Indian.

In addition to being a racial classification, the U.S. Supreme Court has declared that there is a political status to being Native American. As J. Gordon Hylton notes in his article *What Has Become of All the Native American Law Students?*:

“In Morton v. Mancari, 417 U.S. 535 (1974), the United States Supreme Court confirmed that Native American status was not a purely racial matter, but was derived from membership in a tribe recognized by the federal government. Moreover, at least since the Indian Reorganization Act of 1934, 48 Stat. 984 (now 25 U.S.C. §§ 461-79 (1983)), authority to determine tribal membership was vested exclusively in the federally-recognized tribes themselves.”⁵

Some participants in this study addressed the difficulty of (1) identifying as a Native American if not an enrolled member of a tribe or if a member of a tribe that is not federally recognized, and (2) understanding how many Native Americans are actually in a particular law school and/or workplace. To the first point, one participant in our study commented how difficult it was for her “to mark the Native American box because my mother never enrolled herself, and now it’s hard for me to for several reasons, and I identify very strongly as

Indian, but I'm not a member of my tribe officially.” Another participant stated that “law schools and workplaces are so clueless when it comes to what it means to be an Indian. . . . They ask you if you are Indian like they are asking what your hobby is. . . . Being Indian means different things to different Indians, but you aren't Indian simply because your family told you that there was an Indian ancestor way up somewhere in the family tree.”

The manner and the setting in which a person identifies as Native American reveals as much about the perception of Native Americans by the majority as it does about the lack of knowledge by the majority about how Native Americans identify and connect with their Indian heritage. With regards to the survey, only persons who self-identified as Native American were permitted to complete the survey. In other words, 100% of respondents considered themselves to be Native American. Nonetheless, less than 100% of respondents actually held themselves out as Native American in their work places or in social settings. In this survey, 92.37% of respondents said that they identified as American Indian/Alaska Native in their work places or in social settings in comparison to 6.87% of people who said that they did not identify as such even though they considered themselves to be American Indian/Alaska Native. Of the 92.37% who identified as American Indian/Alaska Native, 82% reported being enrolled members of a tribe while 18% reported not being enrolled in a tribe. (Only 18% of those who were not enrolled were eligible to enroll; 61% were not eligible to enroll for reasons ranging from their tribes not being federally recognized to difficulties in proving their heritage.)

The following comments from the study participants illustrate the depth and complexity of what it means say “I am an Indian”:

- *I am not enrolled, but I am 3/16 Native American. I'm an Indian, sort of.*
- *I identify as Indian to non-Indians, but with Indians, I identify myself in connection with my tribe.*
- *I identify but only after I know if it's safe for me to tell people my background. Unless people are used to dealing with Indians, there are really stupid things that people say when they meet an Indian.*
- *I was taken at a young age and adopted out into a non-Indian home. I think I'm eligible [for tribal enrollment], but I'm not sure.*
- *My grandfather's records were lost, and we can't prove his blood quantum.*
- *I identify, but the federal government doesn't recognize my tribe so I'm Indian, but not.*
- *My siblings are enrolled but I can't because I was born after blood quantum requirements changed.*
- *I have to live in a particular place in order to enroll in my tribe, and when I moved, I lost that, and I don't plan to move back. Amazing that the government can tell me that I'm not who I am because I moved.*
- *The conversations around being Indian and talking about things like a Certificate of Indian Blood, blood quantum requirements, a Descendant ID Card, a Descendant Certification letter and other crazy terms make it sound like we have identity by paperwork. It makes me cry sometimes.*
- *I am a citizen of a tribal Nation. Using the term “member” sounds like I belong to the AAA or AARP.*

Social safety and cultural acceptance have added an additional layer of complexity in the identification process. Some Native American attorneys self-identify in their personal lives, but not in their professional lives, while others actively identified in both their personal and professional lives. While 97% of the respondents reported identifying in their personal lives and 93% reported identifying in their professional lives, over 60% of the respondents reported actively thinking about this decision, and many people reported talking about it with friends and family to make a good decision. As one respondent stated, *“I am very careful with my professional identification to either say I am a descendant or omit any mention of tribal affiliation at all. The politics of descendancy are too complex and varied between tribes.”* Another respondent clarified that *“I would not say so much that I actively identify myself as Native American; however, if questioned or the topic arises, I will talk about my identity in that way.”* Many respondents rejected the notion that the choice to identify was an actual choice. One respondent summed up that point of view in this way: *“I am an Indian no matter where I am or who I'm with or what I say. They know I'm not white. They know I'm something. If I don't define myself, someone else will. So, I am quick to talk about being an Indian, my tribe, my work on behalf of my tribe and so on.”*

This study is the first comprehensive effort to gather data about Native American lawyers. It provides important insights and raises additional questions for further study. It is hoped that this study advances the goal of being a diverse and inclusive profession.

Pipeline into Law School/Legal Profession

INTRODUCTION



Stacy Leeds

Dean and Professor of Law, University of Arkansas

Although the total number of Native American law students has steadily increased over the past four decades, legal education in the United States includes very few Native American law students, professors and/or administrators. The Native student population remains well below one percent of the total J.D. enrollment in U.S. law schools. Across the more than 200 ABA accredited law schools, fewer than 30 law professors are members/citizens of an Indigenous nation, and there is currently only one Native American law school dean.

Pipeline initiatives have successfully contributed to an increase in Native American law student enrollment over several decades. The result has been a slow but steady increase in the percentage of Native attorneys within the overall legal profession. However, the total number of Native American attorneys remains incredibly low and the Native American community and their tribes remain significantly underrepresented in both legal education and the legal profession.

The pipeline program that is appropriately credited with producing the most Native American law students is the Pre-Law Summer Institute (PLSI) of the American Indian Law Center which is housed at the University of New Mexico School of Law. The two-month summer boot camp for students who will matriculate to law school the following fall has been the first step toward success for many of today's iconic Native American lawyers and leaders.

Other pipeline programs, such as those funded by the Law School Admissions Council (LSAC), CLEO, and individual law schools seek to interact with minority undergraduates at earlier stages of their academic development with an eye toward law school recruitment. The continuation of these programs is a critical component in maintaining the slow gains in Native American law student enrollment that have been developed over time. Future gains will require a more sustained and expanded effort in both the public and the private sector.

Many Native American attorneys report that their decision to pursue legal education was strongly influenced by personal interaction and the persuasion of family, mentors, lawyers or other professionals. Community and social network influence must remain a strong and central component in the pipeline that will produce future law students and legal professionals. A strong support system is necessary to ensure law student success and combat attrition. Given the dearth of Native law professors or administrators in legal education,

there is a crisis of student support that needs attention throughout a student's time in law school and in the early years within the profession.

Barriers to legal education and barriers to the profession for Native students and new attorneys mirror those seen in other populations, including financial challenges, the navigation of admissions and career services processes, and pressures of overall academic success. Native students also are more likely than their peers to be first-generation college or law students, and thereby they have no support in navigating law school or the entry into the profession.

Veterans were the first wave of Native attorneys, entering legal education on the GI Bill. These pioneers were most often the only Native students in their law schools. Even into the early 1980s, there was on average, one Native law student per entering class for each of the U.S. law schools. We are just now beginning to see the emergence of families that boast two generations of Native American attorneys. The pipeline is there because of the hard work of a few programs. But the pipeline is, by comparison to other communities, in the early phases.

In our every deliberation, we must consider the impact of our decisions on the next seven generations.

– Iroquois

The seeds for the experiences of Native American attorneys today were sown many generations ago. The confusion around and the dearth of Native American representation in the law today is the result of the lack of attention and resources dedicated to the full inclusion of Native Americans in the legal profession in spite of the focused attention on diversity and inclusion in the profession since the 1970s. The following data from the American Bar Association on Native American law students between 1979 and 2010 sheds light on how the seeds planted decades ago affect Native American lawyers today and how the seeds we are planting today will affect Native American lawyers for years to come.

Academic Year	Number of Schools	1st Year J.D. Enrollment	2nd Year J.D. Enrollment	3rd Year J.D. Enrollment	4th Year J.D. Enrollment	Total Enrollment
1979–1989	169	171	110	100	11	392
1989–1990	175	220	147	143	17	527
1999–2000	182	342	294	312	30	978
2009–2010	200	451	410	383	29	1,273

While the number of Native American law school enrollees per year has generally risen over the years, from 392 in 1979 to 1,273 in 2009, the percentage of Native American enrollees in relation to overall law school enrollees has been miniscule, rising from .32% in 1979–1980 to .82% in 2009–2010. The statistics from the American Bar Association are the only statistics available, and there is a degree of unreliability in these statistics as the result of a phenomenon called “box-checking.” This is where an applicant to law school, even though he or she has no factual basis to claim being Native American, but nevertheless “checks” the Native American box on the law school application in the hope of receiving some sort of preferential treatment. One participant commented on this phenomenon: “Some people want to be an Indian because they think it’s cool in some way, others want to be an Indian because they think they will get an advantage in college admissions or something, but no one wants to be an Indian when it comes to actually experiencing life in America, especially in the legal profession, as an Indian.”

NNABA has attempted to deal with this “box checking” in formal and informal ways. As J. Gordon Hylton summarizes:

“On April 8, 2008, the National Native American Bar Association (NNABA) adopted a resolution denouncing the fraudulent self-identification of law school applicants as Native Americans...[NNABA] called upon the LSAC [Law School Admissions Council] to require law school applicants claiming Native-American status to list their tribal affiliation and Tribal Identification Number when they register with the LSAC as part of the application process...In late 2010 and early 2011, the NNABA appealed directly to the American Bar Association’s House of Delegates and Committee on Legal Education and Admission to the Bar...On Monday, August 8, 2011, the ABA’s House of Delegates approved a resolution urging the Law School Admissions Council and ABA-approved law schools to require additional information about people who indicate on their registration for the Law School Admission Test and law school applications that they are Native American...The ABA resolution has no binding effect, so it is still an open question as to how the LSAC and the law schools will respond.”⁸

In reaching out to 25 randomly selected law schools as part of this study and receiving 18 confidential responses to the inquiry, this study found that none of the schools looked for any criteria beyond the self-identification of applicants to determine whether an applicant is “actually” Native American. While the numbers are not fully reliable, the experiences of Native American attorneys in this study do help to highlight ways in which the profession can better understand the barriers into law school for Native Americans and what information and support systems can effectively increase the actual number of Native Americans who successfully graduate from law school and enter the legal profession.

Differences in Motivations/Incentives for a Law School Education

The unique context of Native American identity and membership in tribes makes the pipeline into law different for Native Americans than it is for other groups in the majority and among other racial/ethnic groups. Understanding this difference is foundational to inspiring and motivating more Native Americans to consider law school and the legal profession.

The Law School Survey of Student Engagement (LSSSE)⁹, an extensive survey of what motivates students to attend and work hard in law school found that:

- “Among first year students, the most influential factor in the decision to enter law school was the desire to have a challenging and rewarding career. Students also were motivated by the opportunity to further their academic development and to work toward financial security.”¹⁰
- “77% of all students said having a challenging and rewarding career strongly influenced their decision to attend law school. 61% of all students were motivated to work hard during law school by a desire to be competitive in the job market. By contrast, fewer than half of all students (47%) reported that an inherent interest in the material motivated them to work hard in school.”

While the above generally emerge as the primary reasons to attend law school and enter the legal profession, these were not the motivations expressed by the overwhelming majority of respondents as to why they went to law school and chose to enter the legal profession. When asked about their motivations to pursue a legal education, the Native American attorneys who participated in this study were more likely to report that they wanted to give back to their tribe, fight for justice for Indians, and fight for the betterment of Indian people than they were to report wanting a rewarding career for themselves, advancing their own interests, or seeking financial security. While many attorneys reported the individually beneficial motivators as reasons for attending law school, these were not the primary motivators for the majority of Native American attorneys who participated in the study. The following representative sample of perspectives from the study participants illustrate how the motivations to attend law school are more connected to their identity and heritage:

- *Growing up on a reservation and seeing how life was difficult for Native people, I wanted to work for my tribe and community in a meaningful way, and law was a way to really do that because everything we had to fight for, we had to fight through the law for it.*
- *To do something about the poverty on reservations and about the unfairness of the Indian laws that Indians have to live under.*
- *A desire to help empower Native communities to self-sufficiency through protection of original sovereign rights and a respect for traditional cultural life ways.*
- *All Native Americans have to defend their rights because no one else will. I went to law school to do that.*
- *Since I am a Tribal member, it was my goal in going to law school to represent tribes.*
- *A sense that tribes and tribal people have a continuing need for legal advocacy and representation and we don't have people who want to help us.*
- *Interest in Indian law; belief that help was needed in Indian Country by those who understand it.*
- *Growing up in my Pueblo I saw how law impacted many facets of our lives and I knew that becoming an attorney would be beneficial to helping my people as well as other Native peoples.*
- *There are people from all backgrounds who want to help minority groups with all kinds of rights, but if Indians don't go into law, we will suffer because the people who go into Indian law who are not Indian don't always have our best interests at heart.*
- *The great need that our people have to protect our rights, resources and sovereignty for the next seven generations!*

This difference in why many Native Americans may go to law school is fundamental to understanding how to inspire and motivate more Native Americans to consider law school and the legal profession. The survey data and the interview responses revealed that when Native Americans consider the law, they are primarily

focused on practicing Indian Law. Several attorneys in the study talked about how students who may not be attracted to Indian Law would not consider the law generally until they were given the opportunity to see how their participation in other areas of the law could also help their communities economically, politically, and in a myriad other ways. One participant talked about an experience with a Native American college student:

"[The student]...told me that he was not interested in the law because he did not want to become an Indian lawyer and wanted to go into business. When I took him to meet with a friend of mine who did corporate law at a law firm, this student was awed. He had no idea that everything he wanted to do could be done as a lawyer. The kids only see Indian lawyers as lawyers that do Indian law or maybe criminal or family law, but there are a lot of kids in this upcoming generation that would be amazing as transactional lawyers, as litigators, as tax lawyers, etc."

Thus, while giving back and helping their communities through the law is a significant motivator for Native Americans considering law school and the legal profession, the perception that a career in the law is a career in Indian Law is a primary challenge to encouraging more Native Americans to consider the legal profession as a professional choice. Active initiatives to expose Native American young people to all of the various areas in the law through which they can contribute to their communities will increase the number of people who are interested in and motivated to attend law school and enter the legal profession.

Information/Support Systems for a Law School Education

Once Native American students are motivated to consider law school and the legal profession as viable choices for themselves, they then have to access the information and support systems they need in order to successfully enter into and thrive in legal education. The nature of and access to these networks are revealed by examining the factors that have historically been successful in leading Native American students to law school and understanding the support systems the students have needed in the past to successfully negotiate law school and enter the legal profession as a competitive contender for success.

When asked what factors influenced them to go to law school, 37% of Native American attorneys reported that connections made and/or information received through family members and friends was an important influential factor followed by 22.44% who reported that connections made and/or information received through tribal networks was an important influential factor. About 21% of attorneys reported that recommendations from legal professionals (that they met through various channels) also were a significant factor in helping them choose law school and a legal career. For many of these attorneys, the influence from family, friends and tribal networks was very focused and directed in ways that made them feel that pursuing a career in the law was almost mandatory for them. The following factors were also cited by attorneys as influencing them to attend law school:

Factors That Influenced Native Americans to Attend Law School	
Recommendations from legal professionals	21.20%
Participation in student government, debate or mock trial programs	16.71%
Summer internship experience	15.71%
Recommendations from college professors	13.97%
Connections made and/or information received through business/professional networks	11.72%
College and/or law school career placement office	10.47%
Connections made and/or information received through alumni networks	3.49%

Several attorneys also noted that attending the Pre-Law Summer Institute (PLSI) gave them the motivation and information they needed to seriously consider law school and an eventual legal career. Of the 30% of the survey respondents who had attended PLSI, the majority felt that the program had greatly contributed to their decision to attend law school as well as their ability to enter law school prepared and ready for success.

A few attorneys reported a feeling of destiny or spiritual guidance that led them to the law in spite of the fact that they did not have any of the aforementioned sources of information, connections, or other support systems. The majority of attorneys who reported this source of motivation were Baby Boomers or Generation X.

Active service in the military and in law enforcement also emerged as a factor that influenced the decision to attend law school and become an attorney. Overall, the paths that led these attorneys to law school were paved with a deep desire to give back to and strengthen their communities, and the primary factors that influenced their decision to apply were connections and information received from family, friends, tribal networks, and legal professionals.

When asked about barriers to attending and succeeding in law school, the primary barriers cited by the attorneys in this study were:

- *financial (application costs, LSAT preparation costs, tuition costs and room/board costs);*
- *making informed decisions about the best law schools to attend (this related to status and cost of law school);*
- *navigating the application process;*
- *knowing how to prepare to be successful in law school; and*

- *creating the social networks in law school necessary for getting the information and resources to be successful.*

Many of the survey participants were actively involved in Indian-based or other minority student groups in law school. They reported that their participation in these groups helped them feel accepted and supported, but did not increase their access to information and resources they felt their majority counterparts received that were critical for success in school.

Professional Development Opportunities and Challenges in the Profession

INTRODUCTION



Thomas W. Fredericks

Senior Partner, Fredericks Peebles & Morgan LLP, a forty-two year (1972–2014) Indian law practitioner who started at the Native American Rights Fund, continued at the Department of Interior as Associate Solicitor, later as Assistant Secretary for Indian Affairs and on to private practice since 1980. Mr. Fredericks also served as the inaugural president of NNABA.

My beginnings in the practice of Indian law had an initial goal of empowering Indians and has steadily evolved over the past 40 years. Early in my professional career as the Director of the Standing Rock Sioux Tribe's Office of Economic Opportunities, I witnessed the strong influence the tribal lawyer from D.C. had when he shot down two projects I had worked on for months in a matter of minutes. The initial motivation and impetus for me and probably a handful of other Indians to go into law was to replace these old claims lawyers. Each one had one or more tribes that they would paternalistically refer to as "my Indians." We thought we would do a better job for our own tribes and Indians. So that's what we did; we set out to empower Indians. A major goal in this strategy was creating the Native American Rights Fund (NARF) here in Boulder. NARF had as its goals protecting tribal sovereignty, Indian treaty rights, land, water, hunting and fishing rights, and the empowerment of tribal government to be the primary government in Indian Country.

It began with establishing the National Native American Law Student Association 40 years ago. I recall Martin Seneca was the President, I was the Treasurer, and Alan Parker was the Vice-President. Gerald Brown from Blackfeet was also involved, and our first meeting was in Albuquerque, New Mexico. While at NARF, I was involved in the creation of Coalition of Indian Controlled School Boards. We created the National Native American Bar Association (NNABA) of which I was the first President, the American Indian Higher Education Consortium, and the Council of Energy Resource Tribes. The goal was to create entities that empowered Indians to take over their own affairs. At the same time and on the federal front, the era of self-determination was led by Sargent Shriver as the head of the Office of Economic Opportunity (OEO). His task was to eradicate poverty and together with tribal employees funded by the OEO, meaningful programs were developed during this time. Education was a priority, tutors were provided, head start was a priority, community work and community centers took center stage.

The Housing Improvement Program was established and economic development came to the forefront. The biggest benefit of the OEO program was the empowerment of tribal governments by granting the tribes funds to provide essential governmental programs to their people and be totally responsible for running the grant

programs including hiring and firing and accounting for all their grant programs. Not only did OEO empower tribal governments, but also Dr. James Wilson, working with the University of New Mexico Law School funded the Indian law program that recruited and placed Indians in law schools throughout the nation.

All of these efforts resulted in steady progress as more Indians began to take their rightful place as professionals in all sectors of tribal, federal, state, and local governments. Indian lawyers, in particular, began serving their tribes as lawyers, chairmen, and professionals. As a first-year lawyer, I was selected by the Coalition of Indian Controlled School Boards to sue President Nixon for not appointing members to the National Indian Advisory Council. I am happy to report that we were successful in getting the advisory committee members appointed notwithstanding eighteen cases of string cites that stated we could not sue a sitting President.

In the 70s and 80s, the courts served as an important tool for tribes and lawyers practicing Indian law. The courts stood behind us when we did not receive the expected result from Congress and the Administration. These efforts in the courts resulted in significant cases like *Williams v. Lee*, in which the Supreme Court held that the tribes had the right to tax, enforce both civil and criminal law over reservation lands and the people on these lands, and generally exclude state authority from the reservations and *Arizona v. California*, in which we advocated for and achieved Indian claims receiving first priority in exchange for the recognition that states had presently perfected rights to water usage.

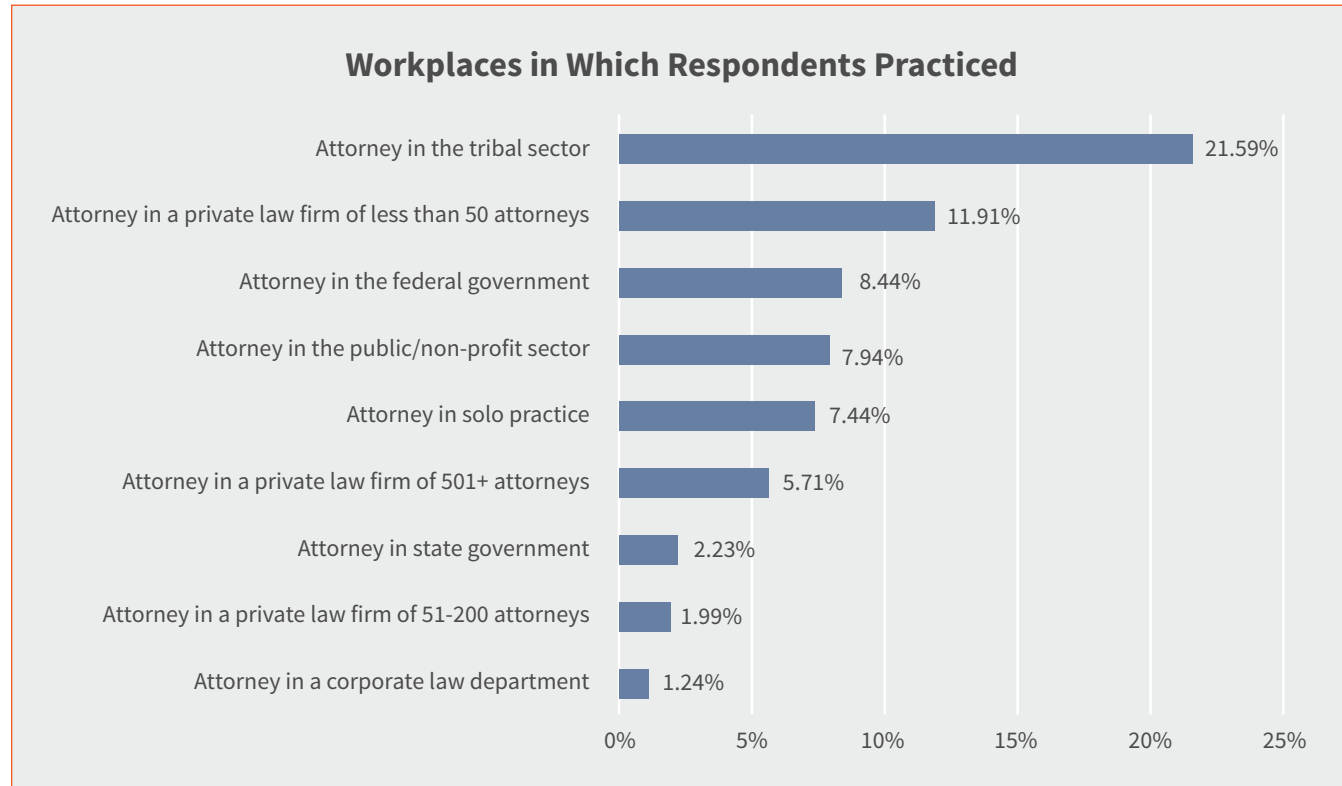
At the same time, we were still fighting against paternalism and paternalistic policies. For example, the Department of Housing and Urban Development (HUD) was pushing housing development for tribes that would have placed us in 400-unit high-rise clusters. However, tribes, through their professionals who were increasingly tribal members, advocated against the proposal because their preferred living style was to live out on the prairie, not clustered in high rises. This argument won the day for tribes, and although it is more expensive per house to build, HUD homes were provided as single units in the open prairie. At this point in time, lawyers and other tribal professionals experienced first-hand the benefits of working within the system and working for the system. This is one example of why it makes sense for Indians to work in tribal law settings in the tribal, federal, and state systems. The next step is for tribes to continue to hire Indian attorneys for in-house and outside legal counsel.

While much has changed since I was in law school and progress has been made, there is still much to do. Remember, Indians have been practicing law for about 40 years and while it is a long time, it is also a very short period of time when considered in the larger historical context. The challenge for today's Indian attorneys is to stay the course. When coming into the sphere of law, be patient, diligent, and perform to the best of your abilities so that clients are comfortable hiring Indians. Remember that there may be set backs but persistence will pay off. While the challenges that you face today may be different than what we faced 40 years ago, they are worthwhile causes.

I applaud the NNABA board for commissioning this study and I wish every Indian lawyer the best of luck in whatever chosen field they pursue with their training. I hope we can look back in another 40 years and reflect on the advances that have been made in the profession.

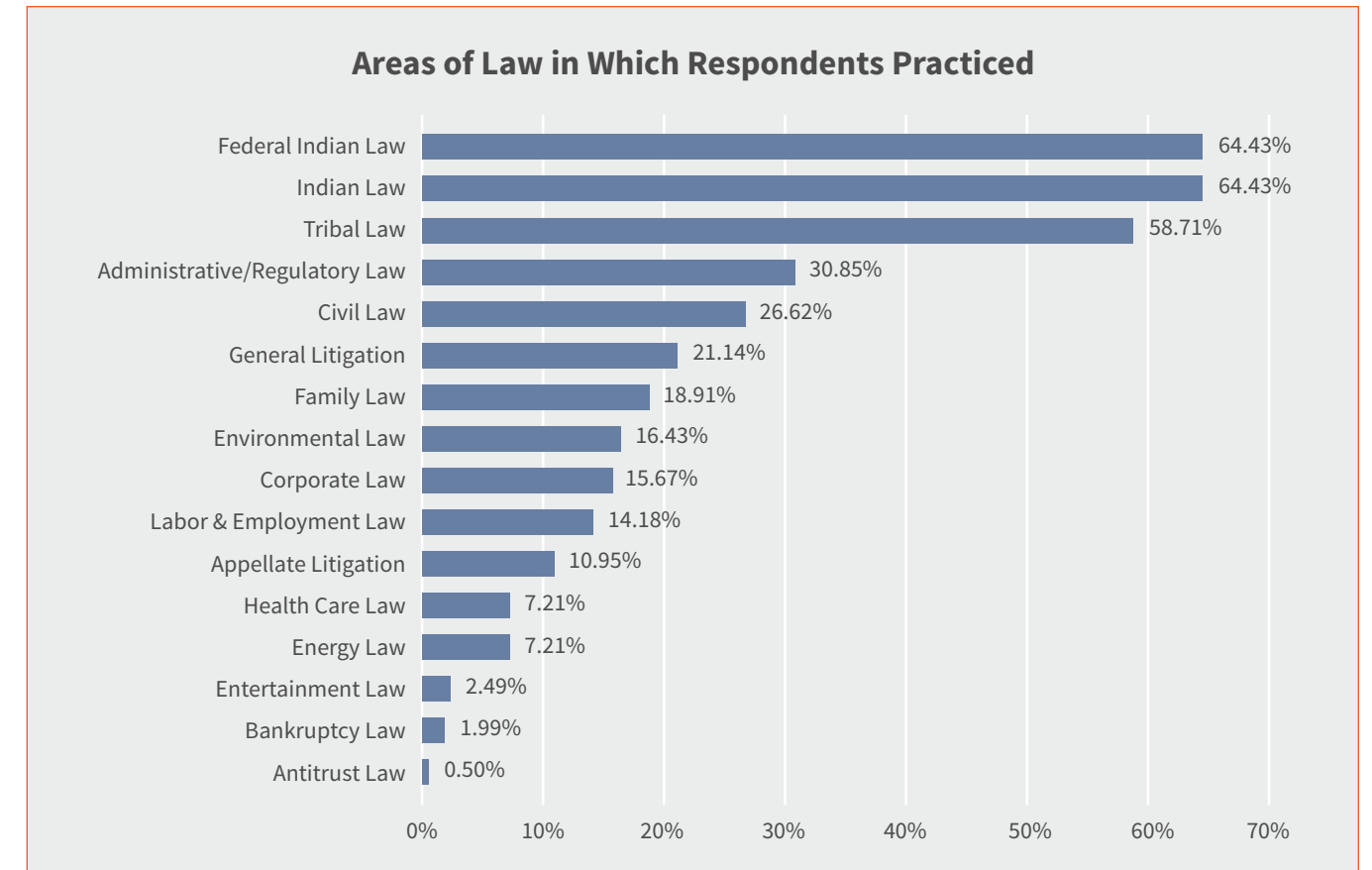
The Landscape

The motivations for attending law school as well as the primary factors facilitating the decision to attend law school greatly impacted the choices that Native American attorneys made regarding where they worked and the areas of law they selected.



The survey revealed that the percentage of men and women employed in most sectors were relatively equal. There were two areas of key differentiation by gender in that a larger percentage of women than men (24.89% to 18.67%) worked as an attorney in the tribal sector, and a significantly larger percentage of men than women (16.27% to 8.6%) worked in a private law firm of less than 50 attorneys. The presence of gender differences in the top two sectors for employment of Native American attorneys signals the differentiated experiences of men and women within the larger community of Native American lawyers, experiences that are clearly articulated in the attorneys' reflections of their varied experiences in the legal profession.

For the overwhelming majority of respondents, their primary reasons for entering the legal profession (serving their tribes/communities, fighting injustices against Indian people, fighting unfairness in Indian law, etc.) played a direct role in the selection process of where to work and in what legal area to practice. As borne out by the data above, this direct connection between motivation to attend law school and selection of legal practice results in the majority of Native American attorneys practicing Indian/Federal Indian/Tribal law¹¹ in the tribal or related sectors. Attorneys practicing in other areas such as administrative, civil rights, family law,



and environmental law also reported working with Indian law or tribal laws within these various fields. Even the majority of attorneys who worked in private law firms and as solo practitioners reported working in areas related to Indian law in some way.

While the majority of these choices were voluntary and deliberate, several respondents reported that even when they expressed a desire to practice in other areas, their employers would ask or pressure them to contribute to the Indian Law practice. Other attorneys reported that, as Native American attorneys, the only jobs for which they were recruited were jobs in Indian/tribal law fields working directly for the federal government, their tribes, or firms that actively deal with both.

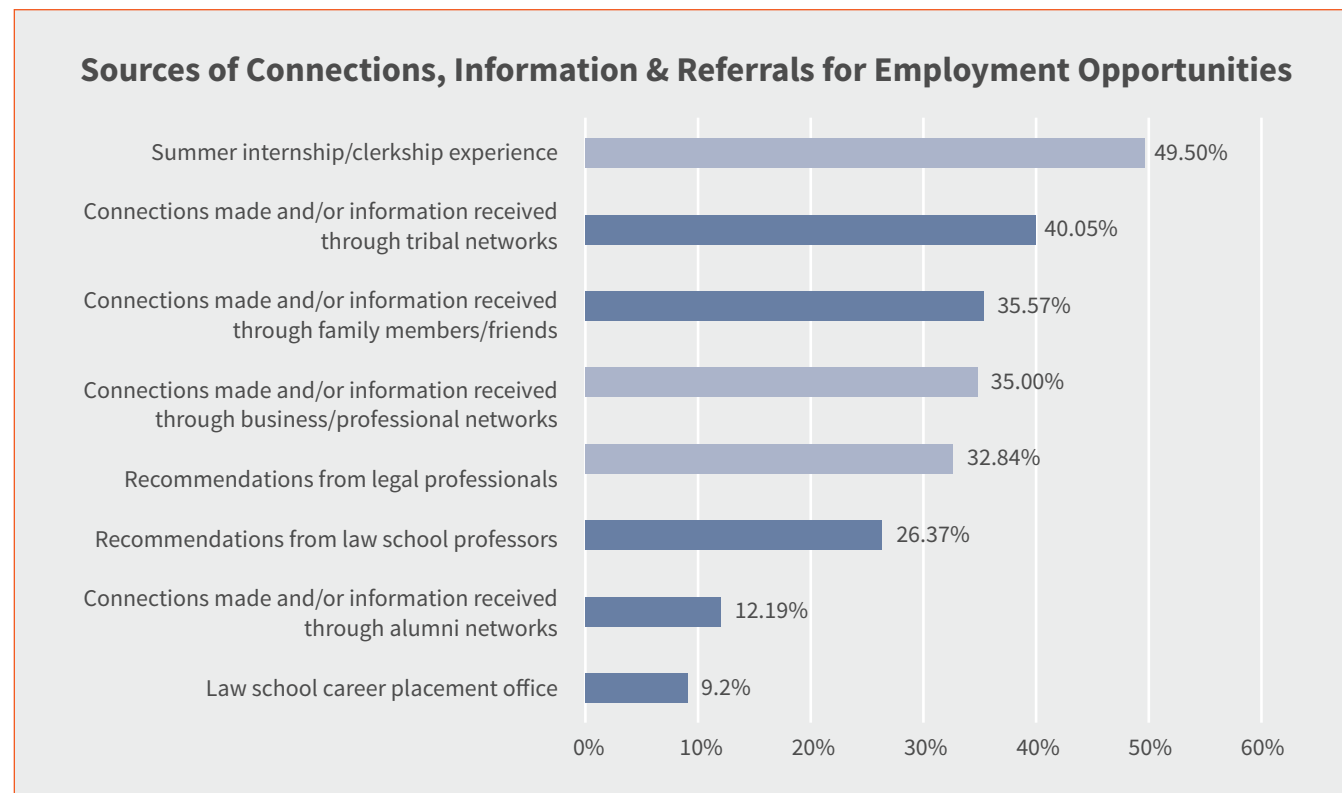
The impact of being pushed into this area of law was summarized effectively by one attorney who reported:

“The discrimination... is more based on being pegged as the Indian or the tribal person (therefore she can't do anything else, that's her niche) than on outright racism. Likewise, the lack of advancement or appropriate compensation concerns are more based on the observation that there isn't often a lot of upward mobility for such a specialized worker, your niche either exists or it doesn't.”

Another attorney stated:

“The biggest thing is the lack of knowledge about Indian Law by those outside of the field. People presume that is so different, thus that you wouldn’t be proficient in anything else. I honestly feel that my resume being stacked with almost solely Indian Law/Lobbying work has prevented me from obtaining positions not having to do with Indian Law. As much as I am passionate about Indian Law, my biggest career regret is focusing so much in it. I am literally stuck now. No advancement opportunities, no job opportunities, no business loan opportunities due to my debt. Stuck and despair are the two words that freely come every time I discuss my position in life at this time, and I don’t perceive it to change anytime in the near future if ever.”

reported by the attorneys included Native American bar associations, the American Bar Association, state and local bar associations, military connections, and college/community organizations to which the individuals belonged.



For many of the respondents, their career choices were also influenced heavily by the connections through which many of them secured their initial and subsequent employment opportunities. As illustrated by the chart above, a significant majority of attorneys connected with employment opportunities through family, friends and tribal networks.

Three sources (summer internship/clerkship experience, connections made and/or information received through business/professional networks, and recommendations from legal professionals) are particularly interesting because many attorneys referred to these as critical sources for employment opportunities but also added that these sources were derived from connections in their tribal networks. Additional sources

Personal Experiences of Satisfaction, Inclusion and Alienation in the Profession

INTRODUCTION



Lawrence R. Baca

Former Senior Trial Attorney in the Civil Rights Division, United States Department of Justice. When he retired, after 32 years of service, he was a Deputy Director of the Office of Tribal Justice.

My “welcome to Indian law” moment came in the library of the United States Attorney for the District of South Dakota in my first year out of law school. I was representing the United States and the federal judge who was to hear argument on my motion the following morning sought me out in that corner of the federal building in Rapid City. Putting his finger in my face he said “Boy, are you Baca? Boy, I read the papers you filed. Boy, we don’t have a problem out here with our Indians until you people from Washington come out and stir them up.” And then he called me “boy” a few more times.

We are demeaned. We are undervalued, we are segregated into “Indian positions” and we are often just plain discriminated against because of our race. And yet we stay. Too many of the participants in the survey expressed dissatisfaction with their jobs for all of these reasons. Some moved on to other positions, some left the law, and yet some stayed. Far too many Indian women expressed the double burden of race- and gender-based discrimination. Even more regrettable is that some Indian women attorneys faced gender-based discrimination from Indian men.

There are many reasons to stay in a position that you really do not like and where they really do not like you. When you are the first Indian, you represent. There is a burden you carry as “the first” that is unlike any other burden in your career. Failure of you as an individual reflects on your entire race. The talk around the water cooler is often about the outsider that was just hired. If an Indian attorney fails, the discussion is, “Well we hired an Indian but they just can’t cut it here.” Unfortunately, it is a unidirectional conversation. When you succeed as first Indian, you are simply holding off any reinforcement of prejudice. You are not, as you would think, shattering the barrier. They do not gather for drinks and say, “Hey, we hired that Indian and those guys are pretty good litigators...Let’s hire another.” When you fail, you lend proof to their preset belief that all of “you” will fail. When you make it, you do not defeat the belief that the collective “you” cannot make it, you only kick out one of the pillars that support their prejudice.

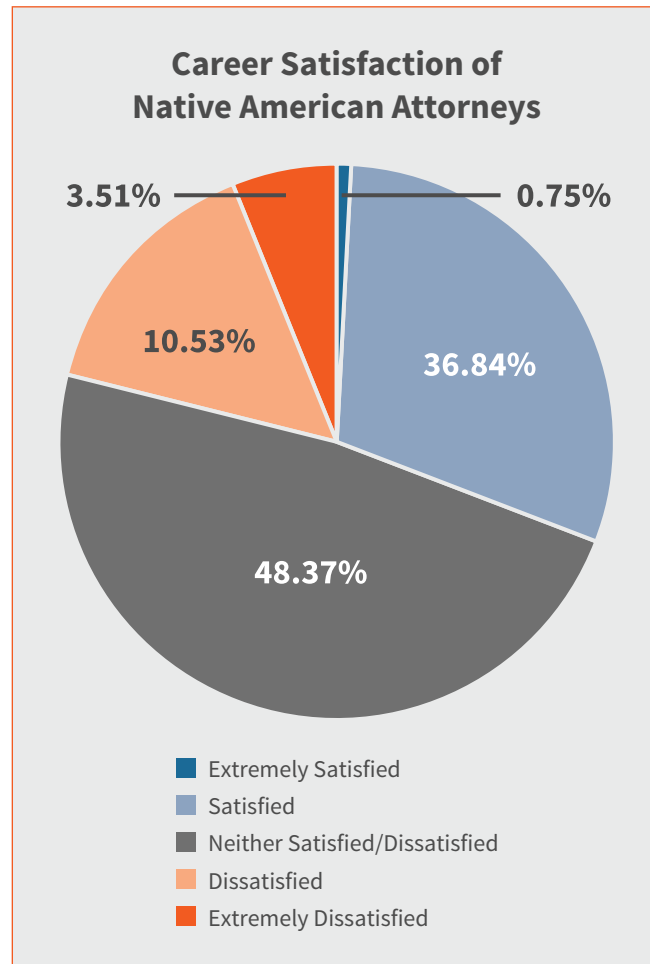
There is a greater likelihood for Native American attorneys that they will be the first. The first Indian hired into your law firm or agency; the first or the only Indian teaching at your law school. When you are an only two

things are true. One is that any prejudicial actions or remarks are received more strongly by you as the solo. The other is that you will have prejudicial actions or remarks aimed at you. Some may simply be the making of jokes at your expense because they have no other method of coping with the outsider. Some may be straight-forward race-based discrimination because they do not want or they fear the outsider. And yet we stay.

Maybe we stay because we have been so thoroughly demeaned by the people we work with that we fear that we cannot succeed anywhere else. Maybe we stay knowing that we have a longer term role to play just by surviving. We often can be effective in protecting the rights of other Indians in the face of personal discrimination. So ultimately, we win when they are not able to demean us enough to make us leave. We believe our perseverance will hold off the next Indian hired from facing what we faced. We believe that being there will help the next Indian cope and survive. And so we stay.

We look forward to the day when professional fulfillment in a job well done is the only reason that we stay.

Overall Career Satisfaction



Overall, the attorneys in this study were satisfied with their careers; however, the most satisfied attorneys were working in the tribal sector, and the least satisfied attorneys were working for the federal/state government or law firms. In firms specifically, the feeling of not being included in firm networks was reported as a high source of dissatisfaction. That said, the attorneys working in the tribal sector reported that tribal politics/cliques, overwhelming workloads, and not being able to make an impactful difference were cited as primary sources of dissatisfaction even in the context of being generally satisfied.

In the government and law firm sectors, dissatisfaction ran higher primarily due to a lack of personal connection that drove satisfaction for attorneys working directly for and with the tribes. According to one attorney working in the federal government, “*working as a federal agency attorney has been miserable. No real experience in legal practice, pay freeze, pointless bureaucracy, poor managers and a system unwilling to improve/make changes.*” An attorney working in a law firm talked

about how the work directly pitted his personal interests against his professional responsibilities:

“Working as an attorney in Federal Indian Law in a major market, the projects are driven by the desires of the clients with the most money—often the goals and priorities of these clients are not aligned with and or are damaging to tribal clients who need help the most...Too often the glamorous issues that got the most legal traction were not representative of the more “grassroots” tribal population...leading me to conclude that employment as an attorney in Indian law was not the best way to be an advocate.”

The gender differential between men and women regarding career satisfaction was pronounced and demonstrated that, as one Native American female attorney noted, “*not all Indian lawyers experience legal work in the same way, but women definitely experience it worse than men.*” Men were significantly more likely to report being “extremely satisfied” with their careers (48.48%) compared with their female colleagues and counterparts (27.15%).

One interesting note in regards to satisfaction is that several attorneys commented that they measured satisfaction in a collective rather than an individual way. As one attorney explained, “*I do not judge my career on personal satisfaction which is always changing. The work is not about me but about much more including family and community.*” Another attorney stated:

“This work is beyond frustrating sometimes, so I’m not satisfied in a traditional way...I ask the people in my tribe if they think what I’m doing is making a difference for my people...If they say yes, then, I’m satisfied...If they say no, it doesn’t matter how I feel about what I’m doing...I have to change it to make a difference.”

A few respondents pointed out that, while the survey choices around satisfaction included a “neither satisfied nor dissatisfied” option, there was no “both satisfied and dissatisfied” option. One attorney who felt that such an option would have captured his experience better stated that working as an advocate for Indian lawyers when there is a lack of awareness regarding advancing the success of Indian attorneys brings satisfaction in the small wins and dissatisfaction with what has to be endured in order to bring about those small wins. Another attorney described her satisfaction with what she was able to achieve while suffering through “*extremely dissatisfied moments*” of being disrespected as an Indian in majority groups and as a woman in “*groups where I am supposed to be with my people.*” This “both/and” option was particularly mentioned by attorneys who had transitioned in and out of very different types of positions in the course of their career. For example, an attorney who transitioned from the public sector into the judiciary was very satisfied with his experience on the bench but very dissatisfied with his experience in his previous position. While this question was crafted to gauge overall career satisfaction, the nuances and clarifications articulated are critical to understand what satisfaction means, how it varies by context, and how it co-exists with dissatisfaction in very real ways.

Experiencing the Profession

Although the overall satisfaction rates for Native American attorneys were generally high, the numbers of men and women who had experienced exclusion, disrespect, and marginalization in their workplaces was also high:

- 40.65% of the attorneys overall in the study reported experiencing demeaning comments or other types of harassment based on their race, ethnicity, and/or tribal affiliation;
- 33.63% reported experiencing one or more forms of discrimination based on their race, ethnicity, and/or tribal affiliation;
- 30% reported that they felt they had been treated differently from their peers because of their race, ethnicity and/or tribal affiliation;
- 25% of attorneys overall in the study reported experiencing demeaning comments or other types of harassment based on their gender;

- 23.3% reported one or more forms of discrimination based on their gender; and
- 20% reported being treated differently from their peers based on their gender.

Attorneys who were not working for or with their tribes directly were twice as likely to report the above. Attorneys who worked for or with their tribes still reported experiences of harassment, discrimination, and differentiated treatment based on tribal hierarchies, socioeconomic status within their tribe, and tribal politics.

These overall numbers are intolerably high and indicate the experiential challenges faced by Native American lawyers in their workplaces. Moreover, important gender differences emerged that highlighted how Native American female lawyers' experiences differed from their male counterparts' and why women's satisfaction levels were so much lower than men's.

- More men than women (48.6% to 36.12%—a differential of 12.48%) reported experiencing demeaning comments and/or other types of harassment based on race, ethnicity or tribal affiliation; however, significantly more women than men (37.79% to only 3.35%—a differential of 34.44%) reported experiencing demeaning comments and/or harassment based on gender.
- Many of the women also reported that the gender-based comments and/or harassment were from the Native American men with whom they worked.
- Similarly, more men than women reported experiencing discrimination based on race, ethnicity or tribal affiliation (38.01% to 30.4%—a differential of 7.61%); however, significantly more women than men experienced discrimination based on gender (34.8% to 4.09%—a differential of 30.71%).

Some women reported higher levels of being treated differently because of race/ethnicity/tribal affiliation and gender. One female attorney remarked: *“Tribal leaders often favor males and so that limits the ability of women to succeed as leaders in the community and in the workplace.”* Another female attorney said *“I am still faced, 15 years into the practice of law, with gender and racial discrimination from internal Tribal politics to good old boys in state superior courts.”* The explicit experiences of multiple biases by Native American women were extremely prevalent and very stark. One participant shared her experience:

“Working for several tribes, the gender bias is unapologetically included in policy if not written law, so it is to be expected. I have made career decisions not to work for law firms because of the gender and racial bias I experienced. Once, I provided my writing sample, transcripts, etc., and was told I was “basically hired.” Then, arriving at the interview, the interviewer’s jaw literally dropped when he saw me. They actually refused to interview me, saying they only hire “winners” at their law firm.”

These areas highlight the intersectionality of exclusion for Native American female attorneys that both decrease their satisfaction levels as well as increase their attrition risk from the profession. The research found that:

- More women than men reported experiencing a lack of access to informal or formal networking opportunities that impacted the advancement of their careers based on race, ethnicity and tribal affiliation (21.22% to 16.15%) and based on gender (22.86% to 3.11%).
- More women than men reported being denied advancement or promotional opportunities because of race, ethnicity and tribal affiliation (12.56% to 10.13%) and because of gender (20.63% to 2.53%). For example, one female attorney reported that *“When I was a young attorney I appeared in a courtroom in northern MN. I represented a non-Indian male. He appeared in court in blue jeans and a t-shirt and was rather disheveled. I had on a navy blue suit. The white male judge thought that I was the defendant and my client was the attorney. He continued to refer to the defendant as counselor until the court reporter had to lean over and tell him that the white man was not the attorney, it was the Indian woman.”*
- More women than men reported being denied appropriate compensation because of race, ethnicity, tribal affiliation (16.25% to 11.95%) and because of gender (29.17% to 1.26%).
- More women than men reported that a lack of access to information negatively affected their abilities to perform effectively because of race, ethnicity, tribal affiliation (16.38% to 9.62%) and because of gender (12.93% to 1.28%).
- More women than men reported a lack of access to resources that negatively affected their abilities to perform effectively because of race, ethnicity, tribal affiliation (15.56% to 9.68%) and because of gender (11.56% to 1.94%).
- Women also reported that they faced challenges due to being perceived as less committed because they were mothers: One attorney, for example, *“was told that I would be less profitable, because I would have to take maternity leave; it would affect my billable hours for that year. Because of that, I was told that I would likely not receive a significant pay raise the next year.”* Another attorney noted: *“It is a struggle to balance motherhood and being a successful attorney. Many places say they are family friendly or have a work-life balance but it’s not true and/or you are treated differently or looked down upon because you choose to seek a greater balance or reduced workload (and pay) so you can be home in time to have dinner with your children. It’s frustratingly difficult.”*

Both men and women consistently reported feelings of exclusion, disrespect and marginalization, especially when working with people outside of Native American communities with women significantly more likely to report negative experiences that directly hindered the advancement of their careers. One of the more sensitive issues raised in the surveys and interviews was that this feeling of exclusion persisted even when Native American attorneys were working with racial/ethnic minority attorneys, groups and/or groups in and out of their organizations that focused on diversity and inclusion in the profession. For example, one female attorney recalled:

“I was on a law journal, attended a top 5 law school and clerked for a federal judge. Notwithstanding, a white male who started two years after me, attended a lower ranked school, no clerkship, no journal, and was paid more money than I was paid. A white partner stated that I made too much money. I guess that if you come from a lower socio-economic background that you should be thankful for the opportunity to have a job! The white male partners made it a point to take the male associates out to lunch and help build their contacts and books of business. This never happened for me. I was the only minority at the law firm. Further, the firm would use me to get Native American clients (“dog and pony show”), but then they would not assign me to the cases.”

This and other types of exclusion that occurred in these contexts included:

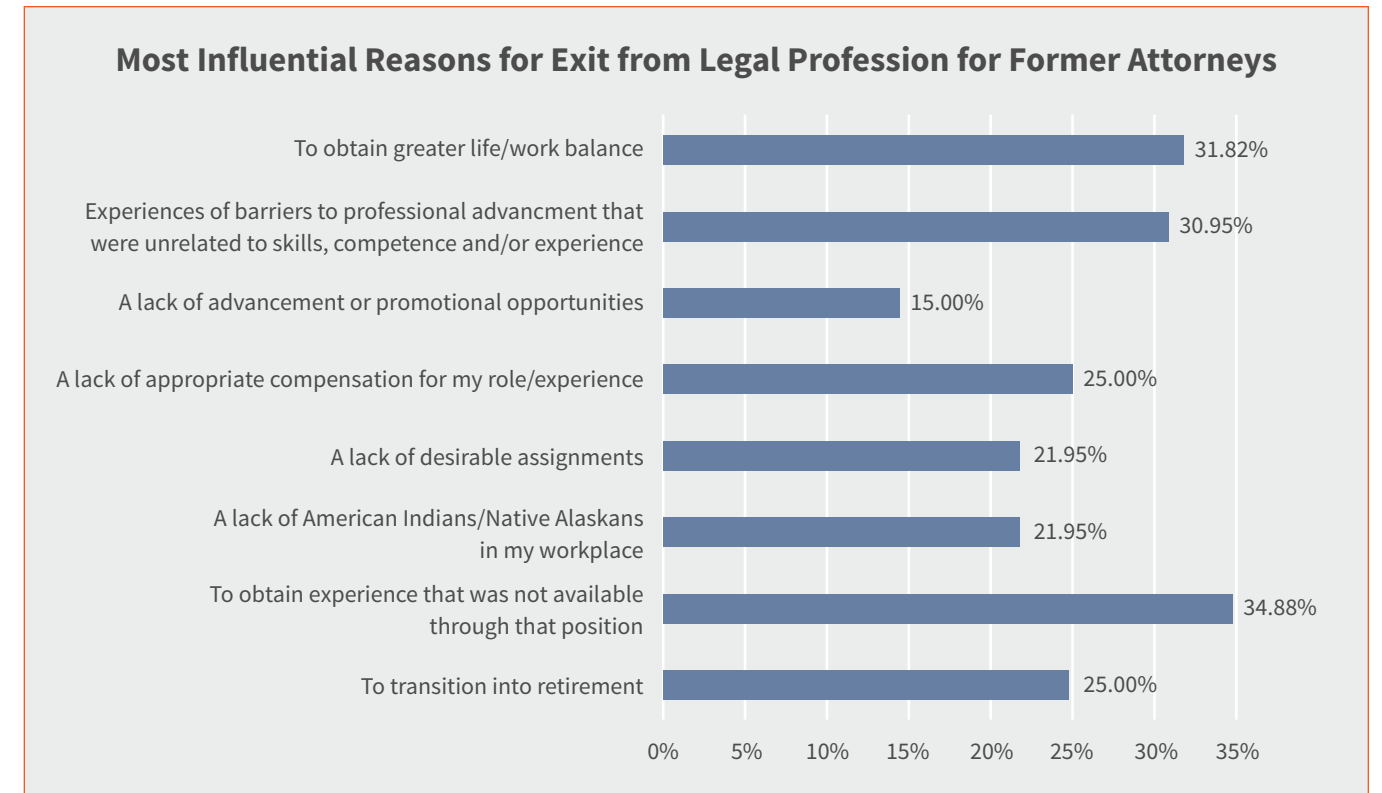
- Native Americans not being seen as an important aspect of diversity and inclusion efforts.
- Native Americans not being seen as a group that required deliberate focus because of their relatively small numbers.
- Native Americans not being seen as an important aspect of diversity and inclusion efforts because of a lack of understanding about Native American histories, experiences and ongoing challenges.
- Discrimination against Native Americans not being taken as seriously because it often does not “look like the kind of discrimination” that workplaces are used to seeing with other racial/ethnic minority groups.
- Offenses against Native Americans being ignored because “there aren’t enough of us to make it feel like a bad thing...The bad things that happen are happening to us one at a time in isolated ways, and it never feels big enough for our pain to be taken seriously.”
- Native Americans being ignored generally because “it’s easy to ignore us because we have been ignored for so long that ignoring us feels natural to everyone.”

Experiences and Exits

The experiences of exclusion, disrespect and marginalization detailed in the previous section have caused large numbers of Native American lawyers to leave the legal profession altogether. The following chart highlights the reasons that most influenced this attrition.

Important gender differences emerged between the influences and the strength of the influences cited by female attorneys in comparison to male attorneys. The factors that women were more likely than men to cite as strongly influencing their decision to leave the law were:

- 34.78% of women in comparison to 14.28% of men reported that a lack of access to informal or formal networking opportunities strongly influenced their decisions to leave the law. Many women also commented on how the majority of informal or formal networking opportunities focused



on activities that men enjoyed doing, even when the context was gender neutral such as a bar association event or a legal conference.

- 58.33% of women in comparison to 21.43% of men reported that a lack of advancement or promotional opportunities strongly influenced their decisions to leave the law.
- 46.16% of women in comparison to 20% of men reported that a lack of appropriate compensation strongly influenced their decisions to leave the law.
- 30.4% of women in comparison to 0% of men reported that a lack of information necessary for effective performance strongly influenced their decisions to leave the law. Women primarily cited the lack of informal mentoring and lack of knowledge about the unwritten rules as being the source of this influence.
- 34.79% of women in comparison to 15.38% of men reported that experiences involving demeaning comments or other types of harassment strongly influenced their decisions to leave the law.
- 33% of women in comparison to 0% of men reported that experiences of gender bias strongly influenced their decisions to leave the law.
- 26.09% of women in comparison to 14.29% of men reported that experiences racial/ethnic bias strongly influenced their decisions to leave the law.

- 52% of women in comparison to 33% of men reported that experiences of barriers to professional advancement that were unrelated to skills, competence and/or experience strongly influenced their decisions to leave the law.

The factors that men were more likely than women to cite as strongly influencing their decisions to leave the law were:

- 33.34% of men and 25% of women reported that a lack of racial/ethnic diversity in their workplaces strongly influenced them to leave the law.
- 40% men and 29.17% women reported that a lack of American Indian/Alaska Natives in their workplaces strongly influenced them to leave the law.
- 60% of men and 52% of women reported that a desire to obtain experience that was not available through their workplace strongly influenced them to leave the law.
- 44.44% of men and 25% of women reported that a desire to transition into retirement strongly influenced them to leave the law. (This differential was correlated with the difference in average age between the male and female attorneys because the older average of the male attorneys made it more likely that they would be eligible for retirement at higher rates than their female colleagues.)

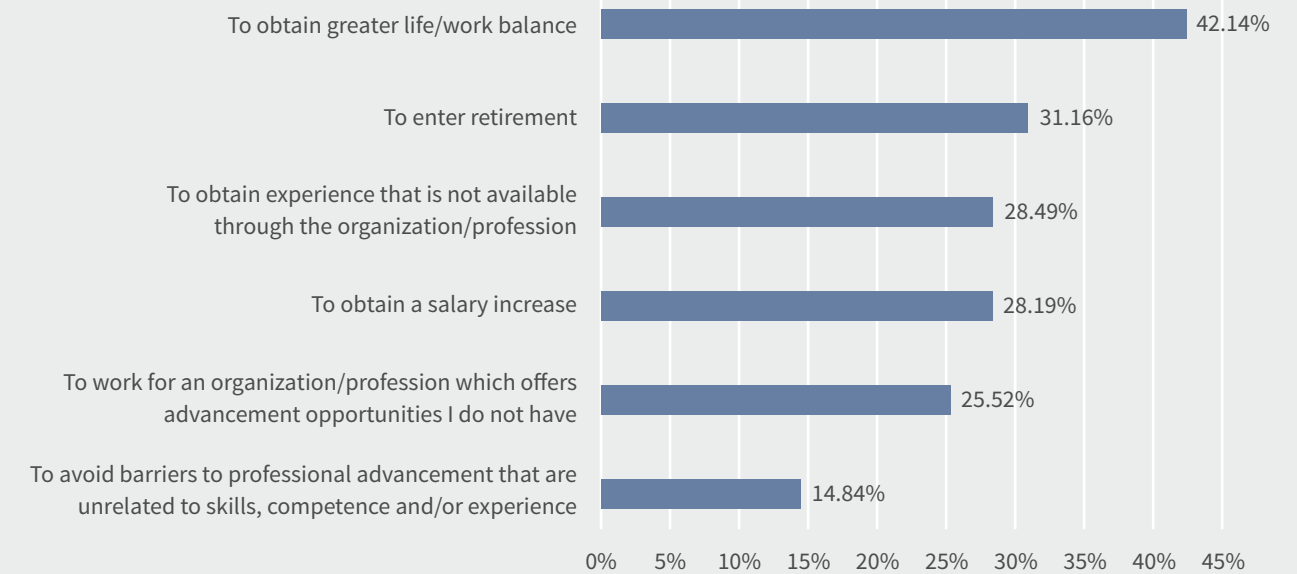
One surprising differential between men and women given the extent of focus on the work-life balance needs of women in the legal profession is that 60% of men in comparison to 48.14% of women cited the desire to obtain greater work-life balance as having strongly influenced their decision to leave the law. There was a correlation between age and this desire in that the older the attorney, the more likely he or she was to cite work-life balance as a reason to leave the law, and men were more represented in the older age groups than women.

For attorneys who are currently employed in the legal profession, the following reasons were cited as the most likely to influence them to leave the practice of law. The similarities between what influenced former Native American attorneys to leave the law and what current Native American attorneys are saying would influence them to leave the law highlight key issues that impact the long-term retention, advancement and career-satisfaction of Native American attorneys.

The gender differences here were similar to the gender differences in the previous section except for work-life balance which was cited by more women (44.89%) than men (38.19%) as a factor that would influence them to leave the practice of law. Since men and women were more equally represented in various age groups within the group of current attorneys, this statistic seems to be a more accurate reflection of gender differences in the focus on work-life balance as a reason to leave the law.

Other factors that were cited more by female attorneys as having the potential to strongly influence their decisions to leave the law were:

Most Influential Reasons for Potential Exit from Legal Profession for Current Attorneys



- 31.69% of women and 18.06% of men cited the desire to work for an organization/profession that offers advancement opportunities not currently available to them.
- 21.34% of women and 7.64% of men cited the desire to avoid barriers to professional advancement that are unrelated to skills, competence and/or experience.
- 12.57% of women and less than 1% of men cited the desire to leave a profession in which they experienced gender bias.
- 14.21% of women and 2.08% of men cited the desire to leave a profession in which they experienced racial/ethnic bias.

There were also generational differences in how Native Americans experienced the law and working in a legal workplace with younger lawyers being more frustrated with their overall experiences than the more senior lawyers. Many young lawyers commented on how they saw generational differences between themselves and more senior attorneys in how “being Indian” was actually defined. One attorney specifically commented: “There is a big difference between how older Indians and younger Indians think about being Indian. I’ve been told by an older Indian mentor that I’m not Indian enough. I have no idea what that means.” Other attorneys focused on how the legal market itself was different for the younger generations, and there was less opportunity now than there was a decade ago: “It’s already harder for our generation because there aren’t as many opportunities but we have it even harder than other people because people don’t see us as adding value.”

Women, more than their male counterparts, reported the intersection of generational and gender differences as particularly troubling in their experiences. As one young female attorney stated, *“Age is a major factor in how people treat others in the workplace. There is a perception by the senior management who are relatively old that the younger women working are less professional, competent and able to perform, and they make discriminatory statements to that effect.”* Another attorney described it in even more explicit terms: *“There is a good old boys club at work, and it’s bad for anyone who is not white and male but it’s really bad for women of color when you are young. They look right through you.”*

In spite of the extremely strong personal and community motivations for entering the practice of law, Native American attorneys have been driven and are continuing to be driven from the profession not because of how they practice law but because of how they experience the practice of law. This combined with a general lack of focus on Native American attorneys within the larger work on diversity and inclusion in the law makes these experiences even more challenging for Native American attorneys to mitigate and neutralize in order to create thriving and satisfactory careers.

The Path to Inclusion

If the legal profession is not working well for Native Americans today, what can it do tomorrow to be more inclusive of the attorneys who serve in the profession with passion but have been passively ignored by the profession?

The areas of change that the attorneys in this study most felt would have a positive impact on their careers are:

1. 83.1% of the attorneys reported that more substantive training and development opportunities would have a positive impact on their careers with 51.8% of that 83.1% reporting that the impact would be very positive. Many attorneys noted the link between being included in informal and formal networks and having access to the types of assignments and resources that would result in more substantive training and development opportunities.
2. 76.68% of the attorneys reported that more awareness and understanding of issues faced by Native Americans would have a positive impact on their careers with 41.01% of that 76.68% reporting that the impact would be very positive. In comparison, only 60% of the attorneys felt that more effective implementation of diversity and inclusion policies in their workplace would have a positive impact on their careers. This is not surprising as diversity and inclusion initiatives have largely ignored the issues and concerns of Native American attorneys, but it is important for diversity and inclusion professionals within the legal profession to understand that the lack of focus on Native Americans has been duly noted and internalized by Native American attorneys. For example, one attorney reported that: *“I feel completely ignored in my firm’s diversity efforts. I’ve been made fun of because I’ve asked them to focus on Native American issues.”*

3. Women were more likely than men (67.18% to 50.34%) to feel that the effective implementation of diversity and inclusion policies would positively impact their careers. This differential was primarily due to the maternity/flexibility policies that women integrated into their overall understanding of diversity and inclusion policies.
4. 75.42% of the attorneys reported that more training for supervisors in the skills they need to adequately train and develop their teams, especially teams with Native American attorneys, would have a positive impact on their careers with 53% of that 75.42% reporting that the impact would be very positive.
5. 72.34% of the attorneys reported that a greater opportunity to influence decisions on matters/cases on which they worked would have a positive impact on their careers with 39.97% of that 72.34% reporting that the impact would be very positive.
6. 68.78% of the attorneys reported that more colleagues who identified as American Indian/Alaska Natives would have a positive impact on their careers with 38.95% of that 68.78% reporting that the impact would be very positive.
7. 61.67% of the attorneys reported that more effective accountability systems to govern the ways in which supervisors develop, train, and evaluate would have a positive impact on their careers with 37.57% of that 61.67% reporting that the impact would be very positive.
8. 57.06% of the attorneys reported that more supervisors who were racially/ethnically diverse would have a positive impact on their careers with 31.7% of that 57.06% reporting that the impact would be very positive.

It is important to note that all of the above are changes that need to be made by workplaces, not individuals. Most of the attorneys in this study reported that simply increasing the racial/ethnic diversity in a workplace without paying attention to the increase in Native American attorneys would not change their environments for them. Female attorneys in the study did feel that more gender diversity in their workplace generally would have a positive impact on their careers, but they still focused more on institutional changes. As one female attorney commented, *“More women does not mean a different place. I’ve worked in places where they hire more women and the women come in and do what the men before them did. The system needs to change.”*

For many of the Native American attorneys who were not working directly for or with their tribes, being the only Native American in the room or in the workplace or on a team was not an unusual experience. While increasing the overall numbers of Native American attorneys (recruiting new attorneys) in their workplaces was important to these attorneys, fairness and inclusion in the system (retention and advancement of existing Native American attorneys) was often stated as more important. As one Native American attorney from a law firm said:

“I think working on the pipeline and recruiting are very important, but sometimes I ask myself what I’m recruiting this next generation into...We are bringing them in but we are not setting them up to succeed. In some ways, we may be setting them up to fail. We have to fix our workplaces first.”

This was a perspective that was repeated often in the surveys and the interviews, but there was a different perspective that was brought up as frequently and fervently:

“We need to get more Indian kids into law school and into practice so that they can work in Indian law directly with their tribes and in other places that deal with tribes. The pipeline is the most important thing because we need Indians to be practicing Indian law. And, the tribes treat Indian lawyers great so we don’t have to deal with the crap of working in places that don’t respect us and act like they don’t care if we are there or not.”

These two perspectives are indicative of a larger debate within the community of Native American attorneys as to where resources and activities should be focused and prioritized. While some attorneys strongly felt that creating more inclusive workplaces in the private and public sector would encourage more Native Americans to enter into and stay in the law, others felt equally strongly that the resources and activities should be focused on getting more Native American youth into law school in order to increase the number of Native Americans practicing with and for Native American tribes. This debate, while appearing to be divergent in nature, is rooted in the fundamental agreement that more Native American students should be introduced to the possibility of a legal career at a young age and then supported (financially and otherwise) to get into and out of law school ready to thrive as a lawyer. The following perspectives further illustrate the dialogue on this topic:

“The Indian lawyer population is getting old, and we don’t have enough young people coming up behind us. We have to fund them to go to law school or we won’t have any Indian lawyers pretty soon.”

“We have to fix what is going on for women in the workplace because I don’t want to see another woman come into the law and get chewed up and spit out. I tell my nieces to not consider the law so they won’t get hurt.”

“Tribes, especially the wealthy ones, need to put up more money to put all of our kids through law school, not just the kids from their communities.”

“Get jobs for the Indian lawyers out there before sending more to law school. So many of us are unemployed and we need support and I hear too much about support for kids to go to law school. What are they going to do after? There aren’t enough jobs, and the jobs that we can get don’t pay enough to live on.”

Strategies to Enhance the Inclusion of Native American Attorneys in the Legal Profession

INTRODUCTION



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Up until now, the discussion about “inclusion” of Native American attorneys has focused on pipeline issues and that is still a very important consideration. The statistics within this report indicate marked improvement from the enrollment

of Native J.D. students from a mere 392 in 1980 to 1,273 in 2010. And yet, the overall statistics remain dismal, with Native American law student enrollment at .32% of the total in 1979–80 and only .82 in 2009–10. Of this number, many did not achieve the index required to gain admission to the most competitive law schools, which places these students at a relative disadvantage as the entry level job market for law graduates becomes more competitive in general. This issue is compounded by the most recent statistics indicating continuing disparities in high school and college graduation rates for Native American students. Moreover, the cost of gaining a law school degree has risen rapidly, meaning that many students will not have the financial means to complete this degree. Clearly, these are all serious issues for consideration in any discussion about inclusion.

For the estimated 2,640 Native American attorneys who are in practice today, the most serious challenge of inclusion concerns the limited range of jobs available to these attorneys, as well as the deficiency of adequate mentoring and professional development that is available to ensure that these attorneys grow and progress in the profession. The study indicates that over 30% of Native attorneys will practice for tribal governments or small law firms, and many more are working within the federal government or for a non-profit organization. Native attorneys are severely underrepresented in the top law firms, corporations, or the federal or state judiciary. The question of professional advancement into key positions is extremely important, as illustrated by the recent confirmation of Diane Humetewa as the first Native American woman in history to be confirmed to the federal bench (and only the third Native American in history to serve on the federal bench).

Although many policymakers would like to portray the United States in 2014 as a truly “color-blind” society, committed to equal opportunity in education and employment, the statistics do not align with this vision.

Rather, the statistics demonstrate that Native Americans continue to struggle in the effort to achieve inclusion within the institutions that drive government, the economy, and the articulation of “justice” within this nation. The strategies to achieve inclusion must focus on institutional change and accountability. The template for tribal self-determination depends upon equal access to the institutions of the federal and state government, as well as development of tribal institutions. Native American attorneys must be represented at all of these levels. In addition, there must be accountability in evaluating the retention and advancement of Native American attorneys. The statistics indicate troubling features of the current structure, including the fact that many Native attorneys are directed into the expected domain of tribal government service or Indian law practice, and they are not invited to participate in other key fields of law. The statistics also reveal that there are continuing episodes of racial and gender bias within all of the existing structures. This is simply unacceptable. We must develop accountability mechanisms to assess these deficiencies in the workplace and to ensure that all Native attorneys are able to enjoy the benefits of advancement within the profession that others possess. This will entail a process of dialogue between the relevant entities and the development of appropriate goals and standards, which can be measured on a periodic basis to assess the progress of the legal profession toward inclusion and pluralism. Legal institutions impact Native peoples in a unique manner and there is a critical need for attorneys who understand the challenges as well as the possibilities for transformation.

Pipeline Strategies to Increase Native American Participation in the Legal Profession

- In order to effectively increase the participation of Native Americans in the pipeline into the legal profession, the pipeline should be divided into the following four sections given that each of the sections requires different interventions:
 - **Interest in law school and a legal career**
 - Create more opportunities for Native American students in various arenas to learn about the law, lawyers and the legal profession in elementary and middle schools.
 - Ensure that pipeline programs that currently reach out to elementary and middle school students are asking about Native American student populations in order to include schools that have Native American students.
 - Appeal to the younger generation of future lawyers by ensuring that materials created about diversity and inclusion actively include Native American lawyers and their stories.
 - **Admission into law school**
 - While additional resources to programs like PLSI and CLEO are invaluable, ensure that any pre-law programs that support students’ application, LSAT, and law school financing efforts actively recruit and include Native American students.
 - Those (or those organizations) involved in financially supporting students’ entrance efforts into law school, should ensure that outreach efforts include deliberate efforts to include Native American students.
 - **Success in law school**
 - Law schools should work to increase dialogue with and support of Native American law student organizations in order to meet the unique needs of Native American law students.
 - Law school career centers should increase their awareness levels of why Native American students go to law school and how they would like to be supported and guided as they choose their career paths.
 - **Successful transition from law school into the legal profession**
 - Law schools and legal workplaces (including legal workplaces within tribal governments and tribal lands) should work together to ensure that Native American law students have the support systems they need in order to transition from school into the workplace.
 - In the private sector, investment in the career development of future lawyers through internship, clerkship and fellowship programs should ensure effective outreach to Native American students.

Institutional Diversity & Inclusion Strategies

- All diversity and inclusion programs should be reviewed and revised to ensure adequate inclusion of Native Americans at all levels of recruiting, hiring, retention, advancement, and promotion.
- A paucity of Native Americans in a particular geographic region should not be a deterrent to including them as integral parts of the overall diversity and inclusion efforts.
- Share this report with others in your workplace and spark a dialogue on what your workplace can be doing differently to be more inclusive of Native American lawyers.

Gender Inclusion Strategies

- Read this report in conjunction with the ABA's Visible Invisibility series to better understand the experiences of women of color who are navigating multiple barriers to inclusion in the workplace.
- Workplaces within the tribal sectors should be especially aware that when women's voices are not heard and valued, the workplaces do not work as well...for everyone.
- Develop an informed awareness that gender issues are not just about "work-life balance" or "work-family conflict." True inclusion of Native American women requires an open dialogue on the types of exclusion that women face regardless of their family dynamics.

Generational Inclusion Strategies

- Increase awareness and integration of generational differences in hiring, training, development, and advancement efforts for Native American lawyers. What worked for more senior attorneys may not work for junior attorneys!
- Recognize and integrate an understanding of how generational differences may impact how younger Native American attorneys identify, express and manifest their Native American identities.

Future Research & Programming Strategies

- When planning a presentation or panel discussion on diversity and inclusion efforts, make sure to include this report as a resource and invite a speaker from the National Native American Bar Association to participate to contribute the perspective of how diversity inclusion efforts can/should include the needs of Native American lawyers.
- Utilize this report as a guide to introduce the unique challenges of Native American attorneys into larger discussions on diversity and inclusion.

Appendix

A Brief & Abbreviated History of Important Dates in the Development of Indian Law and Policy

- 1777** The Articles of Confederation in Article IX conferred on Congress the "sole and exclusive right and power of ... regulating the trade and managing all affairs with Indians not members of any of the states; provided that the legislative right of any state within its own limits be not infringed or violated."
- 1778** The Treaty of Alliance with the Delaware tribe becomes the first written treaty between the United States and an Indian Nation.
- 1789** The U.S. Constitution assigns to Congress the power to regulate Commerce with foreign Nations, among the States and with the Indian Tribes. U.S. CONST. art. I, § 8, cl. 3.
- 1790** An Act to Regulate Trade and Intercourse with the Indian Tribes is passed by Congress.
- 1817** The Indian Country Crimes Act is passed and provides that the federal courts have jurisdiction over interracial crimes committed in Indian Country. 18 U.S.C. §1152.
- 1831** The U.S. Supreme Court defines the relationship between Indian tribes and the U.S. government, characterizing tribes as "domestic dependent nations." *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831).
- 1832** The U.S. Supreme Court lays out the relationship between tribes and the state and federal government, stating that the federal government has the sole authority to deal with Indian nations. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).
- 1849** The Department of the Interior is created, and the Office of Indian Affairs is transferred from the War Department to the Department of the Interior.
- 1871** The United States ends the negotiation of Indian treaties. Indian Appropriations Act of March 3, 1871, 16 Stat. 544.
- 1884** The U.S. Supreme Court rules that despite adoption of the Fourteenth Amendment, Indians are not citizens of the United States even though they are born in the United States. *Elk v. Wilkins*, 112 U.S. 94 (1884).

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- 1885** The Major Crimes Act is passed, making certain crimes federal when committed by any Indian in Indian country. 18 U.S.C. Sec. 1153 (as amended).
- 1886** The U.S. Supreme Court upholds the constitutionality of the Major Crimes Act of 1885 which gave the federal courts jurisdiction over certain crimes committed by Indians on an Indian reservation, and held that the power to do this, even though it is not found in any language in the U.S. Constitution, exists because “[i]t must exist” and because “it has never been denied.” *United States v. Kagama*, 118 U.S. 375 (1886).
- 1887** The General Allotment Act of 1887 (The Dawes Act) is passed, authorizing the government to survey Indian tribal land and divide it into allotments for individual Indians and permitting Indians who accept allotments to gain U.S. citizenship. 24 Stat. 388.
- 1903** The U.S. Supreme Court holds that the federal government may abrogate a treaty with an Indian tribe unilaterally. *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903).
- 1905** The U.S. Supreme Court holds that treaties will be construed as the Indians would have understood them at the time of their signing. *United States v. Winans*, 198 U.S. 371 (1905).
- 1908** The U.S. Supreme Court confirms the validity of reserved water rights in treaties. *Winters v. United States*, 207 U.S. 564 (1908).
- 1924** The Indian Citizenship Act (the Snyder Act) is passed, granting U.S. citizenship to Indians. 43 Stat 253.
- 1928** The Meriam Report is published. The report was officially titled “The Problem of Indian Administration” and was highly critical of the federal government’s administration of Indian Affairs, leading to the “Indian New Deal” and many changes in the government’s handling of Indian affairs.
- 1934** The Indian Reorganization Act of 1934 (The Wheeler-Howard Act) is passed and is designed to improve tribal governments and the economic condition of tribes. 48 Stat. 984-988.
- 1934** The Johnson-O’Malley Act, a part of the Indian New Deal, is passed and allows for contracts between the federal government and states for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians. 48 Stat. 596.
- 1944** Delegates representing more than 50 tribes assemble in Denver, Colorado, and form the National Congress of American Indians (NCAI).

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- 1948** “Indian Country” is formally defined by statute. 18 U.S.C. §1151.
- 1950** Dillon S. Myer, former Director of the War Relocation Authority, the office responsible for the operation of the detention camps for Japanese-Americans, is appointed Commissioner of Indian Affairs.
- 1953** House Concurrent Resolution 108 is passed and declares that it should be the policy of the United States to abolish federal supervision over Indian tribes and to subject Indians to the same laws, privileges, and responsibilities as other U.S. citizens, and it also announces the federal policy of termination, and the Era of Termination officially begins.
- 1953** Public Law 280 is passed, and civil and criminal jurisdiction over Indian lands in six states was turned over to the states. Pub. L. No. 83-280.
- 1955** The U.S. Supreme Court holds that in Alaska, where Congress had not formally recognized a property interest of the Alaska Natives, property can be taken by the federal government without just compensation. *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955).
- 1959** The U.S. Supreme Court concludes that the state court in Arizona has no jurisdiction over a suit by a non-Indian business against Indian creditors for an on-reservation business transaction and that the proper forum is the tribal court. *Williams v. Lee*, 358 U.S. 217 (1959).
- 1968** The Indian Civil Rights Act is passed and makes many, but not all, of the guarantees of the Bill of Rights applicable within the tribes. 25 U.S.C. § 1331.
- 1970** President Richard M. Nixon repudiates the termination policy.
- 1971** The Alaska Native Claims Settlement Act is passed. 43 U.S.C. § 1601 et seq.
- 1973** The U.S. Supreme Court concludes that the State of Arizona cannot levy an income tax on the wages of Indian resident of an Indian reservation where all of her income derives from on reservation sources. *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164 (1973).
- 1974** The U.S. Supreme Court holds that an Indian-hiring preference statute does not violate the U.S. Constitution because the preference is based on the political status of members of federally recognized tribes, not the racial status of Indians. *Morton v. Mancari*, 417 U.S. 535 (1974).
- 1975** The Indian Self-Determination and Education Assistance Act is passed. 25 U.S.C. § 450 et seq.

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- 1977** President Jimmy Carter creates the position of Assistant Secretary for Indian Affairs within the Department of the Interior.
- 1978** The U.S. Supreme Court declares that the Indian Civil Rights Act does not waive a tribe's immunity from suit and that tribes have the absolute right to create their own rules for membership. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).
- 1978** The U.S. Supreme Court concludes that Indian tribal courts do not have inherent criminal jurisdiction to try and to punish non-Indians, and, hence, may not assume such jurisdiction unless specifically authorized to do so by Congress as such retained power is inconsistent with their status as domestic dependent nations. *Oliphant v. Suquamish Tribe of Indians*, 435 U.S. 191 (1978).
- 1978** An Indian tribe is a separate sovereign whose powers do not arise from the federal constitution or a delegation from Congress and, therefore, a person convicted of a crime by the tribe may also be tried by the federal government where the action violates the laws of both sovereigns without violating the double jeopardy clause of the U.S. Constitution. *United States v. Wheeler*, 435 U.S. 313 (1978).
- 1978** The Indian Child Welfare Act (ICWA) of 1978 is passed, and its primary purpose is to establish standards for the placement of Indian children in foster and adoptive homes and to prevent the breakup of Indian families.
- 1980** The U.S. Supreme Court rules that a state may require tribe to collect taxes from non-members for on reservation sale of cigarettes. *Washington v. Confederated Tribes of the Colville Reservation*, 447 U.S. 134 (1980).
- 1980** The U.S. Supreme Court holds that a state may not impose a gross receipts tax on transactions where a contract was entered into on the reservation and the delivery of the tractors took place on the reservation. *Central Machinery Co. v. Arizona Tax Commission*, 448 U.S. 160 (1980).
- 1981** The U.S. Supreme Court rules that the "exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation." *Montana v. United States*, 450 U.S. 544, 564 (1981).
- 1983** The U.S. Supreme Court concludes that a state may require a liquor license for an Indian-owned on-reservation package store even though business already has a tribal license and a federal Indian Trader license. *Rice v. Rehner*, 463 U.S. 713 (1983).

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- 1983** The U.S. Supreme Court rules that Tucker Act provides a waiver of immunity for an Indian tribe to sue the United States. *United States v. Mitchell*, 463 U.S. 206 (1983) (Mitchell II).
- 1985** The U.S. Supreme Court concludes that a challenge to the jurisdictional authority of the tribal court over action by a tribal member against a State-controlled school district must first be made in the tribal court itself before a federal court will consider relief. *National Farmers Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845 (1985).
- 1987** The U.S. Supreme Court holds that a plaintiff alleging diversity jurisdiction must exhaust tribal remedy before appeal to federal court and that tribal court's ruling on jurisdiction is subject to review in federal court. *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9 (1987).
- 1987** The U.S. Supreme Court declares that the State of California cannot regulate gaming on Indian reservations even under the auspices of P.L. 280, and, thus, the gaming revolution in Indian country begins. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).
- 1988** The Indian Gaming Regulatory Act (IGRA) is passed, and the federal government takes control of the regulation of "Indian gaming." 25 U.S.C. § 2701 et seq.
- 1988** The U.S. Supreme Court states that Free Exercise clause of the U.S. Constitution does not prevent the federal government from putting a road through and allowing the harvesting of timber in areas of federal lands held sacred by local Indian tribes. *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988).
- 1990** Native American Graves Protection and Repatriation Act (NAGPRA) is passed. 25 U.S.C. § 3001 et seq.
- 1990** The U.S. Supreme Court concludes that a state's denial of unemployment benefits to Indians who were dismissed from employment for having used peyote sacramentally does not violate First Amendment and that a state does not have to show a compelling state interest in prohibiting the use of peyote. *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990).
- 1990** The U.S. Supreme Court holds that a tribal court may not exercise criminal jurisdiction over an Indian who is not a member of that particular tribe. *Duro v. Reina*, 495 U.S. 676 (1990).
- 1991** Congress amends the Indian Civil Rights Act and restores the tribes' authority to prosecute non-member Indians. 25 U.S.C. § 1301(2).

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- 1997** The U.S. Supreme Court concludes that a tribal court does not have adjudicatory authority over suit between two non-members where the claim arises on a public highway running through the reservation. *Strate v. A-1 Contractors*, 520 U.S. 438 (1997).
- 2001** The U.S. Supreme Court states that tribal authority does not extend to regulation of state police officers who are executing process on a tribal member living within the reservation for off-reservation violations of state law. *Nevada v. Hicks*, 533 U.S. 353 (2001).
- 2002** The U.S. Supreme Court holds that tribe may not tax the operation of a motel located on non-Indian-owned fee land within the borders of its reservation. *Atkinson Trading Post v. Shirley*, 532 U.S. 645 (2001).
- 2004** The U.S. Supreme Court holds that Congress may restore to an Indian tribe the authority to criminally prosecute Indians who are not members of that tribe for violations of the tribe's laws committed while on the tribe's reservation and it is not double jeopardy because the restoration of criminal authority is not a delegation of federal authority. *United States v. Lara*, 541 U.S. 193 (2004).
- 2009** The U.S. Supreme Court concludes that under the Indian Reorganization Act, the Department of the Interior may take land into trust only for tribes federally recognized as of 1934. *Carciari v Salazar*, 555 U.S. 379 (2009).
- 2010** Tribal Law and Order Act of 2010 is passed, allowing tribal courts operating in Indian country to increase jail sentences handed down in criminal cases, and is a major step toward improving enforcement and justice in Indian country. P.L. 111-211 (2010).
- 2011** The U.S. Supreme Court opines that the fiduciary exception to the attorney-client privilege does not apply to the general trust relationship between the United States and the Indian tribes. *United States v. Jicarilla Apache Nation*, 131 S.Ct. 2313 (2011).
- 2012** The U.S. Supreme Court concludes that when the federal government enters into a contract with an Indian tribe for services under the Indian Self-Determination and Education Assistance Act, even if Congress has failed to appropriate sufficient funds to cover all of the contract support costs, the federal government must pay contracts in full so long as funds are available. *Salazar v. Ramah Navajo Chapter*, 132 S.Ct. 2181 (2012).

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- 2013** The Violence Against Women Reauthorization Act of 2013 is passed with new important tools to address domestic violence in Indian country, including authorizing tribes to prosecute non-Indian perpetrators of domestic violence against Native American women in Indian country and clarifying that tribal courts have full civil jurisdiction to provide Native American women the safety and security of protection orders.
- 2013** The U.S. Supreme Court holds that ICWA provisions did not apply where Indian parent never had custody of the child—neither continued custody or breakup of the Indian family existed under the circumstances of this case. *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552 (2013).
- 2014** The U.S. Supreme Court declares that Indian tribe retains inherent sovereign immunity from suit even for activities not on the reservation and that IGRA did not waive immunity from suit for gaming activities not on Indian lands. *Michigan v. Bay Mills Indian Community*, 134 S.Ct. 2024 (2014).
- 2015** National Native American Bar Association (NNABA) releases the first-ever study of Native American Attorneys and their careers.

Endnotes

¹ See www.nativeamericanbar.org.

² Minority Corporate Counsel Association (MCCA), *Native American Attorneys: Small in Number, Not in Influence*, DIVERSITY AND THE BAR (March/April 2006), available at <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=882> (“the American Bar Association ascertained that of the one million lawyers in the United States, only 3.9 percent are African American, 3.3 percent are Latino, 3.9 percent are Asian American, while just 0.3 percent are American Indian”)(citation omitted). See also American Bar Association, Lawyer Demographics, available at http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer_demographics_2013.authcheckdam.pdf.

³ Kimberly Dustman and Phil Handwerk, “Analysis of Law School Applicants by Age Group: ABA Applicants 2005–2009, Law School Admissions Council, available at [http://www.lsac.org/docs/default-source/data-\(lsac-resources\)-docs/analysis-applicants-by-age-group.pdf](http://www.lsac.org/docs/default-source/data-(lsac-resources)-docs/analysis-applicants-by-age-group.pdf).

⁴ See 4 HANDBOOK OF NORTH AMERICAN INDIANS: HISTORY OF INDIAN-WHITE RELATIONS (William C. Sturtevant gen. ed. and Wilcomb E. Washburn vol. ed.)(1989).

⁵ J. Gordon Hylton, *What Has Become of All the Native American Law Students?*, available at <http://law.marquette.edu/facultyblog/2011/09/17/what-has-become-of-all-the-native-american-law-students/>.

⁶ American Bar Association Section of Legal Education and Admission to the Bar, “Enrollment and Degrees Awarded: 1963–2012 Academic Years, available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf.

⁷ For more information on the “box checking phenomenon,” see Lawrence Baca, “American Indians and the ‘Box Checker’ Phenomenon,” *ILLP Review 2011: The State of Diversity and Inclusion in the Legal Profession*, available at <http://nylawyer.nylj.com/adgifs/decisions/090611diversity.pdf>.

⁸ J. Gordon Hylton, *What Has Become of All the Native American Law Students?*, available at <http://law.marquette.edu/facultyblog/2011/09/17/what-has-become-of-all-the-native-american-law-students/>.

⁹ Law School Survey of Student Engagement (2010) available at http://lssse.iub.edu/pdf/2010/2010_LSSSE_Annual_Survey_Results.pdf.

¹⁰ Id. (“77% of all students said having a challenging and rewarding career strongly influenced their decision to attend law school. 61% of all students were motivated to work hard during law school by a desire to be competitive in the job market. By contrast, fewer than half of all students (47%) reported that an inherent interest in the material motivated them to work hard in school.”)

¹¹ In the survey document, the terms “Federal Indian Law,” “Indian law,” and “Tribal Law” were not specifically defined. However, the common meaning of “Federal Indian Law” would be to include the law that is applied in federal court whereas “Tribal Law” would be the law of a particular tribe and applied in tribal court. “Indian Law” can be seen as encompassing both “Federal Indian Law” and “Tribal Law.”



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